



**IMO**

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**MERCHANT SHIPPING (TRAINING AND CERTIFICATION)  
REGULATIONS, 2012**

**A Legislation Drafting Project submitted in partial fulfillment of the  
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## **TABLE OF CONVENTIONS**

1. The 1969 Vienna Convention on the Law of Treaties.
2. The IMO Convention on the Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended.

## **TABLE OF STATUTES**

1. The Constitution of Kenya, 2010.
2. The Judicature Act (Cap 8, Laws of Kenya).
3. The Kenya Maritime Authority Act, Act No. 5 of 2006.
4. The Merchant Shipping Act, Act No. 4 of 2009.
5. The Ratification of Treaties Bill, 2011.

## **EXPLANATORY NOTE**

### **1.1 INTRODUCTION**

The proposed draft maritime legislation is entitled the Merchant Shipping (Training and Certification) Regulations, 2011 (hereinafter referred to as the “Regulations”). It is submitted that the title reflects Kenya’s legislative drafting practice in that, the ‘Merchant Shipping’ sets out the name of the primary legislation under which the Regulations are proposed to be made and ‘Training and Certification’ reflects the name of the Regulations. The Regulations are intended to provide a comprehensive legislative framework to facilitate and enable the implementation of the provisions of the International Maritime Organization (IMO) International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (hereinafter referred to as the “STCW Convention”) to which Kenya acceded on the 4<sup>th</sup> July, 1991.

It is thus proposed that there be formulated for enactment, the Regulations for purposes of effective implementation and enforcement of the provisions of the STCW Convention into Kenyan domestic law. The primary legislation dealing with matters of training and certification of seafarers, the Merchant Shipping Act, Act No. 4 of 2009 (MSA 2009) does not provide a comprehensive framework to enable the implementation and enforcement of the provisions and requirements of the STCW Convention in Kenya. This argument is premised on the fact that the MSA 2009 merely provides that,

“...In making regulations under this section, the Minister shall have due regard to the STCW Convention.”<sup>1</sup>

The proposal to formulate the Regulations is premised on the following reasons:

Firstly, the MSA 2009 incorporates as part of Kenya’s national legislation twenty-five IMO Conventions that Kenya had acceded to as at 1<sup>st</sup> September 2009, among them, the STCW

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<sup>1</sup> Section 170 (2) of the MSA 2009.

<sup>2</sup> The 1995 STCW conference adopted 1995 STCW Convention Reg. I/1 to VIII/2, applicable to 2012-01-01

Convention. Consequently, the MSA 2009 is a framework statute, only setting out in general terms that the STCW Convention shall have application in Kenya.

Secondly, this author opines that, as drafted, the MSA 2009, which is the statute incorporating the provisions of the STCW Convention into Kenya's domestic law does not provide a sufficient legal framework for the implementation and enforcement of the STCW Convention in Kenya. As a result, there is a need to develop a law that provides a comprehensive legislative framework to facilitate the application, implementation and enforcement of the requirements of the STCW Convention in Kenya.

Finally, it is submitted that the aforesaid insufficiency in the MSA 2009, as far as the incorporation of the STCW Convention into Kenya's national law is concerned can be addressed by developing subsidiary legislation under the primary legislation already in existence instead of developing a separate primary legislation for the same purpose as that will cause duplication of laws and possibly, institutional mandate, hence the proposal to develop the Regulations.

## **1.2 GENERAL OVERVIEW OF THE STCW CONVENTION**

The STCW Convention was adopted by the IMO on 7<sup>th</sup> July 1978 and entered into force on 28<sup>th</sup> April 1984. The STCW Convention was the first international convention to establish basic requirements on training, certification and watchkeeping for seafarers at the international level and prescribes minimum standards which countries are obliged to meet or exceed. Before the adoption of the STCW Convention by the IMO, the standards of training, certification and watchkeeping of officers and ratings were established by individual governments, usually without reference to practices in other countries.

As a result, standards and procedures varied widely; an untenable reality given that shipping is the most international of all industries. It is this disharmony that the 1978 STCW Convention sought to address by creating a uniform law relating to the standards of training, certification and watchkeeping for seafarers.

The STCW Convention comprises of seventeen Articles, an Annex and the STCW Code, which together form the legal framework within which mandatory technical standards are applied.

The Annex of the STCW Convention is divided into eight chapters, namely,

1. Chapter I: General provisions;
2. Chapter II: Master and deck department;
3. Chapter III: Engine department;
4. Chapter IV: Radio communication and radio personnel;
5. Chapter V: Special training requirements for personnel on certain types of ships;
6. Chapter VI: Emergency, occupational safety, medical care and survival functions;
7. Chapter VII: Alternative certification; and
8. Chapter VIII: Watch-keeping.

The regulations contained in the Annex are supported by the sections in the STCW Code. Generally speaking, the Annex contains basic requirements which are then enlarged upon and explained in the STCW Code which contains two parts, namely, Part A and Part B. Part A of the Code is mandatory and sets out the minimum standards of competence required for seagoing personnel. Part B of the Code contains recommended guidance, which is intended to help Parties implement the Convention. The measures suggested in Part B of the STCW Code are not mandatory and the examples given are only intended to illustrate how certain requirements of the STCW Convention may be complied with. However, the recommendations in general represent an approach that has been harmonized by discussions within IMO and consultation with other international organizations such as the International Labour Organization (ILO).

The Convention and Part A of the Code form a binding treaty between the States Parties to the Convention, the interpretation of which is governed by the 1969 Vienna Convention on the Law of Treaties.

### **1.3 AMENDMENTS AND REVISIONS TO THE STCW CONVENTION SINCE ITS ADOPTION**

The STCW Convention entered into force on 28<sup>th</sup> April, 1984. Since then, amendments thereto have been adopted in 1991, 1994, 1997, 1998, 2004 and 2006. Major revisions have been adopted in 1995 and 2010 and these revisions were the most extensive and important.

**The 1991 amendments** relate to the global maritime distress and safety system (“GMDSS”) and conduct of trials. The said amendments were adopted by IMO Resolution MSC. 21(59) and entered into force on 1<sup>st</sup> December 1992.

**The 1994 amendments** relate to special training requirements for personnel on tankers and were adopted by resolution MSC. 33(63) and entered into force on 1<sup>st</sup> January 1996.

**The 1995 amendments** were adopted by a Conference of Parties to the STCW Convention, which was convened by the IMO and met at the IMO Headquarters in London from 26 June to 7 July 1998 (“The 1995 STCW Conference”).<sup>2</sup> The 1995 STCW Conference adopted the Standards for Training, Certification and Watchkeeping Code (the STCW Code). As earlier stated, the STCW Code contains two parts, being Part A and Part B. Part A contains mandatory provisions to which specific reference is made in the Annex to the STCW Convention and which give in detail, the minimum standards required to be maintained by parties in order to give full and complete effect to the provisions of the STCW Convention. Part B is recommended guidance to assist parties to the STCW Convention and those involved in implementing, applying or enforcing its measures to give the STCW Convention full and complete effect in a uniform manner. The ‘95 amendments did not have to be ratified like the original STCW Convention because it was an amendment to an existing Convention. The amendments, however, completely re-wrote enforcement measures related to the Convention, and more importantly created an STCW Code that set

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<sup>2</sup> The 1995 STCW conference adopted 1995 STCW Convention Reg. I/1 to VIII/2, applicable to 2012-01-01 <<http://vp.imo.org/IMOVEGA/ImoDocument.aspx>> 25 February 2012.

stringent standards for mariners to meet.

**The 1997 amendments** were made to the STCW Convention and Part A of the STCW Code. These amendments relate to training of personnel on passenger and Ro-Ro passenger ships. These amendments were adopted by resolutions MSC. 66(68) and MSC 67(68) and entered into force on 1 January, 1999.

**The 1998 amendments** were made to Part A of the STCW Code, and relate to enhanced competence in cargo handling and stowage, particularly in respect of bulk cargoes. They were adopted by resolution MSC. 78(70) and entered into force on 1 January, 2003.

**The May 2004 amendments** were made to Part A of the STCW Code, adjusting certificates and endorsements and were adopted by resolution MSC. 156 (78) and the **December 2004 amendments** were also made to Part A of the STCW Code, taking into account on-load and off-load devices in the competence relating to survival crafts and rescue boats other than fast rescue boats and were adopted by resolution MSC. 180. (79). Both sets of 2004 amendments entered into force on 1 July 2006.

**The 2006 amendments** were made to Part A of the STCW Code, introducing, *inter alia*, new measures pertaining to ship security officers. The amendments were adopted by resolution MSC 209. (81) and entered into force on 1 January 2008.

**The 2010 amendments** to the STCW Convention, dubbed the ‘Manila Amendments’, were made to both the Convention and the Code and were adopted by a Conference of Parties to the STCW Convention held in Manila Philippines from 21 to 25 June, 2010 (the 2010 STCW Conference).<sup>3</sup> The 2010 STCW conference adopted a significant number of amendments to the STCW Convention and the STCW Code.<sup>4</sup> The amendments update standards of competence required, particularly in light of emerging technologies, introduce

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<sup>3</sup> The 2010 amendments to the STCW Convention, 1978, as adopted by Resolution 1 to the Final Act of the Manila Conference, entered into force 1 January 2012.

<sup>4</sup> For a complete list of the Manila Amendments, refer to < <http://vp.imo.org/ /IMOVEGA/STCW Convention/2010 amendments>> 24 February 2012.

new training and certification requirements and methodologies, improve mechanisms for enforcement of its provisions and detail requirements on hours of work and rest, prevention of drug and alcohol abuse and medical fitness standards for seafarers. The Manila amendments to the STCW Convention and Code are set to enter into force on 1 January 2012 under the tacit acceptance procedure and are aimed at bringing the Convention and Code up to date with developments since they were initially adopted and to enable them to address issues that are anticipated to emerge in the foreseeable future.

Among the amendments adopted in 2010, important changes were made to each chapter of the Convention and Code. The 2010 amendments include but are not limited to the following:

1. Improved measures to prevent fraudulent practices associated with certificates of competency and strengthen the evaluation process (monitoring of Parties' compliance with the Convention);
2. Revised requirements on hours of work and rest and new requirements for the prevention of drug and alcohol abuse, as well as updated standards relating to medical fitness standards for seafarers;
3. New certification requirements for able seafarers;
4. New requirements relating to training in modern technology such as electronic charts and information systems (ECDIS);
5. New requirements for marine environment awareness training and training in leadership and teamwork;
6. New training and certification requirements for electro-technical officers;
7. Updating of competence requirements for personnel serving on board all types of tankers, including new requirements for personnel serving on liquefied gas tankers;
8. New requirements for security training, as well as provisions to ensure that seafarers are properly trained to cope if their ship comes under attack by pirates;
9. Introduction of modern training methodology including distance learning and web-based learning;
10. New training guidance for personnel serving on board ships operating in polar waters;  
and
11. New training guidance for personnel operating Dynamic Positioning Systems.

The 2010 amendments aim to bring the STCW Convention and the STCW Code up to date with developments since the last full revision. They also aim to enable the parties to address issues that are anticipated to emerge in the foreseeable future in an effort to raise the standards of competence and professionalism of seafarers, upon whom safety of life, property and the environment depends upon.

## **2 TRAINING AND CERTIFICATION OF SEAFARERS IN KENYA**

### **2.1 THE POLICY FRAMEWORK FOR THE ENACTMENT OF SEAFARERS' TRAINING AND CERTIFICATION LAW IN KENYA**

The need for Kenya to enact a merchant shipping legislation was first identified and addressed under the Integrated National Transport Policy 2009<sup>5</sup> (the “Policy”). Kenya’s policy mission statement in relation to the maritime sector is stated in the Policy thus,

“...To promote an efficient, safe, secure, and environmentally sound maritime transport system that supports [...] the improvement of the quality of life and well-being of Kenyans.”<sup>6</sup>

To realize this mission the Government undertakes, vide the Policy, to pursue and ensure the provision of globally competitive, quality maritime education and training of seafarers through, *inter alia*, the incorporation of international conventions relating thereto into Kenya’s national law. The Kenyan Government aims to achieve this goal by enacting updated legal instruments in tune with modern challenges and development, particularly through the enactment of regulations that align the standards of training and certification of seafarers with international standards.<sup>7</sup> This objective was realized through the enactment of the MSA 2009, though it has been proposed by the maritime administration in Kenya that there be enacted subsidiary legislation to create a comprehensive legal framework for certain implementation and enforcement of the provisions of the MSA 2009 which include,

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<sup>5</sup> The Integrated National Transport Policy, 2009, <[www.transport.go.ke](http://www.transport.go.ke)> 18th November, 2011.

<sup>6</sup> The Government of Kenya, Ministry of Transport, The Integrated National Transport Policy, 2009, p. 81.

<sup>7</sup> Ibid 4.

*inter alia*, training and certification regulations.

Kenya, though not a ship-owning country,<sup>8</sup> is a littoral State with significant interest in the shipping industry. Consequently, the Government of Kenya is committed to empowering its population to access employment opportunities, both locally and globally. In the maritime sector, the Kenyan Government has set out to realize this commitment by embarking on a rigorous process of training of seafarers to equip them with the necessary skills to access employment opportunities in the global labour market. This cannot be achieved without first establishing a legal framework within which this goal is to be driven and eventually attained.

## **2.2 THE VALUE OF TRAINING AND CERTIFICATION OF SEAFARERS**

Having been admitted to the IMO's "White List" in May 2010, the commitment by the Government to pursue and ensure the provision of globally competitive, quality maritime education and training of seafarers is on its initial stages of attainment. The admission to the IMO "White List" was based on the incorporation of the STCW Convention into Kenya's national law under the MSA 2009. It is note worthy that at the time of Kenya's application for entry into the IMO White List, its application was supported by a copy of the Draft Merchant Shipping Bill which at the time was being debated on by the Parliament. During the initial stages of tabling the Draft Merchant Shipping Bill in Parliament, it had a comprehensive chapter on training and certification of seafarers. However, during the third reading, the Parliament removed the chapter on training and certification of seafarers from the Draft Bill and replaced it by a provision empowering the Minister to make regulations relating to the training and certification of seafarers.<sup>9</sup> At the time, these changes were made to the Draft Merchant Shipping Bill; the IMO had announced Kenya's entry into the White List.<sup>10</sup> The MSA 2009 has since entered into force.

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<sup>8</sup> Kenya has 17331.77 GT of the global gross tonnage (Kenya's Register of Seafarers in the custody of the maritime administration, the Kenya Maritime Authority as at 18.11.2011).

<sup>9</sup> This information was obtained by the author from Kenya's maritime administration, the Kenya Maritime Authority. However, efforts by the author to get a copy of the Draft Merchant Shipping Bill containing the said chapter or the Hansard Report have been unsuccessful.

<sup>10</sup> Kenya entered the IMO White List in May 2009 and the Merchant Shipping Act was enacted in September

However, regulations on training and certification of seafarers have up to date not been promulgated. The entry of Kenya into IMO's White List signifies the fact that Kenya is now in full compliance with the STCW Convention and Kenyan trained seafarers can now work in foreign going vessels<sup>11</sup>. It also signifies the fact that maritime certificates and other endorsements from Kenya are now recognized all over the world. This is very important for Kenyan seafarers because their livelihoods depend upon their certificates and endorsements being recognized around the world. It is important that all States recognize Kenya's seafarers' certificates because they may work on ships of various nationalities during their careers. The criterion for international recognition of seafarer's certificates and their endorsements by different countries is premised on compliance with the requirements of the STCW Convention.

### 2.3 EXISTING LEGAL PROVISIONS

There are currently two sets of legislation containing provisions for the training of seafarers in Kenya. These sets of legislation are the Kenya Maritime Authority Act, Act No. 5 of 2006 (the "KMA Act") and the MSA 2009.

The KMA Act is the Act of Parliament enacted to establish the Kenya Maritime Authority ("the Authority"), the maritime administration in Kenya. The principal objective of the Kenya Maritime Authority is to regulate, co-ordinate and oversee maritime affairs in Kenya. Section 5 of the KMA Act provides for the functions of the Authority, which are, *inter alia*,

“...Administer and enforce the provisions of the Merchant Shipping Act and any other legislation relating to the maritime sector for the time being in force<sup>12</sup>[...], advise the Government on legislative and other measures necessary for the implementation of relevant conventions, treaties, and agreements to which Kenya is

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2009.

<sup>11</sup> Kenya currently has 5, 675 seafarers with STCW Certificates (Kenya's Register of Seafarers in the custody of the maritime administration, the Kenya Maritime Authority as at 18.11.2011).

<sup>12</sup> Section 5 (a), Kenya Maritime Authority Act, Act No. 5 of 2006 (KMA Act).

a party<sup>13</sup>[...] and oversee matters pertaining to the training [...] of seafarers.<sup>14</sup>

In fulfillment of its mandate set out in the aforesaid section 5(c) of the KMA Act, the Authority in 2009 advised the Government to enact a legislation that domesticates all the international maritime conventions to which Kenya is a State Party. In 2009, the Merchant Shipping Act, Act No. 4 of 2009 (“the MSA 2009”) was enacted for that purpose. Among other international conventions, the MSA 2009 domesticates the rules set out in the SCTW Convention and those rules now forms part of the internal law of Kenya.

The MSA 2009 is the primary legislation that domesticates the STCW Convention into Kenya’s internal law. The long title of the Merchant Shipping Act provides that the Merchant Shipping Act is, *[A]n Act of Parliament to make provision for, inter alia, “... the training and the terms of engagement of masters and seafarers and matters ancillary thereto.”*

Further, section 170 of the MSA 2009 confers upon the minister responsible for shipping, that is, the Minister of Transport (hereinafter referred to as the “Minister”) power to make regulations, in this particular case to be referred to as the Training, Certification and Manning Regulations. Section 170 of the MSA 2009 further provides that the regulations made by the Minister under the MSA 2009 should include the following provisions,

1. requiring ships to carry such number of qualified officers of any description, qualified doctors and qualified cooks and such number of other seafarers or qualified seafarers of any description as may be specified in the regulations;
2. prescribing the standards of competence to be attained and other conditions to be satisfied, subject to such exceptions as may be allowed by or under the regulations, by officers and other seafarers of any description in order to be qualified as seafarers; and
6. prescribing medical fitness requirements for seafarers.

It is submitted that the regulations proposed to be made under section 170 (1) of the Act

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<sup>13</sup> Section 5 (c), KMA Act, 2006.

<sup>14</sup> Section 5 (k), KMA Act, 2006.

cover three areas namely, training and certification of seafarers, safe manning of ships and eyesight and medical certification of seafarers. The reading of Section 170 implies that the Minister should make three sets of regulations in respect of each of the said areas. As a result, the Minister of Transport of Kenya promulgated in 2011 two sets of regulations namely, Merchant Shipping (Safe Manning) Regulations, 2011 and Merchant Shipping (Medical Examination and Eyesight (Regulations) 2011.<sup>15</sup>

However, up to date no regulations on training and certification of seafarers have been promulgated. It is for this reason that this author proposes to draft the Regulations, whose purpose shall be to incorporate the provisions of the STCW Convention into Kenya's national legislation. Section 170 (2) of the Act provides that the Minister may make regulations relating to the training and certification of seafarers and in doing so shall have due regard to the STCW Convention as amended from time to time. This author wishes to state that the proposed Regulations will incorporate the relevant provisions of the STCW Convention, as amended.

### **3 THE NEED FOR A SECONDARY LEGISLATION**

#### **3.1 INCORPORATION OF INTERNATIONAL TREATIES INTO KENYAN LAW**

The Constitution of Kenya provides under Article 2(6) of the Constitution that,

“...Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.”

As a result, international conventions have legal effect in Kenya without the requirement of legislative enactment by the legislature but merely by virtue of ratification and such treaty provisions may then bind the courts without any specific act of incorporation. This provision is however problematic in that the Constitution does not define ‘ratification’, a practice Kenya has shied away from, preferring instead to “accede” to treaties. There

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<sup>15</sup> See < <http://www.kenyalaw.org/kenyalaw>> 22 February 2012.

however seems to be an effort at resolving this definitional problem in that legislation for ratification of treaties has now been drafted. This legislation is still in its early stages; having gone through the first reading on 12<sup>th</sup> October 2011 and thus is yet to become law in Kenya. The Ratification of Treaties Bill defines ‘ratification’ thus, “...“ratification” means the international act by which the State signifies its consent to be bound by a treaty and includes accession...”<sup>16</sup> However, so far, the Constitutional Court in Kenya has not made a determination whether the said constitutional provision is specific to ratification or whether it will apply in cases of accession by Kenya to treaties.

Be that as it may, even in the event the Constitutional Court interprets Article 2(6) of the Constitution to include ‘accession’ to treaties and international conventions or the Ratification of Treaties Bill is given presidential assent without amendment to the definition of ‘ratification’, the legal position so established will not be applicable to the STCW Convention because the Constitution which was promulgated in 2010 has no retrospective effect, nine years after Kenya’s accession to the STCW Convention and one year after the coming into effect of the MSA 2009. Consequently, to have effect of law in Kenya, the STCW Convention must be incorporated into Kenyan law by legislative action and this has been done through the enactment of the Merchant Shipping Act.

### **3.2 THE POWER TO MAKE SUBSIDIARY LEGISLATION IN KENYA**

The power to make delegated legislation in Kenya derives from Article 94 (5) of the Constitution. It provides that “No person or body, other than Parliament, has the power to make provision having the force of law in Kenya except under authority conferred by this Constitution or legislation”. In the exercise of its powers the Parliament of Kenya enacted section 170 (1) of the MSA, 2000, which empowers the Minister responsible for matters of shipping and seafarers, to make regulations relating to the training and certification of seafarers.

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<sup>16</sup> Section 2 (1), Ratification of Treaties Bill, 2011. See < <http://www.kenyalaw.org/kenyalaw>> 22 February 2012.

### 3.3 SUBSIDIARY LEGISLATION MAKING PROCESS IN KENYA

To be enacted into law, subsidiary legislation goes through the stages set out below.

**Stage 1:** The subsidiary legislation is drafted by the Minister, through the maritime administration.

**Stage 2:** The Minister reviews the draft legislation to ensure that it addresses all the policy objectives it seeks to address. The Minister then sends the draft legislation to the Attorney General for purposes of verifying the correctness of the content and ensuring that the draft conforms to Kenya's prescribed legislative drafting style.

**Stage 3:** The draft legislation is forwarded to the Parliamentary Legislative Counsel for confirmation of the correctness of the drafting style. Please note that subsidiary legislation is not debated upon by parliament.

**Stage 4:** Upon confirmation by the Parliamentary Legislative Counsel, the draft legislation is sent back to the Minister for his signature.

**Stage 5:** The Minister sends the draft legislation back to the Attorney General who confirms the authenticity of the signature of the Minister and sends the same to the Government Printer for publication.

**Stage 6:** The Government Printer publishes the legislation which comes into effect as part of the laws of Kenya either on the date appointed by the relevant minister or in the absence of such appointment on the date of publication in the Official Gazette in accordance with the provisions of the Interpretation and General Provisions Act, Cap, 2, Laws of Kenya.<sup>17</sup> The legislation comes into effect on the date of publication or on the date specified by the

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<sup>17</sup> Section 9, The Interpretation and General Provisions Act, Cap 9, Laws of Kenya. See <sup>17</sup> See < <http://www.kenyalaw.org/kenyalaw>> 22 February 2012.

relevant Minister for the legislation to come into effect.

The proposed draft Regulations is the first stage towards the effective implementation of the STCW Convention, as amended, by Kenya into its domestic law.

### **3.4 INSUFFICIENCY OF THE EXISTING LEGISLATION**

The existing legislation on training and certification of seafarers' in Kenya is not sufficient to facilitate effective and certain implementation and enforcement of the provisions of the STCW Convention in Kenya. This argument is premised on the following considerations:

Firstly, the KMA Act empowers the Minister responsible for matters relating to shipping and seafarers to make regulations to achieve its purposes. The KMA Act is an institution-establishing legislation whose object and purpose, from the reading of the Act is to set up the functional and organizational framework of the Authority. Any amendments to the Act should only be limited to that purpose and objective in order to preserve the integrity of the establishing legislation.

In particular reference to the training of seafarers, the KMA Act provides one of the functions of the Kenya Maritime Authority as,

“...To oversee matters pertaining to the training, recruitment and welfare of seafarers...”<sup>18</sup>

The KMA Act being a public body establishing legislation, any proposed amendments must be within the purpose and object of the KMA Act, otherwise such amendments will be *ultra vires*. In any event, the MSA, 2009 empowers the Minister to make regulations in respect of training and certification of seafarers and thus amending the KMA Act to make provision for the incorporation of the STCW Convention into Kenya Law would be an act of duplication of laws.

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<sup>18</sup> Section 5(k) of the Kenya Maritime Authority Act, Act No. 5 of 2006. See <<http://www.kenyalaw.org>. > 14 February 2012

Secondly, although the MSA 2009 domesticates the STCW Convention, it also domesticates some twenty-four other IMO conventions to which Kenya is a party. As a result of the bulk of the content of the twenty five IMO conventions ratified in Kenya, the MSA 2009 is a framework statute, only setting out in general terms that the Minister responsible for matter relating to seafarers and shipping shall have regard to the STCW Convention in making regulations to be called ‘training and certification regulations’.<sup>19</sup>

As drafted, the MSA 2009 does not set out in detail the rights, duties and obligations set out in the STCW Convention and thus fails to provide a comprehensive legal framework to facilitate effective implementation and enforcement of the requirements of the STCW Convention relating to the training and certification of seafarers. This deficiency creates a need to develop secondary legislation to create a comprehensive legal framework to enable the implementation of the STCW Convention in Kenya. It is on this basis that the proposal to develop secondary legislation in relation to training and certification of seafarers as envisioned by the STCW Convention is made.

### **3.5 NEED FOR NEW COMPREHENSIVE LEGISLATION TO GUIDE THE MARITIME ADMINISTRATION, THE JUDICIARY AND THE PUBLIC**

As a result of the insufficiencies set out in the preceding part of this note, it is submitted that there is a need for Kenya to develop and enact a legislation that sets out in detail the various obligations, powers, rights and duties stemming from the STCW Convention. Since there is already in place in Kenya a primary legislation that domesticates the STCW Convention, the best approach is, arguably, the development of subsidiary legislation to set out in detail the provisions of the STCW Convention. The objective of the proposed legislation is thus to create a comprehensive legal framework to enable Kenya to apply, implement and enforce the requirements of the STCW Convention relating to the training and certification of seafarers.

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<sup>19</sup> Section 170 (2) of the MSA 2009.

It is on this basis that this author proposes to draft the Regulations. The proposal to develop the Regulations is based on the fact that despite the incorporation of the STCW Convention into Kenya's national law under the Act in 2009, the Government has not yet embarked on the process of developing for enactment a comprehensive legislation prescribing, *inter alia*, the requirements for the administration and supervision of training of its seafarers, requirements for training, assessment and certification of seafarers and accreditation of maritime training institutions. There is thus an urgent need for Kenya to enact a legislation that will enable it achieve its policy objective in relation to capacity building of seafarers; this policy objective being to ensure the provision of globally competitive, quality maritime education and training for seafarers, through *inter alia*, expediting the implementation of the MSA 2009 to enable the country to meet STCW obligations.

The proposed legislation is not amending any existing Act of Parliament. It is a new subsidiary legislation made pursuant to section 170 of the MSA 2009. The regulations are proposed to be made because Kenya does not have in place any legislation that lays down, in a comprehensive manner, the requirements and standards of training and certification of seafarers and thus facilitate the implementation, application and enforcement of the provisions and the requirements of the STCW Convention in Kenya.

## **4 EXPLANATION OF THE DRAFT TEXT**

### **4.1 OBJECTIVE OF THE DRAFT**

The draft Regulations will set out in detail the various obligations, powers, rights and duties stemming from the STCW Convention.

### **4.2 SCHEME OF THE DRAFT**

The draft Regulations shall be divided into four parts and includes three schedules the contents of which are summarized hereunder.

Part 1 contains preliminary provisions, including the citation of the regulations,

interpretation, the purpose and application and general provisions on issuing, revalidation and endorsement of certificates. This part also establishes various officers and designates officer for purposes of the implementation of the regulations.

Part 2 of the legislation incorporates the provisions of the STCW Convention in respect of examinations, assessment procedure, types of examinations that candidates may undertake, appointment of assessors as well as the requirements to be satisfied to take examinations. The part also establishes examination offences and penalties for those offences.

Part 3 of the proposed legislation incorporates the provisions of the STCW Convention in respect of the certification for various duties on ships, that is, certification of deck officers, engineer officers, electro-technical officers and ratings, personnel on tankers and passenger ships, personnel on ships in polar waters and criteria for establishing qualifying service and removal of limitation for qualifying service.

Part 4 of the draft legislation incorporates the provisions of the STCW Convention in respect of the accreditation of training institutions, training programmes, requirements for training record book, in-service training and duties of training instructor and candidates.

Part 5 of the draft legislation contains provisions on enforcement of the Regulations. The court of competent jurisdiction for purposes of interpreting and enforcing the Regulations is the High Court of Kenya in accordance with section 2 of the MSA, 2009. Section 2 defines court thus,

“...‘Court’ means the High Court of Kenya...”

The draft legislation also contains three schedules. The first schedule sets out the Forms of Certificates and Endorsements incorporated into the STCW Convention by the 2010 Manila amendments and a table of the documents to accompany applications for examinations. The second Schedule contains guidelines for the recruitment and placement of seafarers’ on board ships and the third schedule contains guidelines for the accreditation of maritime training institutes in Kenya.

## 5 CONCLUSION

There is already in place in Kenya a primary legislation that domesticates the STCW Convention and thus it is not advisable enact a separate primary legislation to set out in detail the provisions of the STCW Convention because the same objective can be achieved through the enactment of subsidiary legislation. As stated earlier, the MSA 2009 confers upon the Minister responsible for matters relating to shipping and seafarers the power to make regulations necessary for the implementation of the said Act. It is in line with this provision of the MSA 2009 that this author proposes to develop the Regulations.

The Regulations will be important to Kenya because it will provide a legal basis for the training and certification of seafarers in Kenya and matters ancillary thereto, for instance, the accreditation of maritime training institutions, a matter that is currently not regulated under any education and training laws in Kenya.

The proposed legislation will create certainty in law; in that Kenya's legislative framework in regarding the training of seafarers will be able to satisfy the requirements of clarity to those seeking to know what the law is in respect of various aspects of training of seafarers by making reference to a single law.

The proposed legislation will provide a guide to the maritime administration, relevant users and the public for the implementation of the STCW Convention in Kenya. It will also provide a guide for judicial officers in the adjudication of matters relating to training and certification seafarers in Kenya. Further, the proposed legislation will provide clarity, stability, and intelligibility to those making reference therefrom as well as applying it, these persons being, *inter alia*, judicial officers, public officer and those interested in pursuing maritime training.

The proposed legislation will also provide a legal framework of the attainment of the Government's objective to ensure the provision of globally competitive, quality maritime education and training for seafarers. The enactment of the proposed legislation, when it happens will ensure Kenya's compliance with its undertaking to promulgate laws, decrees, orders and regulations necessary to give the STCW Convention full and complete effect, so

as to ensure that, from the point of view of safety of life and property at sea and the protection of marine environment, seafarers on board ships are qualified and fit for their duties.<sup>20</sup>

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<sup>20</sup> General obligation of state parties to the STCW Convention as is spelt out in Article 1 (2) of the STCW Convention.

**THE REPUBLIC OF KENYA**

**LEGAL NOTICE NO.....**

**MERCHANT SHIPPING ACT, 2009**

**(No. 4 of 2009)**

**IN EXERCISE** of the powers conferred by sections 170 of the Merchant Shipping Act, 2009 the Minister of Transport makes the following Regulations:

**THE MERCHANT SHIPPING (TRAINING AND CERTIFICATION)  
REGULATIONS, 2012**

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## PART A – TRAINING AND CERTIFICATION

### PART 1

#### PRELIMINARY PROVISIONS

- Short Title and Commencement.** 1. These Regulations may be cited as the Merchant Shipping (Training and Certification) Regulations, 2012 and shall come into effect on the date of publication.
- Interpretation.** 2. (1) In these regulations unless the context otherwise requires -
- “**able seafarer deck**” means a rating qualified for service on a seagoing ship in accordance with regulation 44;
- “**able seafarer engine**” means a rating qualified for service on a seagoing ship in accordance with regulation 46;
- “**accelerated training**” means an approved programme of intensive training that is designed to reduce the period of qualifying service;
- “**accredited institution**” means a training institution accredited by the Authority in accordance with regulation 67;
- “**approved**” means approved by the Director General;
- “**approved sea service**”, in relation to-
- (a) a deck officer certificate, means sea service on trading ships relevant to the duties and functions carried out by officers associated with the deck department;
- (b) an engineer officer certificate, means sea service on trading ships relevant to the duties and functions carried out by officers associated with the engine department;

- (c) a deck rating certificate, means sea service in any capacity working on deck and carrying out duties and functions associated with the deck workings on trading ships;
- (d) an engineer rating certificate, means sea service in any capacity working in the engine-room and carrying out duties and functions associated with the engine-room workings on trading ships; and
- (e) a general purpose rating certificate, means sea service contemplated in paragraphs (c) and (d);

**“assessor”** means a person appointed as an assessor under regulation 20(2);

**“assistant engineer officer”** means a person under training to become an engineer officer;

**“Authority”** means the Kenya Maritime Authority established by Act No. 5 of 2006;

**“certificate of competence”** means a certificate issued to a person under Part VII of the Act and which entitles the person to be employed in the capacity stated in the certificate and shall be in the form set out as Form 1 in Annex 1 hereto;

**“certificate of proficiency”** means a certificate, other than a certificate of competency issued to a seafarer, stating that the relevant requirements of training, competencies or seagoing service in the STCW Convention have been met;

**“certificated”** except in relation to a radio operator, means

duly certificated under the Act or deemed under the Act to be so certificated, and, in relation to a radio operator, means holding a valid appropriate certificate of proficiency issued or recognized by the Authority on behalf of the Communications Commission of Kenya;

**“chemical tanker”** means a ship constructed or adapted and used for the carriage in bulk of any liquid product listed in chapter 17 of the IBC Code;

**“chief engineer officer”** means the senior engineer officer responsible for the mechanical propulsion and the operation and maintenance of the mechanical and electrical installations of a ship;

**“chief mate”** means the deck officer next in rank to the master and upon whom the command of the ship will fall in the event of the incapacity of the master;

**“coastal voyage”** has the same meaning as “near-coastal” voyage;

**“deck officer”** means an officer including the master, certificated in accordance with part 1, division 3; and **“deck officer certificate”** shall be construed accordingly;

**“deck rating”** means a rating certificated as an ordinary seafarer or able seafarer in accordance with part 3, division 4; and **‘deck rating certificate’** shall be construed accordingly;

**“documentary evidence”** means documentation, other

than a certificate of competence or certificate of proficiency, used to establish that the relevant requirements of the STCW Convention have been met;

**“electro technical officer”** means an officer including the master, certificated in accordance with part 1, division 3; and **“electro-technical officer certificate”** shall be construed accordingly;

**“electro technical rating”** means a rating qualified in accordance with regulation 45;

**“endorsement”** means a document appended to a certificate and entitling the holder thereof to serve-

- (a) on a ship in a capacity other than that specified on the title page of the certificate;
- (b) on a specific type of ship in the capacity indicated in the certificate; or
- (c) on a ship engaged on a specific voyage when he or she cannot comply fully with the requirements as to medical fitness;

**“engineer officer”** means an officer certificated in accordance with part 3, division 2; and **“engineer officer certificate”** shall be construed accordingly;

**“examiner”** means a person appointed as an examiner under section 170 of the Act;

**“fishing vessel “** means a vessel as defined in section 2 of the Act;

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

**'GMDSS'** means the Global Maritime Distress and Safety System;

**'GT'** for a ship, means its gross tonnage calculated in accordance with the Merchant Shipping (Tonnage Measurement) Regulations, 2011;

**“holder”**, of a certificate or other document, means the person identified as holder by the certificate or document;

**'IBC Code'** means the latest edition the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk published by the International Maritime Organization, as amended from time to time;

**“IGC Code”** means the latest edition of the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk published by the International Maritime Organization, as amended from time to time;

**“length”** has the same meaning as in regulation 2 of the Merchant Shipping (Tonnage Measurement) Regulations, 2011;

**“liquefied gas tanker”** means a ship constructed or adapted and used for the carriage in bulk of any liquefied

gas or other product listed in chapter 19 of the IGC Code;

**“management level”** means the level of responsibility associated with-

- (a) serving as master, chief mate, chief engineer officer or second engineer officer on a trading ship; and
- (b) ensuring that all functions within the designated area of responsibility are properly performed;

**“marine notice”** means an information note issued by the Authority dissemination relevant information to the maritime industry;

**“master”** means the person, except the pilot, having command or charge of a ship, and, in relation to fishing vessels, means the skipper;

**“month”** means a calendar month of 30 days made up of periods of less than one month;

**“officer in charge of an engineering watch”** includes a designated duty engineer officer for a periodically unmanned engine-room;

**“offshore exploration”** means the exploitation by a ship at anchor or dynamically positioned, whether by mining or otherwise, of the mineral resources of the seabed or subsoil thereof, excluding oil and gas resources;

**“oil tanker”** means a ship constructed and used for the carriage in bulk of petroleum or petroleum products;

**“operational level”** means the level of responsibility associated with-

- (a) serving as officer in charge of a navigational or engineering watch or as designated duty engineer officer for periodically unmanned machinery spaces or as radio operator on a trading ship; and
- (b) maintaining direct control over the performance of all functions within the designated area of responsibility in accordance with proper procedures and under the direction of an individual serving in the management level for that area of responsibility;

**“port operations”** means voyages restricted to a port operations area; and **“port operations service”** shall be construed accordingly;

**“port operations area”** means the sea area within a radius of 15 nautical miles measured outwards of the fairway buoy;

**“port operations vessel”** means a harbour tug, dredger, hopper, pilot boat, work boat, bunker barge, ferry, tender, self-propelled floating crane or any other type of ship restricted to a port operations area;

**“propulsion power”** means the total maximum continuous rated output power in kilowatts of all a ship's main propulsion machinery appearing on the ship's certificate of registry or other official document;

**“qualifying service”**, for certification of a particular kind, means the sea service or port operations service, as the case

may be, required for certification of that kind;

**“radio duties”** include, as appropriate, watchkeeping and technical maintenance and repairs conducted in accordance with the Radio Regulations and the International Convention for the Safety of Life at Sea (SOLAS), 1974 as amended;

**“radio officer”** means a person holding an appropriate certificate employed as such and having responsibility for the operation of the radio installations on a ship;

**“rating”** means a seafarer other than a master or an officer;

**“Registrar”** means the Registrar of Seafarers referred to in regulation 6;

**“Ro-Ro passenger ship”** means a passenger ship with Ro-Ro cargo spaces or special category spaces as defined in Chapter II-2 regulation 3 of the SOLAS Convention, 1974 as amended;

**“seafarer”** means any persons employed upon a vessel and includes the Master, ships officers and ratings;

**“seagoing ship”** means a ship other than one that navigates exclusively in inland waters or in a port operations area;

**“sea service”** means service on seagoing ships;

**“second engineer officer”** means the engineer officer next in rank to the chief engineer officer and upon whom

responsibility for the mechanical propulsion and the operation and maintenance of the mechanical and electrical installations of the ship will fall in the event of the incapacity of the chief engineer officer;

**“security duties”** include all security tasks on board ships as defined in by chapter XI-2 of the SOLAS Convention, 1974 as amended, and the International Ship an Port Facility Code (ISPS Code);

**“ship security officer”** means an officer certificated in accordance with part 3, division 5; and **“ship security officer certificate”** shall be construed accordingly the person qualified

**“specified by the Director-General”** means specified by the Director-General in a Marine Notice;

**“STCW Code”** means the Seafarers’ Training, Certification and Watchkeeping (STCW) Code as adopted by the 1995 Conference resolution 2, as it may be amended;

**“STCW Convention”** means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended;

**“support level”** means the level of responsibility associated with performing assigned tasks, duties or responsibilities on a trading ship under the direction of an individual serving in the operational or management level;

**“tanker”** means a chemical tanker, a gas carrier or an oil

tanker;

“**the Act**” means the Merchant Shipping Act, 2009;

“**the Code**” means the *Kenya Maritime Code of Qualifications* published by the Authority, as amended from time to time;

“**trading ship**” means a seagoing ship engaged in trade and proceeding to sea on regular voyages, excluding-

- (a) warships, naval auxiliaries or other ships owned or operated by a state and engaged only on government non-commercial service;
- (b) fishing vessels;
- (c) ships used solely for sport or recreation; and
- (d) sailing ships of traditional build;

“**unlimited voyage**” means a voyage other than one contemplated in the definitions of near-coastal voyage and port operations; and

“**valid**”, in relation to a certificate or other document, means a certificate or document that is current and that has not been suspended or cancelled.

- (2) Any reference in these regulations to a particular level of assessment shall be read as a reference to assessment, in accordance with regulation 21, at that particular level to ensure that the candidate has attained the relevant competencies specified in the Code.

(3) References in these regulations to the holder of a certificate or to holding a certificate are references to the lawful holder of the certificate or to lawfully holding the certificate, as the case may be.

**Purpose of the Regulations.**

3. These regulations prescribe, for the purposes of section 170 of the Act, the standards of competency and the conditions to be satisfied for certification as master, ship's officer or rating on Kenyan ships.

**Classes of certificates of competency which may be issued.**

4. (1) A person is qualified as a master, ship's officer or rating for the purposes of section 170 of the Act and entitled to serve in the capacity and perform the functions involved at the level of responsibility specified in his or her certificate on a ship of the type, tonnage and power and means of propulsion so specified while engaged on the particular voyage concerned, if-

(a) in the case of a master or ship's officer, he or she holds-

(i) a valid certificate of competency as such referred to in sub-regulation (2),(3) (4) or (5); or

(ii) a valid certificate as such issued by or on behalf of the government of another country and has been authorized to serve on a Kenyan ship under section 170 of the Act; or

(iii) any other certificate issued by or on behalf of the government of another country which, in the opinion of the Director-General, qualifies the person to serve on a Kenyan ship in the capacity concerned.

(b) in the case of a rating, he or she holds-

(i) a valid certificate of proficiency or documentary evidence as such referred to in sub-regulation (6); or

- (ii) a valid certificate as such issued and endorsed in accordance with the STCW Convention by or on behalf of the government of another country; or
- (iii) any other certificate issued by or on behalf of the government of another country which, in the opinion of the Director-General, qualifies the person to serve on a Kenyan ship in the capacity concerned.

(2) Subject to sub-regulation (8), the certificates of competency, with their limitations, endorsements and relative levels of responsibility (if any), applicable to deck officers are-

(a) master-

- (i) master of a ship of any tonnage on unlimited voyages (management level);
- (ii) master of a ship of any tonnage operating within a port operations area, with or without a port breakwater limitation;
- (iii) master of a ship on a ship limited to offshore exploration operations;

(b) chief mate-

- (i) chief mate of a ship of any tonnage on unlimited voyages; (management level);
- (ii) endorsed master of a ship of less than 3,000 GT on unlimited voyages; (management level); or
- (iii) endorsed master of a ship of less than 500 GT on near-coastal voyages (management level);
- (iv) endorsed master of a ship limited to offshore exploration operations;

(c) deck officer-

- (i) officer in charge of a navigational watch on a ship

- of any tonnage on unlimited voyages (*operation level*);
  - (ii) endorsed chief mate of a ship of less than 3,000 GT on unlimited voyages; (*management level*)
  - (iii) endorsed master of a ship of less than 500 GT on unlimited voyages; (*management level*)
  - (iv) endorsed master of a ship of less than 3,000 GT on unlimited voyages (*management level*);
  - (v) endorsed master of a ship of less than 500 GT on near-coastal voyages; (*management level*); or
  - (vi) endorsed master of a ship of any tonnage operating within a port operations area, with or without a port breakwater limitation;
  - (vii) endorsed master of a ship limited to offshore exploration operations;
- (d) master (coastal)-
- (i) master of a ship of less than 500 GT on near-coastal voyages; (*management level*);
  - (i) endorsed officer in charge of a navigational watch on a ship of any tonnage on unlimited voyages  
chief mate/officer in charge of a navigational watch on ships of less than 500 GT on near-coastal voyages (*operation level*);
  - (ii) endorsed master of a ship of less than 500 GT on near-coastal voyages (*management level*);
  - (iii) endorsed master of a ship of any tonnage operating within a port operations area, with or without a port breakwater limitation;
  - (iv) limited to offshore exploration operations (*operation level*);

(3) Subject to sub-regulation (8), the certificates of competency, with their limitations, endorsements and relative levels of responsibility (if any), applicable to engineer officers are-

(a) chief engineer officer-

(i) chief engineer officer of a ship of 3,000 kW propulsion power or more; (*management level*);

*and*

(ii) chief engineer officer of a ship of less than 3 000 kW propulsion power (*management level*);

(b) second engineer officer-

(i) second engineer officer of a ship of 3,000 kW propulsion power or more; (*management level*);

(ii) second engineer officer of a ship of less than 3,000 kW propulsion power; (*management level*);

(iii) endorsed chief engineer officer of a ship of less than 3,000 kW propulsion power; (*management level*);

(iv) endorsed chief engineer officer of a ship of less than 750 kW propulsion power; (*management level*);

(v) endorsed chief engineer officer of a ship of any kilowatt propulsion power operating within a port operations area;

(c) engineer officer (*management level*)

(i) officer in charge of an engineering watch on a ship of any kilowatt propulsion power;

(ii) endorsed second engineer officer of a ship of any propulsion power on ships operating within the port area;

(iii) endorsed chief engineer officer of a ship of less

than 1,500 kW propulsion power on ships operating within the port area;

(d) chief engineer officer (port operations)

(i) chief engineer officer of a ship of any kilowatt propulsion power operating within a port operations area, with or without a port breakwater limitation;

(e) second engineer officer (port operations),

(i) second engineer officer/officer in charge of an engineering watch on a ship of any kilowatt propulsion power operating in a port operations area;

(ii) endorsed chief engineer officer of a ship of less than 1 500 kW propulsion power operating within a port operations area, with or without a port breakwater limitation.

(4) Subject to sub-regulation (8), the certificates of competency, with their limitations, endorsements and relative levels of responsibility (if any), applicable to electro-technical officers engaged on a ship at an operational level and are:

(a) Electro-technical officer in charge of electronic, electrical and control engineering (operational level) of a ship of any tonnage on unlimited voyages;

(b) Electro-technical officer in charge of maintenance and repair of electronic and electrical systems (operational level) of a ship of any tonnage on unlimited voyages;

(c) Electro-technical officer in charge of operation of a ship and care of persons on board (operational level) of a ship of any tonnage on unlimited voyages;

- (5) Subject to sub-regulation (8), the certificates of proficiency and documentary evidence, with their limitations and relative levels of responsibility (if any), applicable to ratings are-
- (a) ordinary seafarer (support level)-limited to port operations;
  - (b) able seafarer (support level) – limited to near coastal voyages;
  - (c) able seafarer deck (support level)- unlimited voyages
  - (d) able seafarer engine (support level)- unlimited voyages
  - (e) electro technical rating (support level) – unlimited voyages;
  - (f) efficient cook.
- (6) The certificates referred to in sub-regulations (2), (3), (4), and (5) may, in addition, be endorsed for service on oil and chemical tankers, liquefied gas tankers, Ro-Ro passenger ships or passenger ships other than Ro-Ro passenger ships, in accordance with regulations 54, 55, 56 or 57 respectively.
- (7) The ranking of voyage limitations is such that the holder of-
- (a) a certificate unlimited as to voyages may serve in the certificated capacity on ships engaged on unlimited voyages or voyages of any limitation;
  - (b) a certificate limited to near-coastal voyages may serve in the certificated capacity on ships engaged on near coastal voyages and in port operations but not on unlimited voyages;
  - (c) a certificate limited to port operations may serve in the certificated capacity only on ships engaged in port operations; and

(d) a certificate limited to offshore exploration operations may serve in the certificated capacity only on ships employed in offshore exploration operations.

(8) The certificates referred to in sub-regulations (2) to (6) shall be issued and endorsed in accordance with the STCW Convention, except-

(a) any certificate limited to port operations; and

(b) the certificate of proficiency as efficient cook;

**Classes of certificates of proficiency which may be issued.**

5. All seafarers shall be required to undertake training and hold certificates of proficiency in-

(a) personal survival techniques;

(b) fire fighting and fire prevention;

(c) basic first aid skills;

(d) personal safety; and

(e) social responsibilities.

**Revalidation of certificates. (STCW 1/11).**

6. (1)A certificate of competency issued in terms of these regulations, and any equivalent certification, is not valid for sea service or port operations service unless revalidated at intervals not exceeding five years to establish continued professional competence in accordance with sub-regulation (2).

(2) Continued professional competence is established by-

(a) completing during the preceding five years, at least 12 months sea service or port operations service, as appropriate to the certification held;

(b) completing during the preceding 6 months, at least 3 months sea serves or port operations service, as appropriate to the certification held; or

(c) performing functions considered by the Authority to be

- equivalent to the service mentioned in sub-paragraph (a); and
- (d) passed the approved test; or
- (e) completing-
- (i) in a supernumerary capacity, at least three months sea service or port operations service as appropriate to the certification held; and
  - (ii) assessment at level 3 to meet the standard of competence specified in the Code; and
  - (iii) passed the approved test.
- (3) Application for revalidation shall be made in the form and manner, including the information and be accompanied by the documents specified by the Authority.
- (4) The Director-General shall, if he is satisfied that the applicant meets the requirements of sub-regulation (2) or (3), issue to the applicant an endorsement revalidating his certificate.

**Equivalence of certificates issued before commencement of regulations.**

7. The certificates issued under these regulations shall be exchanged for the corresponding new certificates within the time and in the manner specified by the Director-General.

**Registrar of Seafarers.**

8. (1) The Director-General may designate any officer of the Authority to perform the duties of the Registrar.
- (2) In addition to any other function, the Registrar shall perform the following functions:-:

- (a) to issue certificates of competency and qualification in accordance with the Act;
- (b) to issue endorsements to certificates in accordance with the Act;
- (c) to maintain a register of all certificates of competency and qualification issued or recognized under the Act, and of all matters affecting them;
- (d) to make available information on the status of certificates of competency and qualification, including the matters affecting them, to other competent authorities or shipping firms requesting verification of the authenticity or validity of certificates produced to them; and
- (e) to perform the functions incidental to those referred to in paragraphs (a) to (d).

(3) The Registrar shall perform his or her functions in accordance with any applicable quality assurance system implemented pursuant to regulation 10.

**Senior examiners.** 9. The Director-General shall, for the purposes of these regulations, designate one or more examiners as senior deck or engineer examiners.

**Quality assurance.** 10. The Director-General shall implement a quality assurance system to monitor the working procedures of the examiners and the Registrar.

**Syllabus committee.** 11. (1) The Director-General shall establish a syllabus committee the functions of which shall be to interpret the syllabi set out in the Code and to keep these regulations and the Code

under review.

- (2) The committee shall be chaired by a senior examiner, and the remaining members of the committee, not exceeding eleven, shall be representative of the Government, the training institutions, the shipping industry and organized labour in the shipping industry.

## **PART II - ASSESSMENT**

- Proof of identity.** 12. Every candidate for a certificate or an endorsement shall furnish proof of his or her identity to the satisfaction of the Director-General. Such proof shall be in the form of a valid Kenyan identity document or passport or, in the case of a foreign citizen or resident, a valid passport.
- Dates and places of examination.** 13. (1) The Director-General shall publish annually in a marine notice the dates, times and places of written examinations to be conducted by accredited institutions.
- (2) A candidate for an oral examination shall receive confirmation of the date, time and place of examination after the examiner has determined that the candidate meets all the requirements preliminary to examination.
- How to apply.** 14. (1) Candidates for the issue of certificates or endorsements shall apply at an office designated as an examination centre on an application form obtainable from that office. The duly completed application form shall be accompanied by the relevant supplementary documents specified in the Annex 2 hereto.

- (2) Candidates for oral examination shall ensure that application for examination is made in accordance with sub-regulation (1) at least 21 days before the date proposed for examination.

**How to apply in special cases.**

15. (1) Whenever there is doubt about the sufficiency of a candidate's qualifying service, the candidate may submit his or her case, accompanied by the relevant certificates, discharges, testimonials, training records, watchkeeping certificates and such other documents as may be required for special consideration by an examiner.

- (2) Applications for certificates and endorsements by candidates domiciled outside Kenya may be made by post and shall include full particulars of the case, accompanied, where necessary, by certified copies of the relevant documents. Original documents should not accompany such applications.

**Declaration and proof of qualifying service.**

16. (1) Each candidate shall be required to make a declaration of qualifying service in the application form referred to in regulation 12, and shall be required to explain in writing, to the satisfaction of the examiner concerned, any period of discontinuity in such service.

- (2) Certificates of discharge or a duly completed Continuous Certificate of Discharge shall, in the absence of evidence to the contrary, be accepted as sufficient proof of the service recorded therein.

- (3) A candidate for a deck officer certificate shall, where service in charge of a navigational watch is required,

produce certificates of watchkeeping service signed by the respective masters of the ships on which he or she has served, stating that he or she has acted as a watchkeeping officer for at least 8 hours out of every 24 hours' service claimed. A candidate for a first deck officer certificate shall produce testimonials signed by the respective masters of the ships on which he or she has served for the 12 months' qualifying service preceding the date of application for examination.

(4) (a) A candidate for an engineer officer certificate may submit testimonials as proof of ship service. The testimonials shall set out the kind of work the candidate has undertaken or in which the candidate has been trained.

(b) Testimonials produced as proof of qualifying service by a candidate for an engineer officer certificate shall be signed by either the chief engineer officer or master of the ship concerned and shall state-

(i) the candidate's actual rank on watch;

(ii) the number of engineer officers simultaneously on watch;

(iii) the type of propulsion machinery and the propulsion power (in kilowatts) of the ship;

(iii) the nature of duties performed; and where service in charge of a watch is required, that the candidate has acted as a watch-keeping officer for at least-

(aa) eight hours in every 24 hours' service claimed on ships having a continuously manned engine room; and

(bb) 24 hours in every 72 hours' service claimed on ships having a periodically unmanned engine

room.

- Bribery.** 17. A candidate who has been convicted of bribery in terms of section 48 of the Anti-Corruption and Economic Crimes Act, 2003 or upon whom a penalty for bribery has been imposed under this Act shall not be admitted to any examination for a certificate or endorsement before a period of at least 12 months has elapsed since the date of such conviction or the date of imposition of such penalty, as the case may be.
- Fraudulent Conduct.** 18. A candidate who has been convicted of fraudulent conduct in relation to certificates as a seafarer or upon whom a penalty for fraud has been imposed under the Penal Code shall not be admitted to any examination for a certificate or endorsement before a period of at least 12 months has elapsed since the date of such conviction or the date of imposition of such penalty, as the case may be.
- Unsatisfactory conduct.** 19. A candidate or prospective candidate who, after having signed a crew agreement contemplated in section 119 of the Act with the master, failed to join the ship or who, after having joined, left the ship other than upon discharge, or who has been found guilty of misconduct on board shall, unless the Director-General directs otherwise, be required to produce satisfactory proof of at least two years' subsequent qualifying service with good conduct.
- Oral examinations.** 20. (1) Where an examination consists of a written part and an oral part, a candidate shall not be examined in the oral part unless he or she has passed in the written part.
- (2) Oral examinations shall be conducted by an examiner in the

presence of an assessor. The purpose of an oral examination shall be to ascertain a candidate's competency in the practical aspects of an officer's duty.

- (3) Every candidate shall, before being examined in the oral part of an examination, submit to the examiner a certificate of results from an accredited institution, signed by an authorized person and showing-
  - (a) the candidate's full name and student number;
  - (b) the course or courses successfully completed;
  - (c) for each subject, the subject mark, marks obtained in the final examination (if applicable), final marks and result; and
  - (d) the duration of the course or courses.
  
- (4) The oral examination for a deck officer certificate shall test a candidate's knowledge of the ambit and intent of the Collision Regulations, and the mere ability to repeat the regulations verbatim shall not suffice to ensure a pass in the examination, nor shall the lack of verbatim repetition necessarily entail failure, provided the examiner is satisfied that the candidate grasps the full significance, content and practical application of those regulations. During the examination a candidate shall not be required to handle a sailing ship, but his or her ability to recognize a sailing ship's lights, and knowledge of a sailing ship's possible manoeuvres according to the direction of the wind, shall be tested.
  
- (5) A candidate may, during and oral examination, be required to complete a calculation or to elaborate upon a section of the syllabus applicable to the certificate or endorsement for which he or she is being examined.

- (6) A candidate who fails in the oral part of an examination for any certificate or endorsement through serious deficiency in practical knowledge may, at the examiner's discretion, be required to perform further qualifying service, not exceeding six months, before being eligible for re-examination.
- (7) A candidate who without reasonable excuse fails to appear for an oral examination at the appointed time and place may be failed by default.

**Written  
Examinations.**

- 21. (1) Written examinations shall be conducted by accredited institutions and shall cover the subjects required for each certificate or endorsement as specified in the Code so as to ensure that candidates have attained the standard of theoretical knowledge required in the Code.
- (2) The Director-General shall designate examiners who shall-
  - (a) moderate examination question papers and memoranda at least 30 days before the appointed examination date;
  - (b) moderate examination scripts;
  - (c) re-mark examination scripts at the request of an accredited institution; and
  - (d) consult with the relevant lecturer or internal examiner of an accredited institution when a negative trend or fault is detected in a memorandum, script or batch of scripts.
- (3) In the subjects coastal navigation and ocean navigation, ship stability and watchkeeping for deck officers, a candidate shall be required to obtain a final aggregate pass-mark of at

least 60 per cent in each subject; in all other subjects, in both the deck officer and engineer officer syllabi, the final pass-mark for each subject shall be at least 50 per cent.

- (4) In cases of doubt about a candidate's final mark in the subjects of coastal navigation and ocean navigation, ship stability and watch-keeping and engineering knowledge, the examiner's decision shall be final.

**Assessment  
procedure.**

22. (1) Every candidate for the issue of a certificate or an endorsement shall be assessed at one or more of the following levels:

(a) Level 1 assessment is carried out during qualifying service on a ship or during training at an accredited institution, and shall be carried out aboard ship by one or more designated ship's officers and ashore by one or more persons who meet the requirements of regulation 20 (2).

(b) Level 2 assessment is carried out during qualifying service on a ship or during training at an accredited institution and shall be carried out by an assessor.

(c) Level 3 assessment is carried out by an examiner and an assessor when a candidate presents himself or herself for oral examination.

(2) All units of competency that are to be assessed at level 1 or 2 shall be indicated in the training record book issued to a candidate.

(3) Only an assessor may sign off a unit of competency in a candidate's training record book when the candidate is considered to be ready for the next level of assessment and

has successfully demonstrated competency in the unit as specified in the Code.

- (4) A candidate who is required to complete more than one level of assessment shall not be assessed at the higher level until he or she has demonstrated competency at the lower level, nor shall such candidate be assessed at level 3 until all the relevant units of competency have been signed off at the lower levels of assessment by an assessor.

**Assessors.**

23. (1) Every person who, whether aboard ship or ashore, conducts in-service assessment of a candidate for the purposes of certification in terms of these regulations shall-
- (a) have an appropriate level of knowledge and understanding of the competence to be assessed;
  - (b) have proof of being qualified in the activities for which the assessment is being made;
  - (c) have proof of having received appropriate guidance in assessment methods and practice;
  - (d) have gained practical assessment experience; and
  - (e) where assessment is conducted by means of simulators, have gained practical assessment experience on the particular type of simulator under the supervision to the satisfaction of another, more experienced assessor.
- (2) (a) The Director-General may, subject to paragraph (b), in writing appoint as an assessor any person who, in the Director-General's opinion, is qualified to be so appointed, stating in the instrument of appointment the levels, competencies and tasks that the person is entitled to assess.

- (b) A person is not eligible for appointment under paragraph (a) unless he or she-
  - (i) holds an appropriate certificate of competency;
  - (ii) is medically fit; and
  - (iii) has successfully completed an approved course, including at least three practical assessments, covering the disciplines in question.
  
- (3) Appointment as an assessor remains in force for a period not exceeding three years from the date of appointment, but is renewable subject to sub-regulation (2).
  
- (4) The Director-General may revoke an appointment under sub-regulation (2) upon request, or if-
  - (a) after investigation it is found that the assessor-
    - (i) was negligent or incompetent in carrying out his or her duties;
    - (ii) completed an assessment fraudulently; or
    - (iii) raised a fraudulent fee for his or her services;
  
  - (b) the assessor is unable to complete his or her duties due to ill-health;
  - (c) the assessor is convicted of a criminal offence; or
  - (d) the assessor's certificate of competency is cancelled or suspended by a competent authority.
  
- (5) A list of all appointments in force under sub-regulation (2), including the particulars thereof, shall be published in a marine notice.

**Board of  
Examiners.**

24. (1) The Director-General shall appoint a Deck Officer's Board of Examiners which shall consist of three examiners.
- (2) The Director-General shall appoint a Marine Engineering Board of Examiners which shall consist of three examiners.
- (3) The Examiners shall-
- (a) be the holder of a valid certificate of competency Master Class 1 or Certificate of Competency as Chief Engineer Class 1 as the case may be, or the holder of certificates of a higher grade than those for which examinations are currently arranged.
  - (b) be medically fit; and
  - (c) have completed any approved course which shall have included at least three practical assessments covering the appropriate disciplines.
- (4) The Board of Examiners may raise a fee for their services and such fee may be prescribed under these regulations.
- (5) An examiners appointment shall be valid for a maximum period of three years and it may be renewed upon application by the examiner and on review by the Director-General.
- (6) The Director-General may cancel an examiner's appointment if-
- (a) the examiner requests;

(b) it is found after an enquiry conducted by the Registrar of Seafarers that the examiner-

- (i) was negligent or incompetent in his or her duties;
- (ii) has fraudulently completed an assessment;
- (iii) has raised a fraudulent fee for his or her services;
- (iv) is unable to satisfactorily complete his or her duties due to failing health;
- (v) has been found guilty of a criminal offence; or
- (vi) has had his or her certificate of competency or qualification suspended or cancelled.

**Deafness and other physical and mental disabilities.**

25. (1) (a) If in the course of an examination an examiner finds that a candidate is afflicted with deafness, with an impediment in speech or with some other physical or mental infirmity, and upon further investigation the examiner is satisfied that the degree of infirmity is such as to render the candidate incapable of discharging the ordinary shipboard or other duties of a holder of the certificate concerned, he or she shall not, even if the candidate passes the examination, issue to the candidate any documentary proof that he or she has passed the examination.

(b) An examiner shall report all such cases to the Director-General and shall furnish the candidate with a copy of such report. If the candidate is the holder of an existing medical certificate, such certificate shall be forwarded together with the report.

(2) If a candidate referred to in sub-regulation (1) subsequently

produces a medical certificate stating that his or her hearing, speech, or physical or mental condition has improved or is normal, the Director-General shall reconsider the candidate's application for examination together with the examiner's report.

**Use of English  
Language in  
assessment.**

26. Every candidate shall be able to give instructions and understand instructions given in the English language, both written and oral.

**Examination  
results.**

27. (1) (a) A candidate who complies with all the requirements for the issue of a certificate or an endorsement shall receive a certificate of pass signed by the examiner, which shall be valid for a period of six months from date of issue.

(b) A certificate of pass referred to in paragraph (a) shall-

(a) state the date and the title of the relevant certificate or endorsement;

(b) serve as a temporary certificate or endorsement until such time as the original certificate or endorsement is issued by the Registrar; and

(c) be surrendered by the candidate when collecting the original certificate or endorsement.

(2) (a) A candidate who fails assessment at level 3 shall receive a notice of failure signed by the examiner.

(b) A notice of failure referred to in paragraph (a) shall-

(i) state the examination failed, the reasons of failure and the conditions (if any) imposed by the examiner; and

(ii) be produced to an examiner when the candidate next applies for assessment at level 3.

## PART III- CERTIFICATION REQUIREMENTS

### Division 1 - Deck officer certificates

**Deck officer  
(STCW A- II/1).**

28. (1) Subject to sub-regulation (2), a candidate for the certificate of competency as deck officer shall be at least 18 years of age and shall have-

- (a) completed at least 36 months' approved sea service on ships of 500 GT or more on unlimited voyages;
- (b) performed bridge watchkeeping duties under the supervision of a qualified deck officer for the last six months of the approved sea service;
- (c) passed a theoretical examination at an accredited institution and have successfully completed approved simulator and laboratory equipment training, where appropriate;
- (d) been assessed at levels 1, 2 and 3 or, if the candidate has not undergone on-board accelerated training at levels 1 and 3;
- (e) met the standards of competence in section A-II/1 of the STCW Code;
- (f) meet the applicable requirements of the Radio Regulations, as appropriate, for performing designated radio duties as required.

(2) A candidate referred to in sub-regulation (1) who holds a certificate of competency as master (coastal) or mate (coastal) shall have-

- (a) completed at least six months' approved sea service on ships of 500 GT or more on unlimited voyages;

- (b) performed bridge watchkeeping duties under the supervision of a qualified deck officer for the last three months of the required sea service;
- (c) passed a theoretical examination at an accredited institution and have successfully completed training; and
- (d) been assessed at level 3.

**Chief mate  
(STCW II/2).**

29. A candidate for the certificate of competency as chief mate, which includes the endorsement referred to in regulation 3 (3) (c) (ii), shall have-

- (a) completed at least 12 months' approved sea service as an officer in charge of a navigational watch on ships of 3 000 GT or more on unlimited voyages while holding, as a minimum, a certificate of competency as deck officer;
- (b) passed a theoretical examination at an accredited institution and have successfully completed approved simulator training;
- (c) passed a theoretical examination at an accredited training institute and have successfully completed laboratory training equipment using-
  - (i) charts, nautical publications and navigational instruments and manufacturers' manual; or
  - (ii) radar, terrestrial electronic position-fixing systems, satellite navigation systems and appropriate nautical charts and publications; or
  - (iii) charts, nautical almanac, plotting sheets, chronometer, sextant; or
  - (iv) approved ECDIS simulator training; and a calculator;
- (d) been assessed at level 3; and

(e) met the standards of competence in section A-II/1 of the STCW Code..

**Master  
(STCW II/2).**

30. A candidate for the certificate of competency as master shall have-

(a) completed-

(i) at least 36 months' approved sea service as an officer in charge of a navigational watch on ships of 3,000 GT or more on unlimited voyages while holding, as a minimum, a certificate of competency as deck officer; or

(ii) at least 12 months' approved sea service as chief mate of a ship of 3,000 GT or more on unlimited voyages while holding, as a minimum, a certificate of competency as chief mate;

(b) passed a theoretical examination at an accredited institution and have successfully completed approved simulator training;

(c) passed a theoretical examination at an accredited training institute and have successfully completed laboratory training equipment using-

(ii) charts, nautical publications and navigational instruments and manufacturers' manual; or

(iii) radar, terrestrial electronic position-fixing systems, satellite navigation systems and appropriate nautical charts and publications; or

(iv) charts, nautical almanac, plotting sheets, chronometer, sextant; or

(v) approved ECDIS simulator training;

(d) met the standards of competence in section A-II/2 of the STCW Code; and

(e) been assessed at level 3.

**Mate (near-coastal voyages)  
(STCW A-II/3).**

31. (1) Subject to sub-regulation (2), a candidate for the certificate of competency as mate (coastal) shall be at least 18 years of age and shall have-

- (a) (i) completed at least 36 months' approved sea service on ships of 100 GT or more on unlimited or near-coastal voyages; or
- (ii) if the candidate has attained Kenya Certificate of Secondary Education examination mean grade C with Grade C in mathematics and physics or its equivalent-
  - (aa) completed at least 12 months' service contemplated in subparagraph (i); and
  - (bb) successfully completed approved on-board accelerated training;
- (c) performed bridge watchkeeping duties under the supervision of a deck officer for the last 6 months of the required sea service;
- (d) passed a theoretical examination at an accredited institution and have successfully completed approved simulator training;
- (e) passed a theoretical examination at an accredited institution at an accredited training institution and have successfully completed laboratory equipment training using chart catalogues, radio navigational warnings, charts, nautical publications, navigational instruments, electronic navigational equipment and echo-sounding equipment;
- (f) met the standards of competence in section A-II/3 of the STCW Code; and
- (g) been assessed at levels 1, 2 and 3 or, if the candidate has not undergone on-board accelerated training, at levels 1 and 3.

- Endorsement as chief mate of ship of less than 3,000 GT on unlimited voyages.**
32. A candidate for the endorsement as chief mate of a ship of less than 3 000 GT on unlimited voyages shall have-
- (a) completed at least 12 months' approved sea service as an officer in charge of a navigational watch on ships of 500 GT or more on unlimited voyages while holding, as a minimum, a certificate of competency as deck officer;
  - (b) passed a theoretical examination at an accredited institution and have successfully completed training; and
  - (c) been assessed at level 3.
- Endorsement as master of ship of less than 500 GT on unlimited voyages.**
33. A candidate for the endorsement as master of a ship of less than 500 GT on unlimited voyages shall have-
- (a) completed at least 12 months' approved sea service as chief mate of a ship of 100 GT or more on unlimited voyages while holding, as a minimum, a certificate of competency as deck officer;
  - (b) passed a theoretical examination at an accredited institution and have successfully completed training; and
  - (c) been assessed at level 3.
- Endorsement as Master of a ship of less than 3,000 GT on unlimited voyages.**
34. A candidate for the endorsement as master of a ship of less than 3,000 GT on unlimited voyages shall have –
- (a) completed –
    - (i) at least 36 months approved sea service as officer in charge of a navigational watch on ships of 500 GT or more on unlimited voyages while holding, as a minimum, a certificate of competency as deck officer; or
    - (ii) at least 12 months approved sea service as chief mate of a ship of 500 GT or more on unlimited voyages while

- holding, as a minimum, a certificate of competency, or an endorsement, as chief mate;
- (b) passed the theoretical examination contemplated in regulation 34(b) at an accredited institution and have successfully completed training; and
- (c) been assessed at level 3.

### **Division 2 - Engineer officer certificates**

#### **Engineer officer (STCW III/1).**

- 35. A candidate for the certificate of competency as engineer officer shall be at least 18 years of age and shall have-
  - (a) completed at least six months' approved sea service as assistant engineer officer on ships of 750 kW propulsion power or more under the supervision of a qualified and certificated engineer officer;
  - (b) passed a theoretical examination at an accredited institution and have successfully completed approved training consisting of an approved cadetship, of at least 30 months, consisting of-
    - (i) practical simulator training;
    - (ii) training ship experience;
    - (iii) laboratory equipment training;
    - (iv) theoretical education; and
    - (v) at least six months approved sea service;
  - (c) met the standards of competence in section A-III/1 of the STCW Code; and
  - (d) been assessed at levels 1, 2 and 3.

**Second engineer officer of ships of 3,000 kW propulsion power or more (STCW A-III/2).**

36. A candidate for the certificate of competency as second engineer officer of a ship of 3,000kW propulsion power or more shall-

- (a) meet the requirements for certification in terms of regulation 35;
- (b) have completed at least 12 months' approved sea service as assistant engineer officer or engineer officer on ships of 3 000 kW propulsion power or more;
- (c) have passed a theoretical examination at an accredited institution and have successfully completed training;
- (d) met the standards of competence set out in section A-III/3 and
- (e) have been assessed at level 3.

**Second engineer officer of ships of between 750kW and 3,000 kW propulsion power (STCW III/2).**

37. A candidate for the certificate of competency as second engineer officer of a ship of between 750 kW and 3,000kW propulsion power -

- (a) meet the requirements for certification in terms of regulation 35;
- (b) have completed at least 12 months' approved sea service as assistant engineer officer or engineer officer on ships of 750 kW propulsion power or more;
- (c) have passed a theoretical examination at an accredited institution and have successfully completed training;
- (d) met the standards of competence in section A-III/2 of the STCW Code; and
- (e) have been assessed at level 3.

**Chief engineer officer of ships of 3,000 kW propulsion power or more (STCW III/2).**

38. A candidate for the certificate of competency as chief engineer officer of a ship of 3 000 kW propulsion power or more shall have-

- (a) met the requirements for certification in terms of regulation 35;
- (b) completed at least 36 months' approved sea service as assistant engineer officer or engineer officer on ships of 3,000 kW propulsion power or more, of which at least 12 months shall have been served as officer in charge of an engineering watch while holding, as a minimum, a certificate of competency as second engineer officer of a ship of 3,000 kW propulsion power or more;
- (c) passed a theoretical examination at an accredited institution and have successfully completed training;
- (d) Met the standards of competence in section A-III/2 of the STCW Code; and
- (e) been assessed at level 3.

**Chief engineer officer of ships of less than 3,000 kW propulsion power (STCW III/2).**

39. A candidate for the certificate of competency as chief engineer officer of a ship of less than 3 000 kW propulsion power shall have-

- (a) met the requirements for certification in terms of regulation 35;
- (b) completed at least 36 months' approved sea service as assistant engineer officer or engineer officer on ships of 750 kW propulsion power or more, of which at least 12 months shall have been served as officer in charge of an engineering watch while holding, as a minimum, a certificate of competency as second engineer officer of a ship of less than 3 000 kW propulsion power;

- (c) passed a theoretical examination at an accredited institution and have successfully completed training;
- (d) met the standards of competence in section A-III/2 of the STCW Code; and
- (e) been assessed at level 3.

**Endorsements of engineer officer certificates.**

40. (1) A candidate for the endorsement as chief engineer officer of a ship of less than 3 000 kW propulsion power shall have-
- (a) completed at least 12 months' approved sea service as officer in charge of an engineering watch while holding, as a minimum, a certificate of competency as second engineer officer of a ship of 3,000 kW propulsion power or more;
  - (b) passed a theoretical examination at an accredited institution and have successfully completed training; and
  - (c) been assessed at level 3.
- (2) A candidate for the endorsement as chief engineer officer of a ship of less than 750 kW propulsion power shall have-
- (a) completed at least six months' approved sea service as officer in charge of an engineering watch on ships of 750 kW propulsion power or more while holding, as a minimum, a certificate of competency as second engineer officer of a ship of less than 3,000 kW propulsion power;
  - (b) passed a theoretical examination at an accredited institution and have successfully completed training; and
  - (c) been assessed at level 3.
- (3) A candidate for the endorsement as chief engineer officer of a ship of any kilowatt propulsion power operating within a port operations area shall have-

- (a) completed at least 12 months' approved sea service as officer in charge of an engineering watch on ships of 750 kW propulsion power or more while holding, as a minimum, a certificate of competency as engineer officer;
- (b) passed a theoretical examination at an accredited institution and have successfully completed training; and
- (c) been assessed at level 3.

### **Division 3 – Electro-technical officer certificates**

**Electro technical officer (STCWA- III/6).**

41. A candidate for the certificate of competency as an electro-technical officer of a ship shall-

- (a) be not less than 18 years of age;
- (b) have completed at least 12 months' of combined workshop skills training and approved sea service as part of an approved training programme which meets the requirements of Section A-III/ 6 of the STCW Code and is documented in an approved training record book, or otherwise not less than 36 months of combined practical training and approved service on a ship of which not less than 30 months shall be sea going service in the engine department;
- (c) have completed approved education and training at an accredited training institution; and
- (d) have met the standard of competence specified in section A-III/6 of the STCW Code.

**Endorsements of  
electro-technical  
officer certificates.**

42. (1) A candidate for the endorsement as electro-technical officer of a ship of any kilowatt propulsion power shall have-
- (a) completed at least 12 months' approved sea service in total as an electro technical officer in the preceding five years while holding, as a minimum, a certificate of competency as an electro-technical officer; or
  - (b) completed at least three months approved sea service in total as an electro technical officer in the preceding six months while holding, as a minimum, a certificate of competency as an electro-technical officer;
  - (c) successfully completed on-shore training; and
  - (d) .been assessed at level 3; and
  - (e) passed a theoretical and practical examination at an accredited institution.

**Division 4 - Rating Certificates**

**Ratings  
(ordinary seafarer)  
(STCW A-II/4 and  
A-III/4).**

43. (1) A candidate for the certificate of qualification as ordinary seafarer shall be at least 18 years of age and shall have-
- (a) completed-
    - (i) at least six months' approved sea service on ships of 100 GT or more on unlimited or near-coastal voyages and have successfully completed approved on-board training; or
    - (ii) at least two months' approved sea service contemplated in subparagraph (i) and have successfully completed approved on-board accelerated training;
  - (b) been assessed at level 1 and passed an approved practical test;
  - (c) meet the standards of competence under sections A-II/4 and A-III/4 of the STCW Code; and

(d) been issued with a provisional certificate of qualification as ordinary seaman by the master of the ship on which the satisfactory assessment was completed.

(2) (a) Where a candidate has gained the period of service contemplated in sub-regulation (1) (a) on port operations vessels only and has been satisfactorily assessed at level 1, the candidate may be issued with a provisional certificate of qualification as ordinary seafarer (port operations) by the master of the ship on which the satisfactory assessment has been completed.

(b) The provisional certificate referred to in paragraph (a) shall be valid for a period of six months from date of issue and may be exchanged for the certificate of qualification as ordinary seaman (port operations) on application in accordance with regulation 12 (1).

**Ratings (Able seafarer) (STCW A-II/4 and A-III/4).**

44. (1) A candidate for the certificate of qualification as able seafarer shall, while holding a certificate or provisional certificate of qualification as ordinary seafarer, have-

(a) completed-

(i) at least 12 months' approved sea service on ships of 100 GT or more on unlimited or near-coastal voyages and have successfully completed approved on-board training; or

(ii) at least six months' approved sea service contemplated in subparagraph (i) and have successfully completed approved on-board accelerated training;

(b) successfully completed an approved shore-based training

course;

(c) been assessed at level 1 or 2 and passed an approved practical test; and

(d) meet the standards of competence under sections A-II/4 and A-III/4 of the STCW Code.

(2) Where a candidate complies with sub-regulation (1) (b) and (c), but has gained the period of service contemplated in sub-regulation (1) (a) on port operations vessels only, the candidate shall qualify for the certificate of qualification as able seafarer (port operations) and may, in lieu of holding the certificate or provisional certificate of qualification as ordinary seafarer, hold the certificate or provisional certificate of qualification as ordinary seafarer (port operations).

**Able seafarer deck  
(STCW A-II/5).**

45. (1) A candidate for the certificate of qualification as able seafarer deck shall, while holding a certificate or provisional certificate of qualification as ordinary seafarer-

(a) Be not less than 18 years of age;

(b) Meet the requirements for certification as rating forming part of a navigational;

(c) While qualified for service as a rating forming part of a navigational watch, have approved seagoing service in the deck department of-

(i) Not less than 18 months, or

(ii) Not less than 12 months and have completed approved training; and

(iii) have successfully completed approved training ship experience and practical training;

(iv) have successfully completed approved simulator training, where appropriate;

- (v) been assessed at level 1 or 2 and passed an approved examination; and
  - (d) have met the standard of competence specified in section A-II/5 of the STCW Code.
- (2) Where a candidate complies with sub-regulation but has gained the period of service contemplated in sub-regulation (1) (c) on port operations vessels only, the candidate shall qualify for the certificate of qualification as able seafarer deck (port operations) and may, in lieu of holding-
- (a) the certificate or provisional certificate of qualification as ordinary seafarer, hold the certificate or provisional certificate of qualification as ordinary seafarer (port operations).

**Electro-technical rating (STCW A-III/7).**

46. (1) A candidate for the certificate of qualification as electro technical rating shall, while holding a certificate or provisional certificate of qualification as ordinary seafarer-
- (a) be not less than 18 years of age;
  - (b) have:
    - (i) completed approved seagoing service including not less than 12 months training and experience, or
    - (ii) completed approved training, including an approved seagoing service which shall not be less than 6 months'; and
    - (iii)
  - (c) Meet the standards of competence specified in section A-III/7 of the STCW Code.

**Able seafarer  
engine (STCW A-  
III/5).**

- 47.(1) A candidate for the certificate of qualification as able seafarer engine shall, while holding a certificate or provisional certificate of qualification as ordinary seafarer,
- 
- (a) Be not less than 18 years of age;
  - (b) Meet the requirements for certification as rating forming part of a watch in a manned engine-room or designated to perform duties in a periodically unmanned engine-room;
  - (c) While qualified to service as a rating forming part of an engineering watch, have approved seagoing service in the engine department of-
    - (i) Not less than 12 months, or
    - (ii) Not less than 6 months and have completed approved training; and
  - (d) Meet the standard of competence specified in section A-III/5 of the STCW Code.

**Division 5- Certificates of proficiency**

**Proficiency in  
survival craft  
(STCW VI/2-1)**

48. A candidate for the certificate of qualification as proficient in survival craft shall be at least 18 years of age and shall have-
- (a) completed-
    - (i) at least 12 months' sea service on ships of 100 GT or more on unlimited or near-coastal voyages. or
    - (ii) at least six months' sea service contemplated in subparagraph (i) and have documentary proof of having successfully completed an approved shore-based training course; and
  - (b) been assessed at levels 1 or 2.

- Proficiency in fast rescue boats (STCW A-VI/2-2).** 49. A candidate for the certificate of qualification as proficient in fast rescue boats shall have successfully completed an approved training course while holding a certificate of qualification as proficient in survival craft and meet the standards of competence in section A-VI/2-2 of the STCW Code.
- Proficiency in advanced fire fighting (STCW A-VI/3).** 50. A candidate for the certificate of qualification as proficient in advance fire fighting shall have successfully completed an approved training course while holding a certificate of qualification as proficient in fire fighting and fire prevention and meet the standards of competence in section A-VI/3 of the STCW Code.
- Proficiency in medical first aid and medical care (STCW A-VI/2-2).** 51. A candidate for the certificate of qualification as proficient in medical first aid and medical care shall be at least 24 years of age and shall have;
- (a) documentary proof of having successfully completed a training course as a doctor or clinical officer;
  - (b) completed at least six months' sea service under the supervision of a qualified medical officer on ships of 100 GT or more on unlimited or near coastal voyages; and
  - (c) meet the standards of competence in Section A-VI/4 of the STCW Code.
- Efficient cook.** 52. A candidate for the certificate of qualification as efficient cook shall be at least 18 years of age and shall have-
- (a) documentary proof of having successfully completed a training course as cook or chef; and
  - (b) completed at least six months' sea service in the catering department on ships of 100 GT or more on unlimited or near-coastal voyages.

## **Division 6 – Ship security officer certificates**

### **Security Officer (STCW A-VI/5).**

53. A candidate for the certificate of qualification as a ship security officer shall be at least 18 years of age and shall have-
- (a) documentary proof of approved training; or
  - (b) Documentary evidence of approved experience and examination, including practical demonstration of competence to conduct physical searches and conduct non-intrusive inspection;
  - (c) documentary proof of assessment at level 1 or 2;
  - (d) Passed an approved examination; and
  - (e) meet the standard of competence specified in section A-III/5 of the STCW Code.

## **Division 7 - Personnel on tankers and Ro-Ro passenger ships**

### **Special requirements for personnel on oil and chemical tankers (STCW A-VI/1-1).**

54. (1) Officers and ratings assigned specific duties and responsibilities related to cargo or cargo equipment on oil and chemical tankers shall have successfully completed, in addition to the other training required by these regulations, an approved shore-based tanker fire-fighting course as specified in the Code, and shall have-
- (a) completed at least three months' approved sea service on oil and chemical tankers in order to acquire adequate knowledge of safe operational practices;
  - (b) completed at least 3 months' approved training ship experience;
  - (c) completed approved simulator training;
  - (d) successfully completed approved on-shore based training programme and assessment; and
  - (e) meet the standards of competence in section A-V/1-1 of

the STCW Code.

(2) (a) Masters, chief engineer officers, chief mates, second engineer officers and any person with immediate responsibility for loading, discharging and care in transit or handling of cargo on oil and chemical tankers shall, in addition to meeting the requirements of sub-regulation (1), have-

(i) completed at least three months' approved sea service in a watchkeeping capacity acquiring the experience appropriate to their duties in the type of tanker in which they wish to serve; and

(ii) successfully completed an approved specialized course, appropriate to the type of tanker for which the endorsement is required, as specified in the Code:

Provided that the Director-General may dispense with the requirement in sub-paragraph (ii) if it is shown to the satisfaction of the Director-General that the person has served in a senior capacity on the type of tanker concerned for at least one year in the preceding five years.

(b) Masters, officers and other persons referred to in sub-paragraph (a) who have served the three months' approved sea service in a watchkeeping capacity on an oil/chemical tanker (ship-type 2 or 3) engaged in carrying products listed in chapter 17 of the IBC Code shall, in addition to meeting the requirements of sub-paragraph (a) (i), have successfully completed an approved shore-based practical training course.

- (c) The course referred to in sub-paragraph (b) shall be conducted by a person with experience in the loading, discharging and handling of products listed in chapter 17 of the IBC Code and shall be of at least 14 days duration, during which period at least four chemical tankers (ship-type 1, 2 or 3) shall be loaded or discharged.
- (d) Documentary proof in the form of a logbook detailing the practical work performed during the course and signed by the person in charge of the training shall, in the absence of evidence to the contrary, be accepted as proof of a person having successfully completed the course.

(3) An appropriate certificate shall be issued to masters and officers who are qualified in accordance with sub-regulation (1) or (2), or their existing certificate shall be endorsed, and every rating who is so qualified shall be certificated.

(4) Masters, officers and ratings who are qualified in accordance with this regulation shall be required at intervals not exceeding five years to show continued professional competence on tankers, in accordance with regulation 6(2) (b).

**Special requirements for personnel on liquefied gas tankers (STCW A-V/1-2).**

55. (1) Officers and ratings assigned specific duties and responsibilities related to cargo or cargo equipment on liquefied gas tankers shall have successfully completed, in addition to the other training required by these regulations, an approved shore-based tanker fire-fighting course as specified in the Code and attained proficiency in medical first aid procedures on antidotes on boards liquefied gas tankers as specified in the Code, and shall have-

- (a) completed at least three months' approved sea service on liquefied gas tankers in order to acquire adequate knowledge of safe operational practices;
- (b) completed at least 3 months' approved training ship experience;
- (c) completed approved simulator training;
- (d) successfully completed approved on-shore based training programme and assessment; and
- (e) meet the standards of competence in section A-V/1-2 of the STCW Code.

(2) (a) Masters, chief engineer officers, chief mates, second engineer officers and any person with immediate responsibility for loading, discharging and care in transit or handling of cargo on liquefied gas tankers shall, in addition to meeting the requirements of sub-regulation (1), have-

(a) completed at least three months' approved sea service in a watchkeeping capacity acquiring the experience appropriate to their duties in the type of tanker in which they wish to serve; and

(b) successfully completed an approved specialized course, appropriate to the type of tanker for which the endorsement is required, as specified in the Code:

Provided that the Director-General may dispense with the requirement in sub-paragraph (ii) if it is shown to the satisfaction of the Director-General that the person

has served in a senior capacity on the type of tanker concerned for at least one year in the preceding five years.

- (b) Masters, officers and other persons referred to in sub-paragraph (a) who have served the three months' approved sea service in a watchkeeping capacity on an oil/chemical tanker (ship-type 2 or 3) engaged in carrying products listed in chapter 19 of the IGC Code shall, in addition to meeting the requirements of sub-paragraph (a) (i), have successfully completed an approved shore-based practical training course.
  - (c) The course referred to in sub-paragraph (b) shall be conducted by a person with experience in the loading, discharging and handling of products listed in chapter 19 of the IGC Code and shall be of at least 14 days duration, during which period at least four chemical tankers (ship-type 1, 2 or 3) shall be loaded or discharged.
  - (d) Documentary proof in the form of a logbook detailing the practical work performed during the course and signed by the person in charge of the training shall, in the absence of evidence to the contrary, be accepted as proof of a person having successfully completed the course.
- (3) An appropriate certificate shall be issued to masters and officers who are qualified in accordance with sub-regulation (1) or (2), or their existing certificate shall be endorsed, and every rating who is so qualified shall be certificated.

(4) Masters, officers and ratings who are qualified in accordance with this regulation shall be required at intervals not exceeding five years to show continued professional competence on tankers, in accordance with regulation 6 (2) (b).

**Special requirements for personnel on Ro-Ro passenger ships (STCW A-V/2).**

56. (1) This regulation applies to masters, officers, ratings and other personnel serving on Ro-Ro passenger ships.

(2) Prior to being assigned shipboard duties on Ro-Ro passenger ships, seafarers referred to in sub-regulation (1) shall have successfully completed approved simulator training and the training required by sub-regulations (4) to (8) in accordance with their capacity, duties and responsibilities.

(3) Seafarers who are required to be trained in accordance with sub-regulations (4), (7) and (8) shall, at intervals not exceeding five years, undertake approved refresher training as specified in the Code.

(4) Masters, officers and other personnel designated on muster lists to assist passengers in emergency situations on Ro-Ro passenger ships shall have completed approved training in crowd management as specified in the Code.

(5) Masters, officers and other personnel assigned specific duties and responsibilities on Ro-Ro passenger ships shall have completed approved familiarization training as specified in the Code.

(6) Personnel providing direct service to passengers in

passenger spaces shall have completed approved Ro-Ro passenger ship safety training as specified in the Code.

- (7) Masters, chief mates, chief engineer officers, second engineer officers and every person assigned immediate responsibility for embarking and disembarking passengers, loading, discharging or securing cargo, or closing hull openings on Ro-Ro passenger ships shall have completed approved training in passenger safety, cargo safety and hull integrity as specified in the Code.
- (8) Masters, chief mates, chief engineer officers, second engineer officers and any other person having responsibility for the safety of passengers in emergency situations on Ro-Ro passenger ships shall have completed approved training in crisis management and human behaviour as specified in the Code.
- (9) It shall be the duty of any person providing training referred to in this regulation to issue documentary evidence to every person successfully completing such training.
- (10) An appropriate certificate shall be issued to masters and officers who are qualified in accordance with this regulation or their existing certificate shall be endorsed, and every rating so qualified shall be certificated.

**Special requirements for personnel on passenger ships other than Ro-Ro passenger ships. (STCW A-V/2).**

57. (1) This regulation applies to masters, officers, ratings and other personnel serving on passenger ships, other than Ro-Ro passenger ships, engaged on unlimited voyages.
- (2) Prior to being assigned shipboard duties on passenger ships, seafarers referred to in sub-regulation (1) shall have successfully completed approved simulator training and the training required by sub-regulation, (4) to (8), in accordance with their capacity, duties and responsibilities.
- (3) Seafarers who are required to be trained in accordance with sub-regulations (4), (7) and (8) shall, at intervals not exceeding five years, undertake approved refresher training as specified in the Code.
- (4) Masters, officers and other personnel designated on muster lists to assist passengers in emergency situations on passenger ships shall have completed approved training in crowd management, as specified in the Code.
- (5) Masters, officers and other personnel assigned specific duties and responsibilities on passenger ships shall have completed approved familiarization training as specified in the Code.
- (6) Personnel providing direct service to passengers in passenger spaces shall have completed approved passenger ship safety training as specified in the Code.
- (7) Masters, chief mates, and every person assigned immediate responsibility for the embarking and disembarking passengers shall have completed approved

training in passenger safety, as specified in the Code.

(8) Masters, chief mates, chief engineer officers, second engineer officers and any other person having responsibility for the safety of passengers in emergency situations on passenger ships shall have completed approved training in crisis management and human behaviour, as specified in the Code.

(9) It shall be the duty of any person providing training referred to in this regulation to issue documentary evidence to every person successfully completing such training.

(10) An appropriate certificate shall be issued to masters and officers who are qualified in accordance with this regulation or their existing certificate shall be endorsed, and every rating so qualified shall be certificated.

### **Division 8 - Qualifying service and removal of limitations**

**Insufficient  
qualifying service.**

58. A certificate shall not be issued to a candidate who, after the final assessment, is found to have insufficient qualifying service: Provided that the Director-General shall issue the certificate if he or she is satisfied that any error in calculating the qualifying service was not due to the candidate's own fault or deliberate misrepresentation and the candidate has made good the deficiency in qualifying service. If it is found that the candidate made the error deliberately, the certificate of pass shall be withheld until the candidate has completed an additional 12 months' qualifying service, such service to count only when completed after the date of final assessment and not to count as qualifying service for any

other certificate.

**Qualifying service as rating.** 59. Sea service or port operations service as a rating shall count in full towards the qualifying service required for a first certificate of competency provided such service is appropriate to the certificate and the candidate has successfully completed approved training.

**Validity of qualifying service.** 60. The qualifying service for a particular certificate or endorsement shall be performed within a period not exceeding 10 years after the date of completion of final assessment, or within such further period as a senior examiner may allow in special cases.

**Calculating qualifying service.** 61. Qualifying service shall be calculated from the date of engagement on a ship to the date of discharge from the ship, and is calculated by taking the actual days between the days of engagement and discharge, both inclusive, and reckoning 30 days to a month, 12 months to a year.

**Recognition of radio officer's certificate.** 62. (1) A person who holds a certificate as radio operator issued or recognized by or on behalf of the Kenya Communications Commission and who has completed at least three years' sea service as a radio officer on trading ships of 500 GT or more on unlimited voyages may apply for the issue of a certificate of competency as deck officer, provided he or she produces documentary proof of having-

- (a) completed the three years' sea service within the 10 years preceding the date of application;
- (b) completed six months' approved sea service on ships of 500 GT or more on unlimited voyages and of having successfully completed approved on board training;

- (c) performed, during the period referred to in paragraph (b), four months' bridge watch-keeping duties under the supervision of a deck officer;
- (d) passed, at an accredited institution, the theoretical examinations in the subjects listed in the deck officer syllabus in the Code;
- (e) been assessed, at levels 1 and 2 in a training record book, at the operational level; and
- (f) been assessed at level 3 for the issue of a certificate of competency as deck officer.

- (2) An application contemplated in sub-regulation (1) shall be accompanied by the relevant supplementary documents specified in the Annex.

**Proof of service on foreign ships.**

63. Service performed on a ship not registered in Kenya shall not count as qualifying service unless the service can be verified by the Director-General or, in a case where it cannot be so verified, by or on behalf of the government of the country to which the ship is registered.

**Removal of “port operations” limitation.**

64. The holder of a certificate limited to port operations who desires the removal of that limitation shall-
- (a) have completed the qualifying service required for each certificate leading up to the certificate desired;
  - (b) have successfully completed the units of competency not required for the certificate held but required for the certificate desired;
  - (c) have successfully completed any training courses not required for, the certificate held but required for the certificate desired;
  - (d) at the conclusion of the required qualifying service, have

been assessed at level 3; and

(e) submit to the examiner-

- (i) satisfactory proof of having gained the qualifying service contemplated in paragraph (a);
- (ii) a certificate of pass from an accredited institution for the additional units of competency contemplated in paragraph (b);
- (iii) a duly completed training record book covering the period of service and the training contemplated in paragraphs (a) and (c), respectively; and
- (iv) valid eyesight test and medical fitness certificates.

**Removal of tonnage limitation.** 65. The holder of a certificate limited to a certain tonnage who desires the removal of that limitation shall have completed -

- (a) the qualifying service required for each certificate leading up to the certificate desired; and
- (b) an assessment at level 3.

**Removal of offshore exploration operations limitation.** 66. The holder of a certificate limited to offshore exploration operations who desires the removal of that limitation shall have completed-

- (a) the qualifying service required for each certificate leading up to the certificate desired; and
- (b) an assessment at level 3.

#### **PART 4 - TRAINING INSTITUTIONS AND TRAINING PROGRAMMES**

**Accreditation of Training institutions.** 67. (1) The Director-General may, on application by a training institution, accredit the institution-

- (a) to conduct the courses specified in the instrument of accreditation;
- (b) to act as an approved examination centre for

- examination of the subjects so specified; and
- (c) to issue certificates to candidates who successfully complete the courses so specified.
- (2) An application contemplated in sub-regulation (1) shall be made in writing and shall be accompanied by the following particulars:
- (a) Name and physical address of the training institution;
  - (b) description of each course, and of its content, referenced in the Code, together with lecturers' study plans;
  - (c) name of each course lecturer with a brief description of his or her qualifications and experience;
  - (d) name of each course examiner with a brief description of his or her qualifications and experience;
  - (e) examination and assessment procedure in respect of each course;
  - (f) training and assessment facilities in respect of each course;
  - (g) details of any quality assurance system applicable to the training activities of the institution; and
  - (h) specimens of all certificates to be issued in respect of each course.
- (3) For the purposes of accreditation, a training institution shall, on receipt of reasonable notice, make available-
- (a) for inspection by an examiner, classrooms, simulators, simulator approvals, libraries, laboratories, workshops, lecturers' study programmes, test scripts, past examination papers and scripts; and
  - (b) for interview by an examiner, heads of departments, lecturers, internal examiners, and students.

- (4) Every accredited institution shall-
  - (a) make available annually to the Director-General the course commencement and completion dates, and the examination dates; and
  - (b) inform the Director-General, without delay, of any change in the person of any lecturer or examiner, or of any change in a lecturer's study plan.
  
- (5) Every accredited institution that is accredited to conduct examinations or assessments on behalf of the Director-General shall-
  - (a) make available, in reasonable time, examination question papers and memoranda for moderation by an examiner;
  - (b) make available, without delay, examination scripts for moderation by an examiner;
  - (c) upon receipt of at least two working days' notice, make available to an examiner, a candidate's course examination scripts and results, records of progress, completed projects, and reports by his or her tutors; and
  - (d) for audit purposes, keep the documents referred to in paragraphs (a) to (c) for a period of at least five years.
  
- (6) An examiner may visit an accredited institution at any reasonable time for the purpose of auditing the conduct of any accredited activity.
  
- (7) The Director-General may vary or revoke accreditation granted under sub-regulation (1) if-
  - (a) the institution concerned fails to comply with these regulations or any of the conditions of accreditation; or
  - (b) the Director-General otherwise has reasonable grounds

to vary or revoke such accreditation.

(8) Where the Director-General intends to vary or revoke accreditation under sub-regulation (7), he or she shall inform the institution concerned accordingly, giving it at least 30 days to correct any deficiencies or to furnish reasons why accreditation should not be varied or revoked.

(9) A list of all accreditations in force under sub-regulation (1), including the particulars thereof, shall be published in a marine notice.

**Training  
programmes and  
training record  
books.**

68. (1) (a) Every candidate who follows an accelerated training programme in order to claim reduced qualifying service for certification as mate (coastal), deck officer or engineer officer, ordinary seafarer, or able seafarer, with or without the port operations limitation, shall produce to an examiner satisfactory proof-

(i) of having followed an approved on-board accelerated training programme throughout the required minimum period of qualifying service;

(ii) that all such service, while on board, was performed in a satisfactory manner; and

(iii) in the case of a candidate for the certificate of competency as deck officer, that not more than two months of such service were spent on ships in port standing-by, in dry-dock, undergoing engine repairs or otherwise laid up.

(b) The structure of the training programme shall be set out in a training plan containing a clear statement of the objectives of each stage of training, both aboard ship

and ashore. The plan shall set out clearly the competencies to be attained by the end of the programme and how they are to be attained through a combination of education, training and practical experience aboard ship and ashore.

- (c) Every candidate shall be provided with a training record book to enable him or her to keep a comprehensive record of all practical training undertaken and of experience gained at sea. The training record book, duly completed, shall be submitted to an examiner before assessment at level 3 as proof of having completed a structured programme of on-board training.
  - (d) Every accelerated training programme shall be approved by the Director-General before it is put into operation, which approval shall be published in a marine notice.
- (2) Every candidate who has not followed an accelerated training programme for a certificate referred to in sub-regulation (1) (a) shall have completed, for presentation to an examiner when applying for the certificate, a training record book with the relevant units of competency completed at assessment level 1.
- (3) A training record book-
- (a) shall be completed in full and shall not be submitted to an examiner until all relevant units of competency have been duly signed off in accordance with regulation 19 (3);
  - (b) shall be laid out in such a way that it provides detailed information about the tasks and duties that should be

- undertaken, and about the progress towards their completion;
- (c) found to have been completed fraudulently shall result in it's holder (the candidate) having to complete an additional 12 months' qualifying service;
- (d) shall adhere to the principles set out in the STCW Convention; and
- (e) shall be approved by the Director-General before use.

**In-service  
Training.**

69. (1) Every person who, whether aboard ship or ashore, conducts in-service training of a seafarer for the purposes of certification in terms of these regulations shall-
- (a) have an appreciation of the training programme and a thorough understanding of the specific training objectives for the particular type of training being conducted;
  - (b) have proof of being qualified in the activities for which training is being conducted; and
  - (c) if conducting training by means of a simulator, have proof of having-
    - (i) received appropriate guidance in instruction techniques involving the use of simulators; and
    - (ii) gained practical operational experience on the particular type of simulator being used.
- (2) Every person who supervises in-service training shall have a thorough knowledge and understanding of the training programme and of the specific objectives for each type of training being conducted.

**Duties of instructors and candidates.** 70. (1) Every person conducting in-service training shall ensure that-

- (a) appropriate periods are set aside for completion of the programme of on-board training within the normal operational requirements of the ship;
- (b) at the beginning of the programme and at the start of each voyage on a different ship, candidates are given comprehensive information and guidance as to what is expected of them and how the training programme is to be conducted;
- (c) a training officer is designated to administer the programme;
- (d) ship's officers who are responsible for training and assessment know and understand their duties and responsibilities regarding training;
- (e) ship's officers receive appropriate training in assessment methods;
- (f) during the required period of qualifying service, a candidate receives systematic practical training and experience in the tasks, duties and responsibilities relevant to the certificate desired, with due regard to the competencies specified in the STCW Code;
- (g) assessments of a candidate are conducted, without undue delay, when a candidate is considered ready for assessment;
- (h) the on-board training forms an integral part of the overall training plan;
- (i) the programme of on-board training is managed and co-ordinated by the person managing the ship on which the qualifying service is to be performed; and
- (j) a comprehensive record is kept of all training conducted.

- (2) Every person designated as a training officer pursuant to sub-regulation (1) (c) shall be responsible for-
- (a) the overall administration of the training programme;
  - (b) monitoring candidates' progress throughout such programme; and
  - (c) giving guidance, when necessary, and ensuring that the training programme is conducted properly.
- (3) A master's responsibilities shall be-
- (a) to provide the link between the ship's officers responsible for training and the training officer ashore;
  - (b) to designate, in writing, the ship's officers who are to be responsible for organizing and supervising on-board training for each voyage;
  - (c) to ensure continuity in the case of any change of ship's officers during voyages; and
  - (d) to ensure that all personnel concerned carry out effectively the on-board training programme.
- (4) Unless the master directs otherwise in the interests of the safe operation of the ship, every ship's officer designated pursuant to sub-regulation (3) (b) shall be responsible for-
- (a) organizing the programme of practical training at sea;
  - (b) ensuring, in a supervisory capacity, that training record books are properly maintained and that all other requirements are met; and
  - (c) ensuring so far as practicable, that the time the candidate spends on board is as useful as possible in terms of training and experience, and is consistent with the objectives of the training programme and the progress of training.

- (5) Every candidate shall-
- (a) follow diligently the programme of training;
  - (b) utilize fully the opportunities presented, both during and outside working hours; and
  - (c) keep his or her training record book up-to-date and available for inspection at all reasonable times.

## **PART 5 - ENFORCEMENT**

**Offences, penalties and defences.** 71.(1) Every person who contravenes the requirements of these regulations commits an offence and is liable on conviction to a fine of fifty thousand shillings or to imprisonment for a period not exceeding 12 months, or both.

(a) In proceedings for an offence in terms of this regulation it is a defence to prove that the accused took reasonable precautions and exercised due diligence to avoid committing the offence.

(b) In proceedings for an offence in terms of this regulation consisting of a failure to comply with a duty or requirement to do something so far as is reasonably practicable, it shall be for the accused to prove that it was not reasonably practicable to do more than what was in fact done to satisfy the duty or requirement.

**Director General may impose penalty upon admission of guilt.** 72. (1) If any person –

- (a) admits to the Director General that he or she has contravened any provision of these regulations, or that he has failed to comply with any such provision with which it was his duty to comply; and
- (b) agrees to abide by the decision of the Director General ; and

(c) deposits with the Authority such sum as may be required of him , but not exceeding the maximum fine which may be imposed upon a conviction for the contravention or failure in question,

the Director General may, after such enquiry as he or she deems necessary, determine the matter summarily and may, without legal proceedings, order by way of penalty the whole or any part of the said deposit to be forfeited.

(2) The imposition of a penalty under sub-regulation (1) shall be deemed to be a conviction of a criminal offence, but no prosecution for the relative offence shall thereafter be competent.

**ANNEX 1**

**FORMS OF CERTIFICATES AND ENDORSEMENTS**

*(Official seal)*

*FORM 1*

**THE REPUBLIC OF KENYA  
KENYA MARITIME AUTHORITY  
MERCHANT SHIPPING ACT, ACT NO. 4 OF 2009**

**CERTIFICATE ISSUED UNDER THE PROVISIONS OF THE INTERNATIONAL  
CONVENTION ON STANDARDS OF TRAINING, CERTIFICATION AND  
WATCHKEEPING FOR SEAFARERS, 1978  
AS AMENDED**

The Government of **KENYA** certifies that Mr./Mrs./Miss/ ..... has been found duly qualified in accordance with the provisions of regulation .....of the above Convention, as amended, and has been found competent to perform the following functions, at the levels specified, subject to any limitations indicated until .....or until the date of expiry of any extension of the validity of this certificate as may be shown overleaf:

FUNCTION	LEVEL	LIMITATIONS APPLYING (IF ANY)

The lawful holder of this certificate may serve in the following capacity or capacities specified in the applicable safe manning requirements of the Administration.

CAPACITY	LIMITATIONS APPLYING (IF ANY)

Certificate No. .... issued on .....

*(Official Seal)*

.....  
*Signature of duly authorized official*

.....  
*Name of duly authorized official*

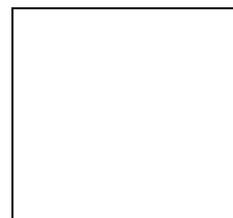
(PTO)

The original of this certificate must be kept available in accordance with regulation 1/2, paragraph 11 of the Convention while its holder is serving on a ship.

Date of birth of the holder of the certificate .....

Signature of the holder of the certificate.....

Photograph of the holder of the certificate



The validity of this certificate is hereby extended until .....

*(Official seal)*

.....  
*Signature of duly authorized official*

Date of revalidation.....

*Name of duly authorized official*

The validity of this certificate is hereby extended until .....

*(Official seal)*

.....  
*Signature of duly authorized official*

Date of revalidation.....

.....  
*Name of duly authorized official*

(Official seal)

FORM 2

**THE REPUBLIC OF KENYA  
KENYA MARITIME AUTHORITY  
MERCHANT SHIPPING ACT, ACT NO. 4 OF 2009**

**ENDORSEMENT ATTESTING THE ISSUE OF A CERTIFICATE  
UNDER THE PROVISIONS OF THE INTERNATIONAL CONVENTION ON  
STANDARDS OF TRAINING, CERTIFICATION AND WATCHKEEPING  
FOR SEARFARERS, 1978, AS AMENDED**

The Government of ..... certifies that certificate No.....has been issued to .....who has been found duly qualified in accordance with the provisions of regulation .....of the above Convention, as amended, and has been found competent to perform the following functions, at the levels specified, subject to any limitations indicated until .....or until the date of expiry of any extension of the validity of this endorsement as may be show overleaf:

FUNCTION	LEVEL	LIMITATIONS APPLYING (IF ANY)

The lawful holder of this endorsement may serve in the following capacity or capacities specified in the applicable safe manning requirements of the Administration.

CAPACITY	LIMITATIONS APPLYING (IF ANY)

Endorsement No. .... issued on .....

(Official Seal)

.....

*Signature of duly authorized official*

.....

*Name of duly authorized official*

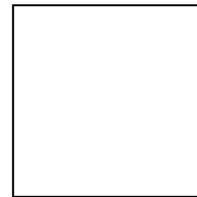
(PTO)

The original of this endorsement must be kept available in accordance with regulation 1/2, paragraph 11 of the Convention while its holder is serving on a ship.

Date of birth of the holder of the certificate .....

Signature of the holder of the certificate.....

Photograph of the holder of the certificate



The validity of this endorsement is hereby extended until .....

*(Official seal)*

.....  
*Signature of duly authorized official*

Date of revalidation.....

.....  
*Name of duly authorized official*

The validity of this certificate is hereby extended until .....

*(Official seal)*

.....  
*Signature of duly authorized official*

Date of revalidation.....

.....  
*Name of duly authorized official*

(Official seal)

FORM 3

**THE REPUBLIC OF KENYA  
KENYA MARITIME AUTHORITY  
MERCHANT SHIPPING ACT, ACT NO. 4 OF 2009**

**ENDORSEMENT ATTESTING THE RECOGNITION OF A CERTIFICATE  
UNDER THE PROVISIONS OF THE INTERNATIONAL CONVENTION ON  
STANDARDS OF TRAINING, CERTIFICATION AND WATCHKEEPING  
FOR SEAFARERS, 1978, AS AMENDED**

The Government of ..... Certifies that certificate No..... issued to ..... by or on behalf of the Government of .....is duly recognized in accordance with the provisions of regulation 1/10 of the above Convention, as amended, and the lawful holder is authorized to perform the following functions, at the levels specified, subject to any limitations indicated until ..... or until the date of expiry of any extension of the validity of this endorsement as may be shown overleaf:

FUNCTION	LEVEL	LIMITATIONS APPLYING (IF ANY)

The lawful holder of this endorsement may serve in the following capacity or capacities specified in the applicable safe manning requirements of the Administration:

CAPACITY	LIMITATIONS APPLYING (IF ANY)

Endorsement No. .... issued on .....

(Official Seal)

.....

*Signature of duly authorized official*

.....

*Name of duly authorized official*

(PTO)

The original of this endorsement must be kept available in accordance with regulation 1/2, paragraph 11 of the Convention while its holder is serving on a ship.

Date of birth of the holder of the certificate .....

Signature of the holder of the certificate.....

Photograph of the holder of the certificate



The validity of this certificate is hereby extended until .....

*(Official seal)*

.....

*Signature of duly authorized official*

Date of revalidation.....

.....

*Name of duly authorized official*

The validity of this endorsement is hereby extended until .....

*(Official seal)*

.....

*Signature of duly authorized official*

Date of revalidation.....

.....

*Name of duly authorized official*

**ANNEX 2**

**DOCUMENTS TO ACCOMPANY APPLICATION FOR EXAMINATION**

**ENGINEER OFFICERS**

<b>Documents To Accompany Application</b>	<b>CLASS OF CERTIFICATE</b>				
	Chief Engineer Officer	Second Engineer Officer	Engineer Officer	Second Engineer Officer (Port Operations)	Chief Engineer Officer (Port Operations)
Proof of identity	X	X	X	X	X
Testimonials (certificate of apprenticeship)	X	X	X	X	X
Previous certificate of competency	X	X	X(A)	X	X
Engineer watchkeeping training certificate	--	-	X	-	-
Medical certificate	X	X	X	X	X
Proof of sea service	X	X	X	X	X
First aid at sea certificate	X	X	X	X	X
Fire fighting	X	X	X	X	X

course certificate					
Advanced fire fighting course certificate	X	X	X	X	X
Certificate of proficiency in survival craft	-	-	X	-	-
Certificate of proficiency in inflatable appliances	-	-	-	X	X

Note:

(A) Or training book

## DECK OFFICERS

<b>Documents To Accompany Application</b>	<b>CLASS OF CERTIFICATE AND ENDORSEMENT</b>							
	<b>Master</b>	<b>Chief mate</b>	<b>Deck officer</b>	<b>Master&lt;500 GT endorsemen t</b>	<b>Chief mate &lt;3000 GT endorsemen t</b>	<b>Master (Coastal)</b>	<b>Mate (Coastal)</b>	<b>Master (Port operations)</b>
Proof of identity	X	X	X	X	X	X	X	X
Testimonials	X	X	X	X	X	X	X	X
Previous certificate of competency/training record book	X	X	X	X	X	X	X	X
Bridge watchkeeping training certificate	-	-	X	-	-	-	X	-
Watchkeeping certificates	X	X	-	X	X	X	-	X
Sight test certificate	X	X	X	X	X	X	X	X
Medical certificate	X	X	X	X	X	X	X	X

Proof of sea service	X	X	X	X	X	X	X	X
First aid at sea certificate	-	-	X	-	-	-	X	X
Ship captain's medical training certificate	-	X	-	X	X	X	-	-
Fire fighting course (small vessels) certificate	-	-	-	-	-	-	-	-
Fire fighting course certificate	X	X	X	X	X	X	X	X

Note:

(A) For the endorsement as deck officer

## ELECTRO-TECHNICAL OFFICERS

<b>DOCUMENTS TO ACCOMPANY APPLICATION</b>	<b>CLASS OF CERTIFICATE ELECTRO-TECHNICAL OFFICERS</b>
Proof of identity	X
Testimonials (certificate of apprenticeship)	X
Previous certificate of competency	X
Electro-technical training certificate	X (A)
Medical certificate	X
Proof of sea service	X
First aid at sea certificate	X
Fire fighting course certificate	X
Advanced fire fighting course certificate	X
Certificate of proficiency in survival craft	X
Certificate of proficiency in life-saving appliances	X
Certificate of proficiency in Maintenance and repair of a ship's electrical and electronic systems	X
Certificate of proficiency in Electrical, electronic and control engineering	X
Certificate of proficiency in control of ship operations	X
Certificate of proficiency in maintenance and repair of bridge navigation and ship communication systems	X
Occupational safety certificate	X

Certificate of proficiency in use of English in written and oral form	X
Certificate of proficiency in leadership and team working skills	X
Certificate of proficiency in pollution prevention	

Note:

(A) Or training book

## RATINGS

Documents To Accompany Application	CERTIFICATE OF QUALIFICATION								
	Wiper	Ordinary seafarer	Oiler	Able seafarer	Efficient general purpose rating (port operations)	Able seafarer engine	Able seafarer engine	Electro-technical rating	Efficient cook
Proof of identity	X	X	X	X	X	X	X	X	X
Proof of sea service	X	X	X	X	X	X	X	-	-
Approved training record book	X	X	X	X	X	X	X	-	-
Sight test certificate	-	X	-	X	X	X	X	-	-
Medical fitness certificate	X	X	X	X	X	X	X	-	-
Fire fighting course certificate	-	-	X	X	X	X	X	-	X
First aid at sea certificate	-	-	X	X	X	X	X	-	X

Documentary proof of pass at an accredited institution	-	-	X	X	X	X	X	X	X
Certificate of proficiency in survival craft	-	-	X	X	-	X	X	X	-
Provisional certificate as ordinary seafarer	-	X	-	-	-	-	-	-	-
Certificate as ordinary seafarer	-	-	-	X	X(A)	-	-	-	-
Provisional certificate as wiper	X	-	-	-	-	-	-	-	-
Certificate as wiper	-	-	X	-	X(B)	-	-	-	-
Certificate of proficiency in inflatable appliances	-	-	-	-	X	-	-	-	-
Proficiency in fast rescue boats	-	-	-	-	-	-	-	-	-
Proficiency in		-	-	-	-	-	-		-

survival craft									
Proficiency in safe use of electrical equipment, systems and machinery	-	-	-	-	-	-	-	X	-
Proficiency in shipboard maintenance and repair	-	-	-	-	-	-	-	X	-
Proficiency in handling ship stores	-	-	-	-	-	-	-	X	-
Occupational safety certificate	-	-	-	-	-	-	-	X	-
Proficiency in marine pollution prevention	-	-	-	-	-	-	-	X	-

**Notes:**

(A) Or certificate as ordinary seafarer (port operations)

(B) Or certificate as wiper (port operations)

## PROVISIONS APPLICABLE TO TABLES

The following provisions shall have effect in relation to the tables above:

- (a) A sight test certificate is an eyesight certificate issued in accordance with the requirements of the Merchant Shipping (Eyesight and Medical Examination) Regulations, 2011.
- (b) The First Aid at Sea certificate is valid for a period of five years from the date of passing the examination at an accredited institution.
- (c) The Ship Captain's Medical Training Certificate is valid for a period of five years from the date of passing the examination at an accredited institution. For admission to the ship captain's medical training course, a candidate shall hold a valid first Aid at Sea Certificate or an expired Ship Captain's Medical Training certificate.
- (d) Fire-fighting and advanced fire-fighting course certificates are valid for a period of five years from the date of successful completion of the course at an accredited institution.
- (e) A restricted certificate of competence in radiotelephony or a GMDSS restricted operator's certificate, as the case may be, will be issued by the Independent Communications Authority of Kenya to a candidate who passes the qualifying examination.
- (f) A medical certificate issued in accordance with Part 2 of the merchant Shipping (Eyesight and Medical Examination) Regulations, 2011, and is valid from the date of issue for a period, not exceeding 12 months, stated in the certificate.
- (g) A training record book is an approved book wherein a record is kept of a trainee's practical training and of the assessments of such training at levels 1 and 2.
- (h) Watchkeeping certificates, signed by the master(s), serve as proof of a candidate's having acted as a watchkeeping officer. The certificate shall be in the form set out in the Code.
- (i) Bridge watchkeeping training certificates, signed by the master(s), attest to the candidate's

having spent at least the specified number of months of qualifying service on duties associated with bridge watchkeeping under the supervision of a deck officer. The certificate shall be in the form set out in the Code.

- (j) Proof of sea service shall be submitted in the form of a Seafarer's Record Book (discharge book) or Certificates of Discharge, signed by the master(s).
- (k) Documentary proof of pass at an accredited institution is a document issued by an accredited institution declaring that the candidate has passed a written theoretical examination or has successfully completed an approved course.

**MADE ON THE .....DAY OF..... 2012.**

**HON. AMOS KIMUNYA**

**MINISTER FOR TRANSPORT.**