

**SEYCHELLES MERCHANT SHIPPING (INTERNATIONAL SHIP
AND PORT FACILITY SECURITY) REGULATIONS, 2020.**

**A Legislation Drafting Project submitted in partial fulfillment of the requirements
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Submitted By: Dericka Figaro (Seychelles)

Supervisor: Mr. Sanjeet Ruhel

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TABLE OF CONTENTS

Part 1 –The International Dimension	1
1.1 Introduction	1-2
1.2 Background.....	2-3
1.3 Overview of the International Ship and Port Facility Security (ISPS) Code	3-4
1.4 Responsibility of Contracting Governments	4-5
1.5 Ship Security	5-7
1.6 Port Security	7-8
1.7 Compliance and Non-Compliance with the ISPS Code	9
Part 2-The Seychelles Dimension	10
2.1 Introduction	10
2.2 Vessels calling into Port Victoria (2015-2019)	10-11
2.3 Law and enforcement	11
2.4 General aim of the Draft of the Seychelles Merchant Shipping (International Ship and Port Facility Security) Regulations.....	11
Part 3-The implementation of the ISPS Code for Seychelles	12
3.1 The importance of implementing the ISPS Code for Seychelles	12-14
3.2 Implementing the ISPS code into National Legislation	14-16
Part 4- Overview of the Draft Regulations.....	17--18
Part 5- The Draft Merchant Shipping (International Ship and Port Facility Security) Regulations, 2020.	18-50

Part 1:.The International Dimension

1.1 Introduction

Ninety percent of the world's trade is transported via the shipping industry across international boundaries and in light of this shipping plays a vital role in the maritime sector. In 2018, for example, it is estimated that the industry transported over 7.7 thousand cargo, equivalent to a total volume of world trade by the sea of over 32 thousand billion tonnes ¹.

Given its importance to the world economy, the shipping industry is vulnerable to the security threat of the 21st industry. As a matter of fact, security threat against ships had been on the rise over the last decade. Piracy in the Gulf of Somalia had caused a loss of billion to many shipping companies. Subsequently, security threat such as piracy, cyber-attack and terrorism act poses a significant danger for the shipping industry across the globe. It appears; such catastrophic act is borderless and takes no form. Rather, it produces a devastating effect on society, and it is essential that states and shipping companies are vigilant. In light of the deadly terrorist attack on September 11, 2001, in the United States of America, such act showed the world that terrorist can use any form of weapon to launch their attack. Generally speaking, it is when tragedy strikes the effectiveness of our security measures and procedures are being tested. It is no secret in the past and still in the present day, there are many port facilities, and ship that have lack of inefficient security measure. Essentially, this is due to different reasons which need to be addressed by each State. Consequently, this loophole had make the shipping industry vulnerable from any potential terrorist attack; endangering the world economy. Indeed, the shipping industry is not exempted for danger. For instance, the terrorist can use a ship as a weapon and use the ship as a mean of transporting persons intending to cause a security incident, ² and it is for the best interest for flag states, port states, shipping companies and all government entities to ensure the necessary measures are in force to detect and act upon any potential maritime security threat. It is therefore very important for the port facility and ship to identify security risk at an early be safe and carry out effective measure to reduce the risk to enhance maritime security.

In general, the maritime industry is interconnected across national boundaries. The State as a critical partner cannot act alone to combat the maritime threat. Taking into account the maritime sector comprises various government authorities and private organization, the requirement of coordination is essential and fundamental. Therefore, through effective coordination between the various partners, the interconnections of the shipping industry are gradually strengthening for the benefit of world trade. In this respect, one cannot separate the relationship between the shipping industry and the importance of the port. Indeed, one must appreciate that the two are closely interlinked. In general, the port is the strategic point in which ships load/unload goods before embarking on a new voyage. Inevitably, such interconnection between the shipping and port can become a potential target for a terrorist attack. Despite the technological advancement, state and Shipping Company must possess the necessary procedure to detect and response to maritime security threat. It is therefore, through the basic port and ship assessment a full analysis can be conducted to detect an analysis.

In light of the concerned mention above in the shipping industry, it is clear that international and cooperation is essential to minimize the risk of the 21st century maritime threat. Maritime security is a national and international priority which no state can turn a blind eye on. In essence, state and shipping companies must be more vigilant and prepare to respond to any eventuality of maritime threat. It is for this reason, the international community had taken a fundamental step forward to address the maritime

¹ Maritime International Secretariat Limited (Marisec), "Shipping and world Trade: Value of World Trade by Sea (2010)" <<http://www.marisec.org/shippingfacts/worldtrade/volume-world-trade-sea.php>> accessed on 12 January 2020.

² James Krask "Ship and Port Facility Security" in David Attard et al., *The IMLI Manual on International Maritime Law* (Volume III Maritime Environmental Law and Maritime Security Law) ,(1st edn ,Oxford University Press), p446.

security threat by the introducing a maritime security regime, called the International Ship and Port Facility Security (ISPS) Code ³.

1.2 Background

In consequence to the attack on the World Trade Center in the United States of America 2001, the International Maritime Organization (IMO) Assembly Resolution A.924 (22) ⁴ called for a review of the existing international legal and technical measures to prevent and suppress terrorist acts against ships at sea and in port, and to improve security on vessels and ashore at port facilities. The main aim was to reduce risks to passengers, crews and port personnel on ships and in port areas and the vessel and their cargoes and to enhance ships and port security and avert shipping becoming a target of international terrorism.⁵.

An extraordinary meeting of the Maritime Safety Committee (MSC), also began work amending the International Convention for the Safety of Life at Sea (SOLAS)⁶ to address the threat of maritime terrorism.⁷

Moreover, the MSC and its associated Maritime Security Working Group led the development of far-reaching amendments to the existing chapter XI of SOLAS. The amendment was adopted by the IMO Assembly and redefined as chapter XI-2 of SOLAS. At the Conference of Contracting Governments to SOLAS, from 9-13 December 2002, the member's states of the IMO adopted a series of resolutions and measures amending SOLAS. About one hundred and nine State Parties to the SOLAS Convention participated in the negotiations. The meeting also includes the representatives of numerous intergovernmental and non- governmental organizations.⁸The ISPS Code came into force on July, 1, 2004. The ISPS Code is part of SOLAS and compliance is mandatory for Contracting Parties to SOLAS. The ISPS Code entered into force 18 months after its adoption by the SOLAS conference in December 2002.

In fact, many conventions of the IMO had been adopted and come into force which had resulted in maritime incidents. In contrast, the ISPS Code is the only maritime security regime in chapter XI-2 of SOLAS that addresses terrorism. Indeed at the international level, the international the specialized agency of the United Nations, the IMO yearly advocate to its member State to implement the ISPS Code as former Secretary -General Mr. Efthimios E Mitropoulos called upon in 2004 for States to “*urge early implementation of maritime security measures*”.⁹The ISPS Code is not self-executing and through implementation in national legislation it can be render effective to enhance maritime security.

1.3 Overview of the ISPS Code

³ The International Ship and Port Facility Security Code (Adopted on 12 December 2002; Entered into force 1 July 2004) (IMO Resolution A.924(22) 2001).

⁴ International Maritime organization Assembly 22nd session ,(Resolution A.924(22) 2001,<
[http://www.imo.org/en/OurWork/Security/Guide_to_Maritime_Security/Guidance/Documents/A.924\(22\).pdf](http://www.imo.org/en/OurWork/Security/Guide_to_Maritime_Security/Guidance/Documents/A.924(22).pdf)> accessed on 12 January 2020.

⁵International Maritime Organization(IMO) SOLAS XI-2 and the ISPS Code.<http://www.imo.org/en/OurWork/Security/Guide_to_Maritime_Security/Pages/SOLAS-XI-2%20ISPS%20Code.aspx> accessed on 13 January 2020.

⁶ International Convention for the Safety of Life at Sea (Adapted on 1 November 1974; Entered into force: 25 May 1980) V1184 UNTS 18961.

⁷ James Krask "Ship and Port Facility Security" in David Attard et al, The IMLI Manual on International Maritime Law (Volume III Maritime Environmental Law and Maritime Security Law), (1st edn ,Oxford University Press), p444.

⁸ Ibid.

⁹ Peter Moth, *ISPS code update 2004*, (2nd edn, Foreshore Publication 2004), p x.

Objective

In general, the ISPS Code is a set of measures to enhance the security of ships and port facilities, which is to simply reduce the vulnerability of the industry to attack, thus countering the threat and reducing the risk. The main objectives of the ISPS Code include; establishment of an international framework that fosters cooperation between Contracting Governments, Government agencies, local administrations and the shipping and port industries, in assessing and detecting potential security threats to ships or port facilities used for international trade, so as to implement preventive security measures against such threats; secondly determining the respective roles and responsibilities of all parties concerned with safeguarding maritime security in ports and on board ships, at the national, regional and international levels; thirdly to ensure that there are early and efficient collation and exchange of maritime security-related information, at national, regional and international levels; fourthly to provide a methodology for ship and port security assessments, which facilitates the development of ship, company and port facility security plans and procedures, which must be utilized to respond to ships' or ports' varying security levels; and lastly to ensure that adequate and proportionate maritime security measures are in place on board ships and in ports.¹⁰

Risk Management

In essence, as risk management, the ISPS Code, takes the approach ensuring the security of ships and port facilities as a risk assessment activity and to determine what security measures are appropriate and eliminate the source of threat in each particular case. The ISPS Code is able to do this by introducing the two elements of prevention and deterrence into the international regulatory regime. In addition it does so by facilitating co-operation involving not only governments and shipowners but also all the other persons and entities who play important roles in maritime transport and trade, such as ships personnel, port personnel, passengers, cargo.

Functional requirement

In general, ships and ports facilities have the following functional requirement to attain the objectives of the ISPS Code. These are firstly to gather and to assess information with respect to security threats and to exchange such information with appropriate Contracting Governments; secondly preventing unauthorized access to ships, their restricted areas, preventing the introduction of unauthorized weapons, incendiary devices or explosives to ships or port facilities, additionally requiring ship and port facility security plans based upon security assessments; and requiring training, drills and exercises to ensure the familiarity with security plans and procedures.¹¹

How these objectives are to be achieved

For the objectives of ISPS Code to be met, all Contracting Governments must be on the same playing field. That is Contracting Government, port facilities and operators who had not already taken on board measures will need to catch up according to the rules and guidelines in the ISPS Code. For those contracting who have already implemented enhance security regimes, the ISPS Code formalizes and standardizes globally security measures.

Scope of Application

¹⁰ ISPS Code, Part A/Section 1.2.

¹¹ ISPS Code, Part A/ Section 1.3.

Section 3 of Part A of the ISPS Code state that the code applies firstly to the following ships engaged on the international voyage such as passenger ships including high passenger crafts, cargo ships including the high speed crafts of 500 gross tonnage and upwards and mobile drilling units. It also covers port facilities serving such ships engaged on international voyages.¹²In contrast, ISPS Code does not apply to warships, naval auxiliaries, ships owned or operated by a contracting government and used only on non-commercial government service .Secondly the ISPS Code applies to port facilities engaged on international voyages.¹³

In addition, the ISPS Code comprises two Part. Part A of the ISPS code provides mandatory requirement regarding. Some of the main requirement are Ship security assessment (SSA), ship security plans (SSP), company (CSO) security officers, Port facility security assessment (PFSA), port facility plan (PFP), and port facility security officer (PFSO), as well Declaration of Security (DOS). Whereas, Part B of the ISPS Code provides a recommendation on how the measures of Part A might be implemented. It should point out that Part B of the ISPS must be read in line with Chapter XI-2 of SOLAS and Part A of the ISPS Code.

1.4 Responsibility of Contracting Governments

Firstly, the Contracting Governments shall collect and assess information about potential threat to ports and ship flying their flag. Based on the threat information, the Designated Authority (for ports) and the Administration (for ships) set a security level that reflects the degree of risk that security incidents pose¹⁴. According to section 4 of Part A of the ISPS Code state that" *Contracting Governments shall set security levels and provide guidance for protection from security incidents* ". There are three security levels in the IPS code.

- **Security Level 1**-The minimum appropriate protective measures are implemented at all times that are sufficient to counter most forms of criminality associated with ports and ships, such as trespass, cargo tampering and pilferage, and stowage's;
- **Security Level 2**- additional protective measures that are maintained for specific enhanced protective measures that are maintained for a period when there is a heightened risk of a security incident;
- **Security Level 3** -Is used in exceptional circumstances and establishes specific enhanced protected measures that are maintained for the duration of a period when an incident is probable or imminent, and could even result in the suspension of activities.¹⁵

In setting the security level, the Contracting Governments shall take into consideration the following factors such as the degree of the threat information is credible; the degree that the threat information is corroborated, importantly the degree that the threat information is specific and imminent and the potential consequences of such a security incident.

Furthermore, as Part A/ Section 4.3 of the ISPS Code state that" *Contracting Governments may delegate to a Recognized Security organization certain of their security related duties under chapter XI-2. However some duties which are exception cannot be delegate such as setting the applicable security*

¹² ISPS Code, Part A/Section 3.1.

¹³ ISPS Code, Part A/ Section 3.3.

¹⁴ James Krask "Ship and Port Facility Security" in David Attard et al., The IMLI Manual on International Maritime Law (Volume III Maritime Environmental Law and Maritime Security Law),(1st edn ,Oxford University Press),p 453.

¹⁵ ISPS Code, Part A/ Section 2.1.

level, approving a Port Facility Security Assessment and subsequent amendments to an approved assessment; determining the port facilities which will be required to designate a Port Facility Officer; approving a Port Facility security plan and subsequent amendments to an approved plan; exercising control and compliance measures pursuant to regulation X1-2/9; and establishing the requirements for a Declaration of Security".

Given the ISPS code makes provision for Contracting Governments to delegate their function to Recognized Security Organization (RSO). The MSC/Cir.1074 on interim Guidelines for the authorization of Recognized Security organization's provides further guidance in the responsibilities of the RSO.¹⁶

In addition, each Contracting Government has to ensure completion of a Port Facility Security Assessment for each port facility within its territory.¹⁷ The Port Facility Security Assessment is a fundamentally risk analysis of all aspects of the port operation to determine which parts are more susceptible, and/or more likely, to be subject to attack.

Lastly, the Contracting Governments shall determine when a Declaration of Security is required by assessing the risk/port interface or ship to ship activity poses to persons, property or the environment. A ship can request the completion of a Declaration of security on the different occasion when a ship is operating at a higher security level than the port facility or another ship it is interfacing with, secondly, there is an agreement on a Declaration of Security between Contracting Governments covering certain international voyages or specific ships on those voyages; there has been a security threat or a security incident involving the ship or involving the port facility as applicable, and finally the ship is conducting ship to ship activities with another ship not requires to have and implement an approved Ship Security Plan.¹⁸

1.5 Ship Security

Responsibility of the Administration

Flag states have inherent authority to prescribe and enforce domestic laws and adopt and implement international rules for ships flying their flag. Normally vessels are subject to the exclusive jurisdiction of the flag state and flag states are responsible for ensuring ships flying her vessel flying their flag comply with internationally accepted standards.¹⁹

Provisions of chapter XI -2 and Part A of the ISPS Code are applicable to all ships. Therefore, the flag State Administration approves ship security plans as per Part A/ Section 7.2 of the ISPS Code. In addition the Administration or by a Recognized Security Organization acting on behalf of the Administration shall issue or International Ship Security Certificates as per Part A/ Section 19.2 of the ISPS Code. This is to ensure the ship is in compliance with the ISPS Code.

Responsibility of the Ship Company

¹⁶ International Maritime Organization Resolution ,MSC.349(92) (Adopted on 21 June 2013) ,<[http://www.imo.org/en/KnowledgeCentre/IndexofIMOResolutions/Maritime-Safety-Committee-\(MSC\)/Documents/MSC.349\(92\).pdf](http://www.imo.org/en/KnowledgeCentre/IndexofIMOResolutions/Maritime-Safety-Committee-(MSC)/Documents/MSC.349(92).pdf)>accessed on 12 January 2020.

¹⁷ ISPS Code ,Part A/ Section 4.3.4.

¹⁸ ISPS Code, Part A/Section 5.

¹⁹ James Krask "Ship and Port Facility Security" in David Attard et al., The IMLI Manual on International Maritime Law (Volume III Maritime Environmental Law and Maritime Security Law), (1st edn ,Oxford University Press),p 449.

For shipping companies the obligation imposed by the ISPS Code consists the duty to appoint security officers at company level and also for individual ships. In particular, a ship company is required to conduct Ship Security Plan and Ship Security Assessment per Part A/ Section 6 of ISPS Code.

Company Ship Officer and Ship Security Officer

In essence, the Company Ship Officer plays an important role for the implementation of the ISPS Code and also acts as a liaison officer with the administration and other personnel. The responsibilities and duties of the Company Ship Officer shall include advising the level of threats likely to be encountered by the ship, ensuring the Ship Security Plan and Ship Security Assessment is carried out by persons with appropriate skills, and enhancing security awareness and vigilance. Moreover, the Company Ship Officer shall be assisted by the Ship Security Officer which has the duties and responsibilities to undertake regular security inspections of the ship to ensure that appropriate security measures are maintained, maintaining and supervising the implementation of the Ship Security Plan; ensuring that adequate training has been provided to shipboard personnel; drill shall be carried out at appropriate interval and lastly reporting al maritime incidents .²⁰

Ship Security Plan and Ship Security Assessment

Furthermore, according to Part A/ Section 9.1 of the ISPS code state *"each ship shall carry on board a Ship Security Plan approved by the Administration"*. The Ship Security Plan shall at least consist of a few of the following as listed as per Part A/ Section 9.4 such measures designed to prevent weapons, dangerous substances and devices intended for the use against persons, ships or ports and the carriage of which is not authorized from being taken on board the ship, delineate restrict areas and access control measures. Measures and equipment to prevent the unauthorized access to the ship while in port or at sea; procedures for evacuation in case of security threats or breaches of security; procedures for reporting security incidents and lastly procedures for the periodic review of the Ship Security Plan.

Moreover, the Ship Security Plan should set fort the organizational structure of ship security, and the vessel's relationship with the shipping company, port facilities, other ship, and relevant authorities with security responsibility.²¹

In light of the above , the Administration shall review the Ship Security Plan once per year taking into account; drills or exercises, security breaches or actual security threat involving the ships, changes in shipping operations including the operator; completion of a Ship Security Assessment. Part A/ Section 8.1 of the ISPS Code state *"the Ship Security Assessment is an integral part of the process of developing and updating the Security the Ship Security Plan"*. The Ship Security Assessment should comprises at least the following elements such as Identification of existing security measures, procedures and operations; identification and evaluation of key ship board operations that is important to protect ; and identification of weaknesses, including human factors in the infrastructure, policies and procedures per Part A/ Section 8.4 of the ISPS Code.

Both the Ship Security Plan and Ship Security Assessment shall be protected from unauthorized access or disclosure per Part A/Section 9.8 of the ISPS Code. They are considered as confidential information, and cannot be subject to inspection unless otherwise agreed by the Contracting Governments concerned.

²⁰ISPS Code, Section A/11 and 12.

²¹ ISPS Code, Section B/9.2.

If in any event the officers duly authorized by a Contracting Government have a clear grounds to believe that the ship is not in compliance with the requirements of Chapter X1-2 or part A of ISPS Code, and the only means to verify the non-compliance is to review or rectify of the ship security plan, limited to the plan relating to the noncompliance is exceptionally allowed, but only with the consent of the Contracting Government of or the master, of the ship concerned per Part A/ Section 9.8.1 of the ISPS Code. .

Ships

The code requires *inter alia*, that each ship shall act upon the security levels set by the Contracting Governments whose flag it flies as per Part A/Section 7.1 of the ISPS Code.; that each ship shall carry onboard an approved ship security plan duly approved by the Administration of the flag Contracting Governments as per 9.1 of the ISPS Code. Moreover, each ship shall have an International Ship Security Certificate issued or endorsed by the Administration of the flag state after appropriate verification as per Part A/ Section 9.5.1 of the ISPS Code. Lastly, ships have an obligation to retain on board records of activities such as training, drills, exercises and security threats and incidents for the minimum periods specified by the Administration as per Part A/Section 10. of ISPS Code.

1.6 Port Security

Responsibility of Contracting Governments

Indeed, only Contracting Governments may set the applicable security level, as well as approve Port Facility security assessments and Security Plans, determine the ports that require a Port Facility Officer, exercise compliance measures and establish for a Declaration of Security as per Part A/ Section 5 of the ISPS Code. Besides conducting the daily routine operation, the Contracting Governments must periodically assess port facilities, namely the Port Facility Security Assessment as per obligation under Part A/Section 15 of the ISPS Code.

In general, the Contracting Governments have to balance the costs attached when assessing the risk of security. Besides the obvious financial burden of implementing security measures, there are associated with intangible costs. For example, tight security must accommodate reasonable access to the shore. The rules contained in the ISPS Code are integrated into ongoing IMO initiatives and require a balance between the openness needed to facilitate trade and economic prosperity measures, such as effective screening of ships, and cargo, and the maintenance of port and ship registry.

Responsibility of Port Facility

As far as port facilities are concerned, they are required also required to act upon the security levels set by the Contracting Governments; to develop and maintain Port Facility Plan; to undertake Port Security Assessments and to designate Port Facility Officers with duties and responsibilities set out in the Part A/ Section 14.1 of the ISPS Code.

Importantly, security measures and procedures shall be applied at the port facility in such a manner as to cause minimum interference with, or delay to passengers, ships, ships' personnel and visitors, goods and serviced.

Port Facility Security Plan and Port Facility Security Assessment

A Port Facility Security Plan shall be developed and maintained on the basis of a Port Facility Assessment as per Part A/Section 16 of the ISPS Code. The Port Facility Security Plan shall address at least the following; measures designed to prevent or any other dangerous substances and devices intended for the use against persons, ships or ports and the carriage of which is not authorized from being introduced into port facility or on board a ship; measures designed to prevent unauthorized access to the port facility, and restricted areas of the facility; procedures for responding to security threats or breaches of security; duties of port facility personnel assigned security responsibilities and other facility personnel on security aspects; procedures for the periodic review of the plan; procedures for reporting maritime incidents; and lastly measures designed to ensure effective security of cargo and the cargo handling equipment at the port equipment.

Additionally, the Port Security Assessment is an essential and integral part of the process of developing and updating the Port Facility Security Plan. The Port Facility Security Assessment shall be carried out by the Contracting Governments within whose territory a port facility is located.

Significantly, the Port Facility Security Assessment shall include ,at least the following elements such as firstly the identification and evaluation of important assets and infrastructure to protect; identification, selection and prioritization of counter measures and procedural changes and their level of effectiveness in reducing vulnerability; and identification of weaknesses, including human factors in the infrastructure, policies and procedures as per Part A/Section 15 of ISPS Code.

Both the Port Facility Security Plan and Port Facility Security Assessment shall be protected from unauthorized access or disclosure. Furthermore, the outcome of the Port Facility Security Assessment should be reported or approval of the report is done by a separate designated authority, as it is the responsibility of the Contracting Government.

Port Facility Security Officer

A Port Facility Security Officer shall be designated for each port facility. A person may be designed as the Port Security Officer or one or more port facilities. The duties and responsibilities of the Port Facility Officer shall at least contain the following; ensuring the development, maintenance, implementing and exercise Port Facility Security Assessment Plan; conducting an initial comprehensive security survey of the port facility taking into account the relevant Port Facility Security Assessment; enhancing security awareness and vigilance of the port facility personnel; ensuring adequate training for personnel responsible for the security of the port facility ;ensuring that security equipment is properly operated, tested, calibrated and maintained and lastly and coordinating with ship company officers Ship Security officers and security services as appropriate as per Part A/Section 17 of ISPS Code.

1.7 Compliance and Non-Compliance with the ISPS Code

A ship whose security system and associated security equipment are found to comply with the applicable requirements of the code is issued with an International Ship Security Certificate to be carried on board a ship per Part 4/ Section19 of the ISPS Code.

On the other hand, if a ship doesn't have a valid certificate, it may be detained in port until it gets a certificate. It may expel the ship from port, it may refuse the entry of the ship into port, and it may restrict its operation within the port per Part A/ Section 19 of ISPS Code.

In addition, the Contracting Government may issue a certificate of compliance to the port facility as per Part B/ Section 16.62 of the ISPS Code.

Part 2-The Seychelles Dimension

2.1 Introduction

Seychelles is an archipelago of 115 islands with a population of 94 thousand inhabitants located south-west of the Indian Ocean. Seychelles has a total landmass of 457 square kilometres and Exclusive Economic Zone of 1.4 million square kilometres. As a small island State, the ocean is our bread of life. The economy of Seychelles depends heavily on the shipping, tourism and the fishing industry. Nevertheless, of its status as a high middle income country, Seychelles have an imbalance trade deficit. Furthermore; Seychelles has a lack natural resources and comparative economic advantage for its economic development.

Therefore, Seychelles imports more goods than export. Nevertheless, Seychelles export more of its service as a touristic destination. With hundred thousands of visitors arriving Seychelles yearly, the small economy over the years had experienced economic growth. Means of communication like plane and cruise ship are the point of entrance to Seychelles. Indeed, the role of main the international port, Victoria Port, cannot be ignore given it is the backbone of the Seychelles economy sustaining the tourism, shipping and the fishing industry.

The Victoria Port consists of two ports engage on international voyages The “old port” is use mostly by fishing vessels. Moreover, the other port is called the "New port receives cargo, cruise and foreign military ship. With economic growth and prosperity, the Victoria port, has become the centre of Seychelles development.

2.2 Vessels calling into Port Victoria (2015-2019) ²²

TYPE OF VESSEL/YEAR	2015	2016	2017	2018	2019
Container Vessels	153	134	137	145	178
Cruise ships	27	27	35	46	39
Cement Tanker	2	4	2	7	6
Fishing Vessels	526	592	539	538	561
General Cargo	1	0	0	0	0
Gas Tankers	3	3	4	2	6
Longliner	123	130	108	94	92
Oil Rig	0	0	1	0	0
Oil Tanker	30	37	38	39	45
Research	3	0	3	1	2
Reefer Vessels	54	54	54	60	47
Submarine	13	4	13	10	3
Supply ships	108	126	150	136	119
Tug	5	6	6	5	11
Warship	50	37	43	38	48
Yacht	60	59	74	63	72
Others	24	33	29	46	54
TOTAL	1182	1246	1236	1229	1283

From the analysis of the statistical records provided by the Seychelles Port Authority, it can be seen even though the number of long liners (123 in 2015 to 92 in 2019), reefer vessels(54 in 2015 to 47 in 2019) , and supply ships (150 in 2017 to 119 in 2019) had decreased ,there was increase in container vessels (153 in 2015 to 178 in 2019),fishing vessels(526 in 2015 to 561 in 2019) and oil tanker (30 in 2015 to 45 in 2019). Furthermore, the overall number of calling Victoria port from 2015 to 2019, have

²² Statistics provided by the Business Development Department, Seychelles Port Authority (5 February 2020)

increase from 1182 to 1283. In light of this increase of vessels calling the Victoria port, there is a need for the safety of the port from any potential threat.

2.3 Law and enforcement

The Seychelles Merchant shipping Act 1995²³ and its amendment in 2014 is the main legislation governing the main legislation in the maritime sector, supplemented by the Seychelles Harbor Act²⁴, the Seychelles Control of Hire Craft²⁵ Act and the Seychelles Port Authority Act.²⁶

The Seychelles Harbour Act regulates some degree of security at the Victoria port. It makes provision for the Harbour (Fishing Port) Regulations for the control of vehicles, vessels and restriction on activities and conduct of person entering the fishing Port. It provides rules for harbours, including fishing ports, in Seychelles. It grants regulation-making powers to the Minister, and the President may, by order, designate any areas within or in the vicinity of the harbour of Victoria as the fishing Port of Seychelles. The Seychelles Harbour Act reflect the importance of the fishing industry at the old port, the 1900's Seychelles economy heavily depend on the tuna export and still at present the tuna factory is located at the old port.

The 1998 Act had not yet updated to reflect the development of security issue at the new port, Victoria port.

In general, the Seychelles Safety Maritime Authority is the competent authority for enforcing the Seychelles Merchant Shipping Act and, whereas the Seychelles Port Authority is the competent authority for enforcing the Seychelles Harbour Act. However, the two authorities jointly coordinate for effective implementation of the Seychelles Merchant Shipping Act.

2.4 The general aim of the Draft of the Seychelles shipping Merchant (International Ship and Port Facility) Regulations

Seychelles became a Party to SOLAS on April 16, 1997. As the ISPS Code is a mandatory instrument of the SOLAS, it is applicable to Seychelles under the Seychelles Merchant Shipping Act.

The general aim of the Draft Regulation is to provide a provision that will effectively implement the International Ship and Port Facility Code in the Seychelles Shipping Merchant Act. Therefore, the proposed regulation will imports the mandatory requirements under the ISPS Code and recommended measures where appropriate. The regulation will state the duties and responsibilities of the different entities and personnel. Importantly; it will lay down the procedure to be followed, considerations to be made as well providing definitions.

Part 3 The implementation of the ISPS Code for Seychelles

²³ Seychelles Merchant Shipping Act first came into force in 1992 and its latest amendment was made in 2014 and became the Seychelles Merchant Shipping (amendment) Act, 2019.

²⁴ Seychelles Harbour Act first came into force into 1903 and the latest amendment was made in 2012 and became Harbour Act (Cap.90).

²⁵ Seychelles Control of Hire Craft Act first came into force in 1973 and the latest amendment was made in 2012 and became the Control of Hire of Craft (46).

²⁶ Seychelles Port Authority Act came into force in 2004.

3.1 The importance of implementing the ISPS Code for Seychelles

Maritime transport is essential to the world's economy as over ninety percent of the world's trade is carried by sea and it is, by far, the most cost-effective way to move mass goods and raw materials around the world.²⁷ Shipping plays a vital role in world trade and is the backbone of the world economy.²⁸ International trade is very important for a small country like Seychelles, as eighty percent of goods are imported, for example, goods such as machinery and equipment, foodstuffs, petroleum products. Over the years there has been an increase in trade for Seychelles with its partners such as the United Arab Emirates, Singapore, France, Spain, Germany, India, and South Africa. As Seychelles partnership in commerce is being expanded through new Bilateral Agreement and the promising regional cooperation of the Africa Free Trade Agreement, Seychelles is expected to have an increase in trade.

In general, there are many goods from different countries entering the Victoria port. This is a security issue of its own. Therefore Seychelles needs to be vigilant within the global security era. Consequently, it is important to ensure the appropriate security measure and framework is in place to prevent any security threats to our small economy and society. Having the ISPS Code in place, it should not be viewed as a barrier for trade facilitation. Instead, the ISPS Code provides for the requirement of regular security checkup of cargoes loading/ unloading into the port as well as monitoring personnel entering and leaving the port. This will allow Seychelles to be in accordance with the global security culture and practice.

Significantly the government and its partners play an important role in developing the Seychelles economy. This cooperation also is required for the implementation of the ISPS Code. The cost-benefit of ISPS should not be underestimated. It is a fact, that there will be added logistical costs of implementing the ISPS Code such as purchasing new equipment, employing more Port security officer and provides security training for current staff. Despite all the logistical costs, it is important to mention that the global trading system is vulnerable to terrorist exploitation²⁹. As many ports around the world are vulnerable to a potential terrorist attack; the Victoria port is of no exemption. At present much is required to put in place more adequate security measures to enable Seychelles to be on the same playing field with other countries. It is for the very reason, Seychelles needs to protect itself from the danger of the 21st century and take preventive measures against any possible threat.

The Victoria port receives any cargo ships. Nowadays, we receive an increase in the cruise ship. As the Chief Executive of the Seychelles Tourism Board, Sherin Francis has reiterated the fact that Seychelles is an ideal cruise destination given it is an archipelago surrounded by secluded powder-white beaches and clear Turquoise Ocean. *"We are encouraged; Seychelles is becoming more and more popular among cruise liners. The various cruise ship calls this season will give the Seychelles islands the chance to showcase itself to potential visitors paramount with the hope that their short experience will whet*

²⁷ Business.un.org 'IMO'International Maritime Organization ,<'https://business.un.org/en/entities/13> accessed on 25 January 2020.

²⁸ Rami " The Economic Role of The Shipping Industry " <(2012)https://ramiwaheed.wordpress.com/2012/09/15/the-economic-role-of-the-shipping-industry/> accessed on 26 January 2020.

²⁹ Safety4Sea", Rethinking maritime security(2017)< <https://safety4sea.com/rethinking-maritime-security-2/>> accessed on 26 January 2020.

their appetite for future visits. That is why it is of importance that their short stays are as real and enriching as possible,” said Mrs. Francis.³⁰

The fact that there are different nationalities onboard a cruise ship, this itself can make Victoria port become a potential target against terrorist attack, especially targeting a particular nationality. It is why the ISPS code makes provision controlling the embarkation of persons and their effects. Therefore; there is the need to ensure the safety of the port and the passenger from any danger. In addition, there is the need for more vigilance, procedures and guideline in place to a cruise ship as their entry to Seychelles.

Moreover, one cannot turn a blind eye on the geopolitics of insecurity in the Horn of Africa. The terrorist group, Al Shabaab, threatens the security of eastern Africa by the terrorist attack. Despite the international support to curb the insurgency of Al Shabaab, this is in vain. Seychelles must be at the lookout. Potential threat of terrorism extending on the sea should not be underestimated as the distance between Somalia and Seychelles is 1500 kilometres, and Victoria Port receives ships from the port of Mogadishu. This element of security should not be ignored taking into account the geopolitics of insecurity in the of the Horn of Africa.

On the same note, despite there's a decrease in the attack of piracy in the Horn of Africa, Seychelles should ensure that ship flying its flag or passing its economic exclusive should have security measures in place in an eventuality of a piracy attack. In the past, Seychelles had been affected by the pirate attack, especially our tourism industry. Ships need to have ship security plans to take account the threat of piracy, which is a menace.

Furthermore, today cyber-security attack is on the rise. Ships are not immune from such devastating effect on the shipping. For this reason the ship security assessment ensure that ship identify possible threats to the key ship board operations and the likelihood of their occurrence. Such benefit of the ISPS Code, allow ship to analyses the risk of cyber security and what operation measures to take to address maritime security threat.

Having said all of the above reason, in order for Seychelles to effectively discharge its duties and responsibilities under the international convention, the Seychelles must law to empower the Seychelles Maritime Safety Authority. The Seychelles Maritime Safety Authority working alongside the Seychelles Port Authority should be adequate with resources, finance and with appropriately qualified and experienced personnel. This is fundamental for the two authorities in order to identify risk at the early stages and take the necessary measure to reduce the risk.

Summing up with the main factor, the fact that there is no provision in the national legislation regarding ship and port security, this is one reason Seychelles is not in compliance with the international obligation. The Seychelles Merchant Shipping Act is the law that governs the law of shipping of Seychelles. Currently, there is no express provision for the security of the ship in the Merchant Shipping Act and the Harbour Act 1998 need to be updated to reflect the development of the New port. It is for this reason, to address this deficiency the ISPS regulation need to be drafted and implement in the Seychelles Merchant shipping Act. To add on to this, for the effective implementation, the propose draft ISPS regulation needs to empower the Seychelles Maritime Safety Authority and Seychelles Port Authority to carry out their functions. Moreover, it is important to point out; the first IMO Member state Audit was

³⁰ Seychelles Tourism Board, "Seychelles to record increased number of cruise ship calls this season" <<https://www.seychellestourismboard.travel/news-media/press-releases/218-seychelles-to-record-increased-number-of-cruise-ship-calls-this-season>> accessed on 26 January 2020.

undertaken June 2016³¹ and it recommend Seychelles to have the necessary provision on the mechanism in place for monitoring, reviewing and improving measures to give effect applicable mandatory requirement and enforcement of national legislation. As well as clearly defining the division of responsibilities between the various entities involves. Therefore, such a mechanism will play an important role in effectively enforcing Seychelles international obligation under the SOLAS Convention. But most importantly, the Vitoria Port is the gateway to Seychelles economy and it is a priority for our small island, Seychelles.

3.2 Implementing the ISPS Code into National Legislation

Seychelles is already a Party to the International Convention for the Safety of Life at Sea. Seychelles operates under the dualist system, which means that the positive action is required for the transposition of international instruments into national law. Article 64 (3) of the Constitution of Seychelles states

"The President may execute or cause to be executed treaties, agreements or conventions in the name of the Republic". In addition to this Article 64(4) states "A treaty, agreement or convention in respect of international relations which is to be or is executed by or under the authority of the President shall not bind the Republic unless it is ratified by :

(a) An Act; or

(b) a resolution passed by the votes of a majority of the members of the National Assembly."

In this regard, the Merchant Shipping Act provides that the International Convention for the Safety of Life Sea (SOLAS) shall have the force of Law.³² SOLAS is referred as Safety convention under the Act. As the ISPS Code is a mandatory instrument of the SOLAS, therefore it is applicable to Seychelles. Importantly, the regulation will make a provision for the allocation of budget for the implantation of the code.

The ISPS Code is not self-executing; it has to be implemented by a provision. At the present day, Seychelles has not implemented the ISPS Code. Therefore, the Seychelles Merchant Shipping Act gives the Minister for Tourism, Civil Aviation and Marine, the power to make regulation.

"The Regulations may make provision for, or in relation to the implementation of, or giving effect to, any Convention referred in subsection 85 (1) Subject to this Act and to any other law, the Collisions Convention, the Load Line Convention and the Safety Convention shall have the force of law in Seychelles"

Therefore, the ISPS Code should be implemented in the form of Regulations catering for section 85(5).

In general, for the proper implementation of the ISPS Code, the Government of Seychelles needs to fulfill its responsibilities. This can achieve, if there is effective coordination with the various authorities, clear security procedure as well offences and penalties well defined to deter a breach of these regulations.

³¹ IMO Member State ,Audit of Seychelles , Final Report 5-13 June 2016.

³² Seychelles Merchant Shipping Act 1995(Cap 127 A)section 85(1).

The Government of Seychelles shall collect and assess the information of potential threats to ship and ship to establish the security level. In the Seychelles Merchant Shipping Act, the President of the Republic has given the power to make an Order under section 240 *"may make provision for or in relation to, the implementation, of giving effect to any Convention"*. Thus a provision can be produced to collect and assess information from various organizations such as the Regional Maritime Information Fusion Centre (RMIFC) in Madagascar and the Regional Centre for Operations Coordination (RCOC) in Seychelles.

In addition to this, under the same provision, a Special Committee for the International Ship and for Port Facility can be established for the effective implementation of the Code. As ISPS Code is a national security matter, national stakeholders who are involved with national security such as authority such as the Police, Seychelles Arm Force, Port Authority, Risk and Disaster Department, Ministry of Finance and the Foreign Affairs should be members of the special committee. Furthermore, the Special Committee for International Ship and Port Facility can act as the first point of contact and coordination body for a security operation in any eventuality.

Section 5(1) of the Seychelles Merchant Shipping Act states "the main Designated Authority will be the Seychelles Maritime Safety Authority" which is under the authority of the Ministry of Tourism, Civil aviation and Marine working alongside the Seychelles Port Authority.

The Seychelles Maritime Safety Authority should be the authority responsible for approving the Ship Security Plan and Assessment. Ship entering /leaving Victoria Port should have a Declaration of Security. The Seychelles Merchant Shipping Act *Part XIV GENERAL* makes the provision for issuing of certificate;

"Any person who is by this Act required or authorized to issue grant, give or make certificate or other, shall furnish a certified extract from the certificate or document to any person applying at a reasonable time for such certified copy or certified extract." Consequently, *"Where a ship has become forfeiture under this Act, the Minister may cause the ship to be seized and detained, and may bring the ship for adjudication before the court."* Hence *"where the court adjudges a person convicted of any offence against this Act pay any fine or any other moneys and that person is the master of a ship registered under this Act or the owner of the ship, and the fine or other money are not paid within the time and in a manner limited by the conviction or specified in order of the court"*.

In addition to this, PART XIII of the Merchant Shipping Act makes provision in relation to the jurisdiction to the court. *Jurisdiction*

(1) For the purpose of giving jurisdiction under this Act, every offence under this Act shall be deemed to have been committed either in the place in which the same was committed or in any place in which the offender may be.

(2) Any proceedings for an offence under this Act may be instituted in the Supreme Court or, subject to the limitations set out in the Criminal Procedure Code, in a Magistrates' court and any other proceedings under this Act, unless otherwise provided, shall be instituted in the Supreme Court.

(3) A court which has jurisdiction in any part of the coast of Seychelles shall have jurisdiction over any ship being on or lying or passing off that part, and over all persons on board the ship, in the same manner as if the ship or persons were within the limits of the original jurisdiction of the court.

Importantly, the Merchant Shipping Act 1995 gives the Power for the Minister to prescribe offences and penalties. According to PART XVI

"Section 242

1.(1) The Minister may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or that are necessary or convenient to be prescribed for the carrying out or giving effect to this Act and in particular for prescribing –

(e) offences and penalties in relation thereto, not exceeding a fine of Rs.10,000 or imprisonment for a term of 12 months or both".

Moreover, the Seychelles Merchant Shipping Act makes Part XIV GENERAL the provision for authorized officer and Harbor Master to have prescribed power for implementation of international Convention. The prescribed power is a power:

(a) at all reasonable times ,to go on board a ship and inspect the ship or any part of the ship;

(b) to require the production of ,and to inspect any document or certificate carried in the ship in pursuance of this Act or any Convention.

In addition, The Seychelles Maritime Safety Authority may, in the exercise of its powers under section 60, *"appoint as many corporations and incorporated bodies of persons. When a corporations and incorporated bodies of persons, it shall, if the Seychelles Maritime Safety Authority so directs, nominate a person to carry out surveys, issue certificates and do other things necessary on its behalf."*

Furthermore, Seychelles Merchant Shipping Act makes provision under Section 6" *for The Minister may from time to time give the Harbour Master such general directions, not inconsistent with the provisions of this Act or any regulations made thereunder, on the policy to be pursued in the administration of this Act, as he may consider necessary, and the Director General and the Harbour Master shall forthwith take such steps as are necessary and expedient to give effect thereto."*

It is important to note that under the Harbour Act 1998 it provides rule for harbors, including fishing ports, in the Seychelles. For instance, according section 3 *The Minister may make regulations to provide for the prohibition, control and regulation of persons and goods entering or leaving the Port Security Area.* The Harbour (Fishing Port) Regulation makes provision for the entry of person in the port, control of vessel and restriction of activities and conduct within the port.

It is submitted that the Seychelles Merchant Shipping (International Ship and Port Facility Security) Regulations has been model from the Maltese law regarding the Ports security regulations. In addition, the provision for offences and penalties has been model from the Fiji Maritime (ISPS Code) Regulations 2014. Then, the Minister by order will publish the Merchant Shipping (International Ship and Port Facility Security) Regulations in Official Gazette for the entry into force.

Part 4- Overview of the Draft Regulation

The International Ship and Port Facility Security Code is a risk management activity and its aim is to determine security measures in each particular case.

Firstly, the ISPS Code seeks to promote cooperation between various agencies and private company. By effective cooperation among the various agencies, maritime threat can be identify at early age and measure can be set in place to mitigate it. Furthermore, effective cooperation among the various signifies a higher degree of coordination of security incident in any eventuality. But most importantly, it is cooperation that maritime threat can be identify and address.

Secondly, the ISPS Code place importance on collecting and analyzing security information. This is turn enable company, ship and port officer to draft the security plan and security information. However, the analysis of security information should make the relevant government agencies and Ship Company always vigilant at all times. An alert crew and port officer can eradicate a problem before an emergency situation take place.

Furthermore, the ISPS Code ensures that there continuous monitoring. The monitoring of restricted area of the ship and port facility assists to identify suspicious activities of individual. For instance monitor restricted areas of the ship at regular intervals to ensure no person has entered without permission. To add on the same note, it makes proper measure to ensure no one enters the ship without an ID check or authorization of the ship's captain. Also, ISPS Code makes it a requirement to keep a close watch on the records of entry and exit of visitors. Thus, ensuring that all the entries in the ship are authorized is measure to enhance ship's security.

In addition to this, the ISPS Code ensures that security and communication equipment tools are readily available and are in proper working condition in any of an eventuality. Alertness is an important factor to enhance maritime security and the equipment will assist in any security incident at the port or onboard a vessel.

To add on, the ISPS Code emphasis that officers must conduct training and have basic security knowledge in order to assist them identify any potential threat. Therefore, knowledge of current issues such as reasons of security threats, detection of dangerous substances, unauthorized devices and their effect is an important aspect of port and ship security system.

In general, the ISPS Code is a risk assessment activity, which aims to identify security weaknesses in port and security. Every system has its weakness and if not identified in early stage, can lead to dangerous situations. It is for this very reason, the relevant authority need to survey the security plan, crew performance. Security equipment, duties of ship and Port Security Officer etc. and phase out the loop hole of them.

Lastly, to ensure all of the above points are followed religiously, regular security drills and safety meeting should be organized for crew members and officers of the relevant authority. This is a method of effectively assessing the implementation of the code and assist further in identify the weaknesses and phase out the loophole.

The format of the Draft Regulations is divided into nine parts which makes the following provision; Part one Preliminary; Part two: Responsibility of the Designated Authority; Part three: Responsibility of ship companies and masters; Part four: Control of ships in port; Part five: Inspection of Security Plan; Part six: Responsibilities of the Seychelles Port Authority; Part seven: Port Facility Security Procedures; Part eight: Offence and Penalties and Part nine: Miscellaneous.

Part 5- The Draft Merchant Shipping (International Ship and Port Facility Security) Regulations, 2020

MERCHANT SHIPPING ACT

Merchant Shipping (International Ship and Port Facility Security) Regulations, 2020

Regulations

PART 1-PRELIMINARY

- 1. Citation and commencement**
- 2. Purpose**
- 3. Interpretation**
- 4. Application**

PART 2- RESPONSIBILITY OF THE DESIGNATED AUTHORITY

- 5. Appointment of the Designated Authority**
- 6. Functions and duties of the Designated Authority**
- 7. Focal Point**
- 8. Establishment of the Special Committee on the International Ship and Port Facility Security.**
- 9. Duties of the Special Committee on the International the International Ship and Port Facility Security**
- 10. Composition and procedure of the Special Committee on the International Ship and Port Facility Security**
- 11. When a declaration of security is required**
- 12. Declaration of Security**
- 13. Certificate of Compliance**

PART 3- RESPONSIBILITIES OF SHIPS COMPANIES AND MASTERS

- 14. Masters and ships companies must comply with the ship security levels**
- 15. International Ship Security Certificate on Board**
- 16. Information required of ships intending to enter a port facility**

PART 4-CONTROL OF SHIPS IN PORT

- 17. Control of Ships in port**

PART 5- INSPECTION OF SECURITY PLAN

- 18. Inspection of Security Plan.**

PART 6– RESPONSIBILITIES OF THE SEYCHELLES PORT AUTHORITY

- 19. Joint coordination between the Seychelles Maritime Safety Authority and the Seychelles Port Authority**
- 20. Port Security Assessment**
- 21. Port Security Plan**
- 22. Port Facility Security Officers**
- 23. Port Facility Security Assessment**
- 24. Port Facility Security Plan**

PART 7-PORT FACILITY SECURITY PROCEDURES

- 25. Designation of port security areas**
- 26. Restriction with respect to port security areas**
- 27. A person on official duties**
- 28. A person in a port security area**
- 29. Powers and duties to Minister or the Director of Seychelles Maritime Safety Authority to require screening and searching**
- 30. Power to seize item by an authorized person**
- 31. Power to detain by an authorized person**
- 32. Power to search and detain by the Police**

PART 8-OFFENCE AND PENALTIES

- 33. Power of the Minister to prescribe offences and penalties**
- 34. Administrative offences**
- 35. Criminal Offences**

PART 9-MISCELLANEOUS

- First Schedule-Port Security Assessment**
- Second Schedule-Port Security Plan**
- Third Schedule-Basic Security Training Exercise Requirements**
- Fourth Schedule –Condition to be fulfilled by recognized security organizations**
- Fifth Schedule -(Regulation 16) Ship pre arrival security information**
- Six Schedule-(Regulation 13/15)- Certificate of Compliance/ International Ship Security Certificate**

MERCHANT SHIPPING ACT

Merchant shipping (International Ship and Port Facility Security) Regulations, 2020.

In exercise of the powers conferred by section 242, read with section 85(5) of the Merchant Shipping Act, 1995, the Minister responsible for Marine hereby makes the following Regulations-

PART I-PRELIMINARY

Citation and Commencement

1. (1) These regulations may be cited as the Merchant Shipping (International Ship and Port Facility Security) Regulations, 2020.
- (2) These Regulations commences on 1st September.

Purpose

2. (1) The objective of these Regulations is to establish a national framework amongst government agencies, the Authority and the shipping and port industry to detect access and take preventative measures against security threats or incidents affecting ships or port facilities in Seychelles used in international trade.
- (2) These Regulations-
 - (a) establish the respective roles and responsibilities of all parties concerned for ensuring maritime security, and the early and efficient collation and exchange of security related information; and
 - (b) provide the methodology for security assessments for plans and procedures to counter changing security levels in Seychelles.

Interpretation

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

"Act" means the Seychelles Merchant Shipping Act (Cap 127A);

"Administration" means the Seychelles Maritime Safety Authority referred to in Section 3 of the Act;

" Authority" mean the Seychelles Maritime Safety Authority;

"Authorised Officer" for the purpose of inspection in ports in Seychelles, means a surveyor under Section of the Act;

"Code" means the International Code for the Security of Ships and of Port Facilities, as adopted, on the 12th December, 2002 by resolution 2 of the Conference of Contracting Governments to the Convention, and as may be amended by the International Maritime Organization.

"Company" means the owner of the ship or any other organization or person, such as the manager or the bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner of the ship and who, on assuming such responsibility, has agreed to take over all the duties and responsibilities imposed by the International Safety Management Code;

"Company Security Officer (CSO)" means designated the Company for ensuring that a ship security assessment is carried out; that a SSP is developed, submitted for approval, and thereafter implemented and maintained and for the Liaison with the PFSOs and the SS0;

"Convention" means the International Convention for the Safety of Life at Sea (SOLAS), as amended, in the International Convention for the Safety of Life at Sea (Ratification) Act.

"Designated authority" means the authority responsible for ensuring the implementation of the provisions of these regulation, that is the Seychelles Maritime Safety Authority .

"Declaration of security" means an agreement between a ship and a port facility, or another ship, with which it interfaces, that's specifies the security measures each must implement.

"Focal point for port security" means the body designated as the focal point for maritime security

"International Safety Management Code" means the International Management Code for the Safe Operation of Ships and for Pollution Prevention adopted by the International Maritime Organisation by Resolution A.741 (18), as amended from time to time by the International Maritime Organization;

"Maritime security" means the combination of preventive measures intended to protect shipping and port facilities against threats of intentional unlawful acts;

"Master" has the same meaning as in the Merchant Shipping Act;

"the Minister" means the Minister responsible Tourism, Civil Aviation and Marine;

"Passenger ship" means a ship that carries more than twelve passengers;

"Port facility" means a location, as determined by the Authority, where the ship-port interface takes place, including areas such as anchorages, awaiting berths and approaches from seaward as appropriate;

"Port facility security officer"(PFSO) means the person designated by the port facility operator as responsible for the development, implementation, revision and maintenance of the port facility security plan and for liaison with the ship security officer and the company security officer;

"Port facility security plan"(PFSP) means a plan developed to ensure the application of measures designed to protect the port facility and ships, persons, cargo, cargo transport units and ship's stores within the port facility from the risks of a security incident;

"Recognised security organization" (RSO) means an organization with appropriate expertise in security matters and with appropriate knowledge of ship and port operations that is authorized by the Authority to carry out an assessment, a verification, or an approval or certification activity required by Chapter XI-2 of the Annex to the Convention or by Part A of the Code;

"Seychelles Port Authority" means the authority responsible for the port in Seychelles as define in Section 3 of Seychelles Port Authority Act.

"Security incident" means any suspicious act or circumstance threatening the security of any -(a) ship, including a mobile offshore drilling unit and high-speed craft; or(b) port facility; or(c) mobile offshore drilling unit; or(d) ship-port interface; or(e) ship-to-ship activity;

"Security level" means the quantification of the degree of risk that a security incident will be attempted or will occur;

"security level 1"(Normal) means the level for which minimum appropriate protective security measures must be maintained at all times;

"Security level 2" (Heightened) means the level for which appropriate additional protective security measures must be maintained for period of time as a result of heightened risk of a security incident;

"Security level 3"(Exceptional) means the level for which further specific protective security measures must be maintained for a limited period of time when a security incident is probable or imminent, although it may not be possible to identify the specific target;

The term "ship", when used in these Regulations and the code is as defined in Chapter XI-2/1 of SOLAS.

"Ship" means every description of boat or craft used in navigation, and includes:(a) a barge, lighter, or other like vessel;(b) a hovercraft or other thing deriving full or partial support in the atmosphere from the reaction of air against the surface of the water over which it operates;(c) a submarine or other submersible; (d) a high-speed craft; and (e) a mobile offshore drilling unit that is not on location;

"Ship-port interface" means the interactions that occur when a ship is directly and immediately affected by actions involving the movement of persons, goods, or the provisions of port services to or from the ship;

"Ship security officer"(SSO) means the person on board the ship who is accountable to the master and designated by the company as responsible for the security of the ship, including the implementation and maintenance of the ship security plan, and for liaison with the port facility security officer;

"Ship security plan" means a plan developed to ensure the application of measures on board the ship designed to protect persons on board, cargo, cargo transport units, ship's stores, or the ship from the risks of a security incident;

"ship-to-ship activity" means any activity not related to a port facility that involves the transfer of goods or persons from one ship to another.;

- (2) Terms not otherwise defined in these Regulations shall the have the same meaning shall have the meaning attributed to them in chapters I and XI-2 of SOLAS

Application

4. (1) These regulations apply to-

- (a) The following types of ships;
- i. passenger ships, including high-speed passenger craft, engaged on international Voyages;
 - ii. cargo ships, including high-speed craft, of 500gross tonnage or more engaged on international voyages;

- iii. mobile offshore drilling units and
 - iv. any ship as described in paragraphs (i) to (iii) engaged in domestic shipping to which these regulations would apply following a mandatory security risk assessment; and
- (b) Port facilities within the internal and territorial waters of Seychelles that serve a ship, or a mobile offshore drilling unit, of a type specified in paragraph (a);
- (c) Ports in which one or more port facility, specified in paragraph (b), is or are situated, but shall not apply to military installations located in these ports.
- (2) These regulations do not apply to:
- (a) warships and troopships; or
 - (b) naval auxiliaries; or
 - (c) other ships that are used on Government non-commercial service; or
 - (d) pleasure craft; or
 - (e) ships not propelled by mechanical means; or (f) wooden ships of primitive built; or
 - (f) fishing vessels; or
 - (g) ships not engaged in commercial activities

PART 2- RESPONSIBILITY OF THE DESIGNATED AUTHORITY

Appointment of the Designated Authority

5. The Designated authority responsible for ensuring the implementation of the provisions of these regulations shall be the Seychelles Maritime Safety Authority

Functions and duties of Designated Authority

6. The Seychelles Maritime Safety Authority shall –
- (a) establish procedures to ensure that:
 - i. appropriate measures are taken to protect information which is subject to the requirement of confidentiality to which it has access or which is communicated to other Member States; and
 - ii. any personnel carrying out security inspections, or handling confidential information related to these regulations has the appropriate level of security vetting by the Member States of the nationality of the personnel concerned;
 - (b) ensure that with respect to ports to which these regulations apply that port security plans, based on the findings of port security assessment, are prepared, approved and implemented;
 - (c) ensure that with respect to each port facility within the ports and territorial limits of Seychelles that-
 - i. ship/port facility security assessments are carried out, reviewed, and approved; and
 - ii. ship/port facility security plans are developed, implemented, maintained and approved;
 - (d) specify the appropriate security level for port facilities within the internal and territorial limits of Seychelles
 - (e) specify and communicate the measures that must be addressed in a ship/port facility Security plan.
 - (f) determine-

- i. whether a declaration of security is required; and
 - ii. the requirements for any declaration of security;
- (g) approve-
 - i. any ship/port facility security assessment carried out by a recognized security organization;
 - ii any ship/port facility plan;
 - iii any amendment to an approved port facility security plan that is specified in these regulations as requiring the approval of the Seychelles Maritime Safety Administration;
- (h) exercise control measures;
- (i) for the purpose of providing further information ,publish standards and codes of Practice;
- (j) authorize recognized security organizations;
- (k) undertakes any other functions or duties specifies in these regulations.

Focal Point

7. (1) The Ministry responsible for Tourism, Civil Aviation and Marine shall be the Focal Point for matters relating the International Ship and Port Facility Security Code.
- (2) The duties and functions of this focal point shall to be serve as a contact point for Seychelles to follow up and inform on the application of the international ship and port security measures laid down in these regulations.

Establishment of the Special Committee on the International Ship and Port Facility Security

8. A Special Committee on the International Ship and Port Facility shall establish.

Duties of the Special Committee on the International Ship and Port Facility Security

9. Subject to the provisions of these regulations, it shall be the duty of the Special Committee to –
 - (a) advise the designated authority and competent authorities on the development, maintenance and promotion of an effective system of maritime security;
 - (b) develop the necessary strategies and policies to reach all international and national obligations and relevant objectives related to maritime security in general;
 - (c) develop the necessary directives for the effective response and support to any potential level three threat;
 - (d) develop contingency plans and procedures relevant to national maritime incidents;
 - (e) establish policies and schedules for drills, exercises and testing of all contingency plans and procedures, as well as all relevant coordination, training and support for such measure;
 - (f) coordinate and activate all the necessary resources to implement all the above mentioned measures related to the deliberations that fall within the competencies of this Special Committee; and
 - (g) undertake any other issue prescribed in these regulations.

Composition and procedure of the Special Committee on the International Ship and Port Facility Security

10. (1) The following members of the Special Committee shall, on an *ex officio* basis , be appointed by the Minister and shall be-
 - (a) Minister of Tourism, Civil Aviation and Marine;
 - (b) Directorate of the Seychelles Maritime Safety Authority;
 - (c) Directorate of the Seychelles Port Authority;
 - (d) Commander of the Armed Force of Seychelles;

- (e) Commissioner of Police;
- (f) Special of Home Affairs Department;
- (g) Principal Secretary of Ministry of Finance;
- (h) Principal Secretary of Ministry of Trade;
- (i) Principal Secretary of Tourism;
- (j) Senior official of Department of Foreign Affairs;
- (k) Directorate of Risk and Disaster Department;
- (l) Directorate of National Information Sharing and Coordination Centre:

Provided that the Minister may appoint other persons as members of the Special Committee on the International Ship and Port Facility Security who appear to him to have the experience and to have shown the capacity in matters relating to maritime security.

(2) .The Minister shall be the Chairman of the Special Committee on the International Ship and Port Facility Security

(3) . The Director of the Seychelles Maritime Safety Authority shall be the Deputy Chairman of the Special Committee on the International Ship and Port Facility Security who shall act instead of the Chairman whenever the Chairman is absent from a meeting of the Special Committee or is unable for any reason to act as chairman.

(4) . The Special Committee on the International Ship and Port Facility Security shall regulate its own procedures.

(5) The Special Committee on the International Ship and Port Facility Security shall meet as often as necessary, but in no case less frequently than once in every three months.

(6) The Special Committee on the International Ship and Port Facility Security shall decide on the composition and terms of reference of sub-Committees or expert groups which it can give special and specific tasks.

(7). At the end of each calendar year, the Special Committee on the International Ship and Port Facility Code shall prepared an annual report, to be submitted to the Minister then transmit to the International Maritime Organization within the first quarter of the following year.

When a declaration of security is required

11. The Seychelles Maritime Safety Authority may require a declaration of security if –

- (a) it is satisfied that the ship-port interface or ship-to-ship activity poses a risk to persons, property, or the environment; or
- (b) it has received a request under these regulations, and is satisfied that the ship-port interface or ship-to-ship activity poses a risk to persons, property, or the environment.

Declaration of Security

12. (1) A declaration of security must be completed, signed and dated by the master of, or ship security officer for, the ship and -

- (a) if the other party to the agreement is also a ship – the master of, or ship security officer for, that other ship; or
- (b) if the other party to the agreement is a port facility operator - the port facility security officer.

(2). A declaration of security must specify-

- (a) the contact details for the parties and signatories to the agreement;
- (b) the period for which the declaration is valid; and
- (c) the security level in force for each party.

- (3) The Seychelles Maritime Safety Authority may establish the form of the declaration of security.

Certificate of Compliance

13. The Seychelles Maritime Safety Authority may, upon application and after assessing and verifying a ship, port or port facility under Article 3 of the ISPS Code, issue a certificate of compliance to the ship or port or port facility as prescribed in the ISPS Code as prescribe in Six Schedule.

Part 3-The responsibility of the Ship Companies and Masters

Masters and Companies must comply with ship security levels

14. The master of a ship calling in Seychelles and the company must comply with any requirements specified in these regulations for the security level specified for that ship or class of ship –

- (a) before carrying out a ship-port interface in Seychelles;
- (b) before entering a port facility within the ports and territorial waters of Seychelles; and
- (c) while in a port in Seychelles.

International Ship Security Certificate on Board

15. (1) The master of a ship calling in Seychelles and the company must ensure that a International Ship Security Certificate is held on board the company's ship.

(2) The Seychelles Maritime Safety Authority and Seychelles Port Authority may verify that a International Ship Security Certificate is onboard a ship if that ship is at a port facility within a port or the territorial limits of Seychelles.

(3) The master of a ship in a port facility within a port or the territorial limits of Seychelles must –

- (a) on the request of the Seychelles Maritime Safety Authority , produce the International Ship Security Certificate as prescribe in Six Schedule; and
- (b) co-operate with the designated authority in any other respect.

Information required of ships intending to enter a port facility

16. (1) A master of a ship intending to enter a port facility in Seychelles shall, prior to entry into that port facility, be required to provide the following information to the designated authority to ensure compliance with these regulations:

- (a) evidence that the ship possesses a International Ship Security Certificate;
- (b) evidence of the security level at which the ship is currently operating;
- (c) evidence of the security level at which the ship operated in any previous port where is conducted a ship-port interface during the period of its last ten calls at port;
- (d) evidence of any special or additional security measures that were taken by the ship in any previous port where it conducted a ship-port interface during the period of its last ten calls at port;
- (e) evidence that the appropriate ship security procedures were maintained during any ship-to-ship activity during the period of its last ten calls at port; and

- (f) any other practical security-related information, excluding details of the ship security plan, taking into account the guidance given in the ISPS Code.

(2) The master of a ship must keep a record of the information specified in sub regulation (1) for the last ten calls at port facilities.

(3) The information referred to in sub regulation (1) shall be provided to the designated authority on the form provided in the Fifth Schedule and within the following time frames:

- (a) at least twenty-four hours in advance; or
- (b) at the latest, at the time the ship leaves the previous port, if the voyage time is less than twenty-four hours; or
- (c) if the port of call is not known or if it is changed during the voyage, as soon as the port of call becomes known.

(4) If a master or company declines to provide the information or confirmation specified in sub regulation (1) or sub regulation (3), the designated authority may –

- (a) attempt to establish communication with the master and the ship's administration to rectify the non-compliance; and
- (b) if the communication does not result in rectification, take one or more of the following steps:
 - i. require rectification of the non-compliance;
 - ii. require the ship to proceed to a specified location within Seychelles territorial waters or port;
 - iii. request an appropriate inspector to inspect the ship for the purpose of ascertaining compliance with the certification requirements of these regulations, if the ship is within the territorial waters or port of Seychelles;
 - iv. deny the ship entry, if-
 - (a) the designated authority has reasonable grounds to believe that the ship poses an immediate threat to the security or safety of person; or
 - (b) there are no other appropriate means for removing the threat.

(5) A ship may be denied entry under subregulation (4)(b)(iv) despite the provisions of any other enactment.

(6) If a ship is denied entry under subregulation (4)(b)(iv) –

- (a) possible efforts must be made to avoid a ship being unduly detained or delayed; and
- (b) a person may be allowed to leave the ship, or access to the ship must be allowed, for –
 - i. humanitarian reasons; or
 - ii. emergency reasons; or
 - iii. security purposes

Part 4-Control of ships in port

Control of ships in port

17. (1) If a certificate is not produced to an appropriate inspector when required under regulation 15 without a lawful or justifiable excuse, or if the Seychelles Maritime Safety Authority has clear grounds to believe that a ship is not in compliance with the requirements of these regulations, the Seychelles Maritime Safety Authority must, for the purpose of ensuring compliance with these regulations, impose one or more other following control measures:

- (a) inspection of that ship for the purpose of ascertaining compliance with the certification requirements of these regulations and other legislation enforceable in Seychelles, including, but not limited to, requiring the master to –
 - i. provide the information that the Seychelles Maritime Safety Authority considers relevant to the inspection; and
 - ii. demonstrate to the Seychelles Maritime Safety Authority that the master or the relevant crew are familiar with essential ship board security procedures, and any shipboard security procedure is capable of being carried out in a competent manner;
- (b) delay of that ship;
- (c) detention of that ship;
- (d) restriction of the operations of that ship, including movement within the port;
- (e) expulsion of that ship from the port if-
 - i. the Seychelles Maritime Safety Authority has reasonable grounds to believe that the ship poses an immediate threat to the security or safety of persons, ships, or other property; and
 - ii. there are no other appropriate means for removing that threat.

(2) ...A ship may be expelled under sub regulation (1)(e) despite the provisions of any enactment.

(3) If a ship is expelled from a port under sub regulation (1)(e)-

- (a) the Seychelles Maritime Safety Authority may require the ship to proceed to a specified location within Seychelles territorial waters or port;
- (b) the port facility operator must cease providing services to that ship if the Seychelles Maritime safety Authority directs the port facility operator to cease providing services to that ship;
- (c) all possible efforts must be made to avoid a ship being unduly detained or delayed; and
- (d) a person may be allowed to leave the ship, or access to the ship must be allowed, for-
 - i. emergency reasons ;or
 - ii. humanitarian reasons ;or
 - iii. humanitarian reasons; or
 - iv. security purpose.

(4) If a ship is expelled from a port in term of these regulations, the Seychelles Maritime Safety Authority must communicate the appropriate facts to the relevant authorities-

- (a) the State of the next appropriate port of call, if known; and
- (b) any other appropriate coastal state

(5) The communication must-

- (a) take into account any relevant guidelines promulgated by the International Maritime Organization; (b) be secure and confidential.

Part 5-Inspection of Ship Security Plan

Inspection of Ship Security Plan

18. (1) The Seychelles Maritime Safety Authority and the Seychelles Port Authority may request an appropriate inspector to inspect ship security plan and to carry out control measures if-

- (a) it has reasonable grounds to believe that the ship is not in compliance with the requirements of Chapter XI-2of the International Convention for Safety of Life at Sea or the ISPS Code;
- (b) the only means to verify or to rectify the non-compliance is to
- (c) review the relevant requirements of the ship security plan; and

- (d) consent for the inspection to review the relevant requirements of the ship security plan is obtained from
- (e) the master; or
- (f) the ship's administration, if the State is a party to the Convention.

(2) If the ship is registered in Seychelles or registered in a state that is party as well if the ship is not a party to the Convention, the Seychelles Maritime Safety Authority may authorize the inspection.

Part 6 The responsibility of the Seychelles Port Authority

Joint coordination between the Seychelles Maritime Safety Authority and the Seychelles Port Authority

19. (1) The Seychelles Maritime Safety Authority and the Seychelles Port Authority shall jointly coordinate to administer and implement the requirement of the code.

(2) The Seychelles Port Authority shall ensure that a Port Security Committee is established for each port to which these regulation applies.

(3) The Port security committee shall include representatives of public entities, port users and service providers.

(4) The Port Security Committee shall establish and regulate their own procedure.

Port Security Assessment

20 (1) The Seychelles Port Authority shall ensure that port security assessments are carried out for the ports covered by these regulations. These assessments shall take due account of the specificities of different sections of a port and, where deemed applicable, of its adjacent areas if these have an impact on security in the port, and shall take into account the assessments for port facilities within their boundaries.

(2) Each port security assessment shall be carried out taking into account as a minimum the detailed requirements laid down in the First Schedule.

(3) Port security assessments may be carried out by a Recognized Security Organization.

(4) Port security assessments shall be:

- (a) approved by the Seychelles Maritime Safety Authority after consultation with the Special Committee on International Ship and Port Facility Security;
- (b) reviewed as appropriate, but at least once every five years.

Port Security Plan

21 (1) Subject to the findings of Port Security Assessments, the Seychelles Port Authority shall ensure that port security plans are developed, maintained and updated. port security plan shall adequately address the specificities of different sections of a port and shall integrate the security plan for port facilities within their boundaries

(2) Port Security Plan shall identify, for each of the different security levels:

- (a) the procedures to be followed;
- (b) the measures to be put in place;

(c) the actions to be undertaken.

(3) Each Port Security Plan shall take into account as a minimum the detailed requirements specified in the Second Schedule. Where, and to the extent appropriate, the port security plan shall in particular include security measures to be applied to passengers and vehicles set for embarkation on seagoing vessels which carry passengers and vehicles.

(4) Port Security Plan may be developed by a Recognized Security Organization.

(5) The Ministry of Tourism, Civil Aviation and Marine shall:

- (a) approve the Port Security Plan after consultation with the Special Committee on International Ship and Port Facility Security
- (b) implement the Port Security Plan;
- (c) review the Port Security Plan as appropriate, but at least every five years.

(6) The Seychelles Port Authority shall report to the Ministry of Tourism, Civil Aviation and Marine and Seychelles Maritime Safety Administration on the implementation of the Port Security Plan.

(7) Adequate exercises shall be performed taking into account the basic security training requirements listed in the Third Schedule.

Port Facility Security Officers

22. (1) The Seychelles Port Authority must designate a Port Facility Security Officer

(2) The duties and responsibilities of a Port Facility Security Officer include:

- (a) facilitating the development, implementation, revision and maintenance of the Port Facility Security Plan for the Port Facility Operator;
- (b) liaising with ship, company, port, port service provider and other Port Facility Security Officers; and
- (c) performing –
 - i. the duties and responsibilities in terms of Part A of the ISPS Code; and
 - ii. any additional duties and responsibilities set out in the Port Facility Security Plan or by the Seychelles Maritime Safety Authority.

Port Facility Security Assessment

23. (1) The Seychelles Port Authority must carry out a Port Facility Security Assessment of port facility within its control.

(2) A Port Facility Security Assessment must –

- (a) be periodically reviewed and updated, taking into account changing threats or minor changes in the port facility; and
- (b) if major changes take place to the port facility, be reviewed and updated as soon as practicable:

Provided that the periodic review of the Port Facility Security Assessment shall be carried out at the latest five years after the assessments were carried out or last reviewed.

(3) When a Port Facility Security Assessment is completed, the person carrying out the Port Facility Security Assessment must prepare a report for the Ministry of Tourism, Civil Aviation Marine, and Seychelles Maritime safety Authority that consists-

- (a) a summary of how the assessment was conducted;
- (b) a description of each vulnerability found during the assessment; and
- (c) a description of counter measures be used to address each vulnerability.

(4) The report and the Port Facility Security Assessment must be protected from unauthorized access or disclosure.

Port Facility Security Plan

24. (1) A Port Facility Security Plan must set out the requirements of Part A and Part B of the ISPS Code in respect of Port Facility Security Plan, which among other include:

- (a) the security organization of the port facility;
- (b) a schedule of security plan audits by internal and external auditors;
- (c) the circumstances, in addition to the occurrence of a security incident, following which a security plan review must be conducted;
- (d) the procedures for conducting a security plan audit, including a process for selecting auditors who are independent of the matters being audited;
- (e) the procedures for conducting a security plan review, including a process for consultation during the review;
- (f) the knowledge, skills and other requirements for the port facility security officer;
- (g) the training or qualifications that satisfy the requirements referred to in paragraph
- (h) the training that must be given to the port facility security officer;
- (i) measures to prevent unauthorized carriage or possession of weapons or prohibited items in the facility or on board ships being loaded or unloaded at the facility;
- (j) measures to prevent unauthorized access to the port facility, to ships moored at the facility and to any port security areas established within the boundaries of the port facility;
- (k) procedures for responding to security threats or breaches of security, including procedures for maintaining critical operations in the port facility or ship/port interface;
- (l) procedures for responding to any security directions given by the designated authority;
- (m) procedures for evacuation of the port facility in case of security threats or breaches of security;
- (n) procedures for drills and exercises associated with the plan;
- (o) procedures for interfacing with ship security activities;
- (p) procedures for modifying the plan to correct deficiencies or to update the plan to take into account changes to the port facility;
- (q) procedures for reporting occurrences which threaten the security of the port facility;
- (r) measures to ensure the security of the information contained in the plan;
- (s) measures to ensure security of cargo and of cargo handling equipment at the facility;
- (t) procedures in case the ship security alert system of a ship is activated while in the security regulated port;
- (u) procedures for facilitating –
 - i. shore leave or relief of crew; and
 - ii. access by visitors, including representatives of seafarers' welfare and of labour organizations;
- (v) procedures for facilitating-
 - i. shore leave or relief of crew; and
 - ii. access by visitors, including representatives of seafarers' welfare and of labour organizations;
- (w) a map clearly showing –
 - i. the boundaries of the port facility; and

- ii. the location of any port security area established, or that the operator wishes to be established or changed, within the area covered by the plan; and
- (x) the intervals at which drills shall be carried out to ensure the effective implementation of the port security plan.

(2) The Ministry of Tourism, Civil Aviation and Marine must approve a Port Facility Security Plan, or its amendments, if it –

- (a) is consistent with-
 - i. the purposes of these regulations; and
 - ii. the security assessment for that port facility ; and
- (b) complies with the-
 - i. requirements of these regulations ;and
 - ii. requirements prescribed by the Seychelles Maritime Safety Administration and the Special Committee on the International Ship and Port Facility Security from time to time.

(3) Before, approving any Port Facility Security Assessment or plan and any amendments thereto, the Seychelles Port Authority may consult with the Seychelles Maritime Safety Authority and the Special Committee on International Ship and Port Facility Security.

Part 7 Port Facility Security Procedures

Designation of Port Security areas

25. The Seychelles Port Authority may designate any area within a port facility, or any other area in a port as a port security area.

Restriction with respect to Port security areas

26 . No person , other than an authorized person or a person on official duties ,may enter or remain in a port security area unless authorized by the Seychelles Port Authority.

A person on official duties

27. A person on official duties acting under a statutory power to enter an area to carry out his or her statutory functions or duties –

- (a) may enter a port security area; and
- (b) if requested by an authorized person ,must present his or her warrant or certificate or proof of employment to the authorized person.

Person in a port security area

28. (1) Every person in a port security area must, on the request of an authorized person-

- (a) state his or her name and address;
- (b) state the purpose of his or her presence in the port security area, and his or her authority to enter it; and
- (c) produce satisfactory evidence of the correctness of his or her stated name

(2) If a person fails or refuses to provide an authorized person with satisfactory evidence of his or her name when requested by the authorized person, or if a person fails to satisfy the authorized person that he or she is authorized to be there, the authorized person may order that person to leave the port security area.

(3) A person who refuses to comply with sub regulation (1) or sub regulation (2), and, after having been warned that he or she commits an offence, persists in its commission, may be forcibly detained by an authorized person, and in that case he or she must, as soon as may be practicable, be delivered to a member of the police:

Provided that such powers shall be exercised solely if in the opinion of the authorized person they are absolutely necessary for the authorized person to take the detained person to the nearest Police Station.

(4) A passenger or crew member embarking or disembarking directly through gateways or thoroughfares in a port facility approved for that purpose by the port facility operator is deemed to be authorized by the Seychelles Port Authority to pass through any port security area forming part of those gateways or thoroughfares.

Powers and duties of the Minister or Seychelles Maritime Safety Authority to require screening and searching

29.(1) The Minister or the Seychelles Maritime Safety Authority may, if necessary to improve or enhance maritime security to enable Seychelles to be part of a concerted international response to a threat to maritime security or if it is in the national interest, direct in writing –

(a) to screen-

- i. any person boarding a ship;
- ii. any thing to be carried by a ship;
- iii. any thing in a port security area; and
- iv. any person including that person's personal effects or vehicle entering, or within, a port security area; and

(b) if necessary, to undertake reasonable searches of-

- i. any person boarding a ship; or
- ii. any thing to be carried by a ship; or
- iii. any thing in a port security area; or
- iv. any person including that person's personal effects or vehicle entering, or within, a port security area; or
- v. any ship or class of ship; or
- vi. (vi)any port facility or class of port facility.

(2) The written notice must specify-

- (a) which of the screenings under sub regulation (1)(a) and which of the searches under sub regulation (1)(b) are part of the Minister's or Seychelles Maritime Administrative order.
- (b) the permitted extent of those screenings and searches; and
- (c) the duration of the direction.

.....(3) Before giving a power to seize under direction under sub regulation (1) the Minister or Seychelles Maritime safety Authority must, to determine the direction is necessary to improve or enhance maritime security or whether it is a national interest, consult-

- (a) the Special Committee on International Ship and Port Facility Security
- (b) Minister of other Ministry
- (c) as the Minister in each case considers in each case considers appropriate , representative group in the maritime industry, governments departments and entities.

Power to seize item by an authorized person

30(1) If a person authorized to screen or search detects an item and has reasonable grounds to believe that such item may not lawfully be taken on board a ship or into a port security area, that person may seize such item for the purpose of determining whether the item may lawfully be taken on board a ship or into a port security area.

(2) (a) if there are reasonable grounds to believe that the seized item poses and imminent risk to safety, the authorized person shall -

- i. destroy or otherwise dispose of the item; or
- ii. deliver the item to the police if the authorized officer has reasonable grounds to believe that the seized ;

(b) if the authorized person has reasonable grounds to believe that the seized item may not be lawfully possessed, the authorized person shall deliver the item to the police.

Power to detain by an authorized person

31.(1) An authorized person may, without a warrant, detain any person in, or in the vicinity of, a port security area or on board ship if that authorized person has reasonable grounds to believe that the person has committed, is committing, or about to commit an offence against any of the provisions of these regulations.

(2) An authorized person who is not a member of the Police and who detains any person under these regulations shall, without delay, inform the Police of the fact of the arrest and shall exercise such power only until it is strictly necessary for the Police to takeover custody of the person arrested.

(3) An authorized person exercising the power to detain under sub regulation (1) -shall –

- i. provide evidence of his or her identity to the person to be detained;
- ii. inform the person to be detained that such detention is authorized under this regulation; and
- iii. if not in uniform, provide evidence that he or she is unauthorized person to the person to be detained if that person asks for it.

Power to search and detain by the Police

32. A member of the police may, without a warrant, search a person and that person's baggage, and may detain that person for the purposes of that search, and may take possession of any item which may not be lawfully taken on-board a vessel or into a port security area found in the course of that search, if-

- (a) a company or master refuses to carry a person who has refused to consent to the searching of his or her person or baggage; and
- (b) the member of the police has reasonable grounds to suspect that an offence against these regulations has-been, is being, or is likely to be, committed, whether by that person or by any other person.

PART 8-OFFENCE AND PENALTIES

The Power of the Minister to prescribe offences and penalties

33. PART XVI, section 242 of the Seychelles Merchant Shipping Act state *The Minister may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or that*

are necessary or convenient to be prescribed for the carrying out or giving effect to this Act and in particular for prescribing –

Offences and penalties in relation thereto, not exceeding a fine of Rs.10,000 or imprisonment for a term of 12 months or both.

The Administrative and Criminal offences as well the penalties shall be included in the Seychelles Merchant Shipping (International Ship and Port Facility Security) Regulations and have effect under the Seychelles Merchant Shipping Act, upon the publication of the official Gazette.

Administrative Offences

34. The following are the list of administrative offences and their respective penalties under these Regulations:

Individuals and regulated entities (i.e , ships, corporations, recognized security organization and port facilities)may be held administratively liable for violations of ships and port security law and regulations.

I. Failure to implement and maintain security plan.

It shall be an administrative offence for a regulated entity to operate without a valid security plan as required by law, punishable by

- (a) Rs8,000 fine per day of violation;
- (b) Facility closure;
- (c) Ship seizure and detention

II. Failure to conduct training, drills and exercises

It shall be an administrative offence for a regulated entity to fail to conduct training, drills and exercises as required by law, punishable by

- (a) Rs8,000 fine per day of violation;
- (b) Facility closure;
- (c) Ship seizure and detention.

III. Failure to implement and maintain physical security measures

It shall be an administrative offence for a regulated entity to fail to implement and maintain all physical security measures as required by the security plan, punishable by

- (a) Rs6,000 fine per day of violation;
- (b) Facility closure;
- (c) Ship seizure and detention.

IV. Failure to implement and maintain operational security measures

It shall be an administrative offence for a regulated entity to fail to implement and maintain all operational security measures as required by the port facility security plan, punishable by

- (a) Rs 6,000 fine per day of violation;
- (b) Facility closure;
- (c) Ship seizure and detention

V. Operating or servicing ships without valid International Ship Security Certificates

It shall be an administrative office for a regulated entity to operate or service a regulated ship that does not possess a valid International Ship Security Certificate, punishable by

- (a) Rs 10,000 fine per violation;
- (b) Ship seizure and detention.

VI. Failure of a ship to comply with security directions

Failure of a ship to comply with security directions.

It shall be an administrative offence for any ship or small commercial or recreational boat to fail to comply with security directions issued by the Administration punishable by

- (a) Rs 10,000 fine per violation;
- (b) Ship seizure and detention.

VII. Prohibited action of the Recognized Security Organization (RSO)

It shall be an administrative offence for a Recognized Security Organization to set security levels, approve ship or port facility security assessments, approve ship security plans without the Administration's approval or port facility security plans, or exercise ship control and compliance measures. A violation under this section is punishable by

- (a) Rs10,000 fine per violation; and
- (b) Revocation of RSO certification

Criminal Offence

35. The following are the list of criminal offences and their respective penalties under these Regulations:

Individuals and regulated entities (i.e , ships, corporations, recognized security organization and port facilities)may be held criminally liable for violations of ships and port security law and regulations.

I. Failure of an individual to comply with security directions

It shall be a criminal offence for an individual to knowingly or intentionally fail to comply with security directions issued by the Seychelles Maritime Safety Administration or Seychelles Port Authority, punishable by-

- (a) Rs2, 000 fine per violation; or
- (b) Minimum one month to maximum twelve months of imprisonment.

II. Interference with law enforcement or security personnel

It shall be a criminal offence for an individual to knowingly or intentionally prevent, obstruct, resist or otherwise delay law enforcement or ship/port security personnel in the discharge of their duties. Punishable by

- (a) Rs3, 000 fine per violation; or
- (b) Minimum one month to maximum twelve months of imprisonment

III. Trespass

It shall be a criminal offence for an individual to knowingly or intentionally enter or remain on or in a regulated port facility, regulated ship or security zone, without the consent of the owner or regulating authority, punishable by

- (a) Rs2,000 fine per violation; or
- (b) Minimum one month to maximum twelve months of imprisonment

IV. Tampering

It shall be a criminal offence for an individual to knowingly or intentionally alter, destroy, remove, or manipulate regulated ship or port facility property and containers and cargoes therein without authorization, punishable by

- (a) Rs8,000 fine per violation; or
- (b) one year imprisonment.

V. Possession of weapon

It shall be a criminal offence for an unauthorized individual to possess a weapon inside a regulated port facility, on board a regulated ship or within a security zone, punishable by-

- (a) Rs10, 000 fine per violation; or
- (b) Two years imprisonment

VI. Endangering persons or property

It shall be a criminal offence for an individual to knowingly or intentionally endanger persons or property inside a regulated port facility, onboard a regulated ship or within a security zone, punishable by

- (a) Rs8.000 fine per violation; or
- (b) .Six months imprisonment

VII. Interference with Port Facilities or Vessels

It shall be a criminal offence for an individual to knowingly or intentionally interfere with the operation of a regulated port facility or regulated ships within regulated port facilities or security zones, punishable by

- (a) Rs 10,000 fine per violation; or
- (b) Two years imprisonment

VIII. False report

It shall be a criminal offence for an individual to knowingly or intentionally falsely report the threat of injury to persons or damage to property inside a regulated port facility, onboard a regulated ship or within a security zone, punishable by-

- (a) Rs 5.000 fine per violation; or
- (b) 6 months imprisonment

IX. Counterfeiting

It shall be a criminal offence for an individual to knowingly or intentionally forge, counterfeit, or alter without authorization any security-related certification or documentation, or to use, possess, or exhibit the same, punishable by

- (a) Rs10,000 fine per violation; or
- (b) one year minimum to two years maximum imprisonment

X. Bribery

It shall be a criminal offence for a governmental or port security official to knowingly or intentionally solicit or accept money, gifts or favors from a person or an entity seeking action by the official's office or agency, punishable by

- (a) Rs10,000 fine per violation; or
- (b) Two years imprisonment.

XI. Unauthorized disclosure

It shall be a criminal offence for an individual to knowingly or intentionally disclose port facility security assessments, port facility security plans, ship security assessments or ship security plans without authorization, punishable by

- (a) Rs10,000 fine per violation; or
- (b) Two years imprisonment.

XII. Misuse of official information

It shall be a criminal offence for a governmental or Port security official to knowingly or intentionally use official information to acquire or aid another to acquire a pecuniary interest in any property, transaction, or enterprise that may be affected by the information, punishable by-

- (a) Rs10,000 fine per violation; or
- (b) Two years imprisonment.

XIII. Security violations

It shall be a criminal offence for an individual to knowingly or intentionally violate any security-related law, regulation, rule or order applicable to regulated ships and port facilities, punishable by-

- (a) Rs10,000 fine per violation; or

(b) minimum six months to two years maximum imprisonment.

PART 9-MISCELLANEOUS

First Schedule Port Security Assessment

1. The port security assessment is the basis for the port security plan and its implementation. The port security assessment will cover at least:

- 1.1. Identification and evaluation of important assets and infrastructure which it's important to protect;
- 1.2. identification of possible threats to the assets and infrastructure and the likelihood of their occurrence, in order to establish and priorities security measures;
- 1.3. Identification, selection and prioritization of counter-measures and procedural changes and their level of effectiveness in reducing vulnerability; and
- 1.4. Identification of weaknesses, including human factors in the infrastructure, policies and procedures.

2. For this purpose the assessment will at least:

- 2.1. Identify all areas which are relevant to port security, thus also defining the port boundaries;
- 2.2. Identify security issues deriving from the interface between port facility and other port security measures
- 2.3. Identify which port personnel will be subject to background checks and, or security vetting because of their involvement in high-risk areas;
- 2.4. Subdivide, if useful, the port according to the likelihood of security incidents. Areas will be judged not only upon their direct profile as a potential target, but also upon their potential role of passage when neighboring areas are targeted;
- 2.5. Identify risk variations, e.g. those based on seasonality;
- 2.6. Identify the specific characteristics of each sub-area, such as location, accesses, power supply, communication system, ownership and users and other elements considered security-relevant;
- 2.7. Identify potential threat scenarios for the port. The entire port or specific parts of its infrastructure, cargo, baggage, people or transport equipment within the port can be a direct target of an identified threat;
- 2.8. Identify the specific consequences of a threat scenario. Consequences can impact on one or more sub-areas. Both direct and indirect consequences will be identified. Special attention will be given to the risk of human casualties;
- 2.9. Identify the possibility of cluster effects of security incidents;
- 2.10. Identify the vulnerabilities of each sub-area;
- 2.11. Identify all organizational aspects relevant to overall port security, including the division of all security-related authorities, existing rules and procedures;
- 2.12. Identify vulnerabilities of the overarching port security related to organizational, legislative and procedural aspects;
- 2.13. Identify measures, procedures and actions aimed at reducing critical vulnerabilities. Specific attention will be paid to the need for, and the means of, access control or restrictions to the entire port or to specific parts of a port, including identification of passengers, port employees or other workers, visitors and ship crews, area or activity monitoring requirements, cargo and luggage control. Measures, procedures and actions will be consistent with the perceived risk, which may vary between port areas;
- 2.14. Identify how measures, procedures and actions will be reinforced in the event of an increase of security level;
- 2.15. Identify specific requirements for dealing with established security concerns, such as "suspect" cargo, luggage, bunker, provisions or persons, unknown parcels, known dangers (e.g. bomb). These requirements will analyses desirability conditions for either clearing the risk where it is encountered or after moving it to secure area;
- 2.16. Identify measures, procedures and actions aimed at limiting and mitigating consequences;
- 2.17. Identify task divisions allowing for the appropriate and correct implementation of the measures, procedures and actions identified;

- 2.18. Pay specific attention, where appropriate, to the relationship with other security plans (e.g. port facility security plans) and other existing security measures. Attention will also be paid to the relationship with other response plans (e.g. oil spill response plan, port contingency plan, medical intervention plan, nuclear disaster plan, etc.);
- 2.19. Identify communication requirements for implementation of the measures and procedures;
- 2.20. pay specific attention to measures to protect security-sensitive information from disclosure;
- 2.21. Identify the need-to-know requirements of all those directly involved as well as, where appropriate, the general public

Second Schedule

Port Security Plan

1. The port security plan sets out the port's security arrangements. It will be based on the findings of the port security assessment. It will clearly set out detailed measures. It will contain a control mechanism allowing, where necessary, for appropriate corrective measures to be taken.
2. The port security plan will be based on the following general aspects:
 - 2.1. Defining all areas relevant to port security. Depending on the port security assessment, measures, procedures and actions may vary from sub-area to sub-area. Indeed, some sub areas may require stronger preventive measures than others. Special attention will be paid to the interfaces between sub-areas, as identified in the port security assessment;
 - 2.2. ensuring coordination between security measures for areas with different security characteristics;
 - 2.3. providing, where necessary, for varying measures both with regard to different parts of the port, changing security levels, and specific intelligence;
 - 2.4. Identifying an organizational structure supporting the enhancement of port security.
3. Based on those general aspects, the port security plan will attribute tasks and specify work plans in the following fields;
 - 3.1. Access requirements. For some areas, requirements will only enter into force when security levels exceed minimal thresholds. All requirements and thresholds will be comprehensively included in the port security plan;
 - 3.2. ID, luggage and cargo control requirements. Requirements may or may not apply to sub areas; requirements may or may not apply in full to different sub-areas. Persons entering or within a sub-area may be liable to control. The port security plan will appropriately respond to the findings of the port security assessment, which is the tool by which the security requirements of each sub-area and at each security level will be identified. When dedicated identification cards are developed for port security purposes, clear procedures will be established for the issue, the use-control and the return of such documents. Such procedures will take into account the specificities of certain groups of port users allowing for dedicated measures in order to limit the negative impact of access control requirements. Categories will at least include seafarers, authority officials, people regularly working in or visiting the port, residents living in the port and people occasionally working in or visiting the port;
 - 3.3. Liaison with cargo control, baggage and passenger control authorities. Where necessary, the plan is to provide for the linking up of the information and clearance systems of these authorities, including possible pre-arrival clearance systems;
 - 3.4. procedures and measures for dealing with suspect cargo, luggage, bunker, provisions or persons, including identification of a secure area; as well as for other security concerns and breaches of port security;
 - 3.5. Monitoring requirements for sub-areas or activities within sub-areas. Both the need for technical solutions and the solutions themselves will be derived from the port security assessment;
 - 3.6. Signposting. Areas with access and or control requirements will be properly signposted. Control and access requirements will appropriately take into account all relevant existing law and practices. Monitoring of activities will be appropriately indicated if national legislation so requires;
 - 3.7. Communication and security clearance. All relevant security information will be properly communicated according to security clearance standards included in the plan. In view of the sensitivity of some information, communication will be based on a need-to-know basis, but it will include where necessary procedures for communications addressed to the general public. Security clearance standards will form part of the plan and are aimed at protecting security sensitive information against unauthorized disclosure;

- 3.8. Reporting of security incidents. With a view to ensuring a rapid response, the port security plan will set out clear reporting requirements to the port security officer of all security incidents and, or to the port security authority;
- 3.9. Integration with other preventive plans or activities. The plan will specifically deal with integration with other preventive and control activities in force in the port;
- 3.10. Integration with other response plans and, or inclusion of specific response measures, procedures and actions. The plan will detail interaction and coordination with other response and emergency plans. Where necessary conflicts and shortcomings will be resolved;
- 3.11. Training and exercise requirements;
- 3.12. Operational port security organization and working procedures. The port security plan will detail the port security organization, its task division and working procedures. It will also detail the coordination with port facility and ship security officers, where appropriate. It will delineate the tasks of the port security committee, if this exists;
- 3.13. Procedures for adapting and updating the port security plan.

Third Schedule

Basic Security Training Exercise Requirements

Various types of training exercises which may involve participation of port facility security officers, in conjunction with the relevant authorities of Member States, company security officers, or ship security officers, if available, will be carried out at least once during each calendar year with no more than 18 months elapsing between the training exercises. Requests for the participation of company security officers or ships security officers in joint training exercises will be made bearing in mind the security and work implications for the ship. These training exercises will test communication, coordination, resource availability and response. These training exercises may be:

- (1) Full scale or live;
- (2) Tabletop simulation or seminar; or
- (3) combined with other exercises held such as emergency response or other port State authority exercises.

Fourth Schedule

Conditions to be fulfilled by a recognized security organization

- 1.A recognized security organization will be able to demonstrate:
 - 1.1. Expertise in relevant aspects of port security;
 - 1.2. An appropriate knowledge of port operations, including knowledge of port design and construction;
 - 1.3. An appropriate knowledge of other security relevant operations potentially affecting port security;
 - 1.4. The capability to assess the likely port security risks;
 - 1.5. The ability to maintain and improve the port security expertise of its personnel;
 - 1.6. The ability to monitor the continuing trustworthiness of its personnel;
 - 1.7. the ability to maintain appropriate measures to avoid unauthorized disclosure of, or access to, security-sensitive material;
 - 1.8. knowledge of relevant national and international legislation and security requirements;
 - 1.9. Knowledge of current security threats and patterns;
 - 1.10. the ability to recognize and detect weapons, dangerous substances and devices;
 - 1.11. the ability to recognize, on a non-discriminatory basis, characteristics and behavioral patterns of persons who are likely to threaten port security;

- 1.12. knowledge of techniques used to circumvent security measures;
 - 1.13. knowledge of security and surveillance equipment and systems and their operational limitations.
2. A recognised security organization which has made a port security assessment or review of such an assessment for a port is not allowed to establish or review the port security plan for the same port.

**Fifth Schedule
(Regulation 16)**

**SHIP PRE-ARRIVAL SECURITY INFORMATION FORM FOR ALL SHIPS PRIOR TO
ENTRY INTO THE PORT OF SEYCHELLES**

**TO BE SUBMITTED TO THE SEYCHELLES PORT AUTHORITY FOR MARITIME
SECURITY OF THE PORT OF ARRIVAL**

(1974 International Convention for the Safety of Life at Sea (SOLAS) and Regulation 9 of Chapter XI-2).

SHIP PRE-ARRIVAL SECURITY INFORMATION FORM

<i>1 - Particulars of the ship and contact details</i>			
1.1 - IMO number		1.2 - Name of ship	

1.2 - Port of registry		1.4 - Flag State	
1.5 - Type of ship		1.6 - Call Sign	
1.7 - Inmarsat call numbers (if available)		1.8 - Gross Tonnage	
1.9 - Name of Company		1.10 - IMO Company Identification Number	
1.11 - CSO name & 24 hour contact detail			
2 - Port and port facility information			
2.1 - Port of arrival	SIRACUSA	Port facility of arrival (if known)	ITSIR
2.2 - Expected date and time of arrival of the ship in port (ETA) (B/4.39.3 ISPS Code)			
2.3 - Primary purpose of call			
3 - Information required by SOLAS regulation XI-2/9.2.1			

3.1 - Does the ship have a valid International Ship Security Certificate (ISSC)? (XI-2 / 9.2.1.1)	YES <input type="checkbox"/>	ISSC <input type="checkbox"/>	3.1.2 - NO - why not? <input type="checkbox"/>	3.1.1 - Issued by (name of Administration or RSO)	Expiry date (dd/mm/yyyy)	
3.1.2 - Does the ship have an approved SSP on board?	YES <input type="checkbox"/>	NO <input type="checkbox"/>	3.2 - Security Level at which the ship is currently operating? (XI-2 / 9.2.1.2)	Security Level 1	Security Level 2	Security Level 3
3.2.1 - Location of ship at the time this report is made (B/4.39.2 ISPS Code)						
3.3 - List the last ten calls at port facilities in chronological order (most recent call first): (XI-2 / 9.2.1.3)						

No.	Date from (dd/mm/yyyy)	Date to (dd/mm/yyyy)	Port	Country	UNLOCODE (if available)	Port facility	Security Level
1							SL =
2							SL =
3							SL =
4							SL =
5							SL =
6							SL =
7							SL =
8							SL =

9							SL =	
10							SL =	
3.3.1 - Did the ship take any special or additional security measures, beyond those in the approved SSP? If the answer is YES, indicate below the special or additional security measures taken by the ship. (XI-2 / 9.2.1.4)							YES <input type="checkbox"/>	NO <input type="checkbox"/>
3.3.2 - No. (as above)		Special or additional security measures taken by the ship						
1								
2								
3								
4								

5	
---	--

6						
7						
8						
9						
10						
3.4 - List the ship-to-ship activities, in chronological order (most recent first), which have been carried out during the period of the last ten calls at port facilities listed above. Expand table below or continue on separate page if necessary – insert total number of ship-to-ship activities: <input type="checkbox"/>						
3.4.1 - Have the ship security procedures specified in the approved SSP been maintained during each of these ship-to-ship activities? (XI-2 / 9.2.1.5) 3.4.2 - If NO, provide details of the security measures applied in lieu in the final column below.					YES <input type="checkbox"/>	NO <input type="checkbox"/>
No.	Date from (dd/mm/yyyy)	Date to (dd/mm/yyyy)	Location or Longitude and Latitude	Ship-to-ship activity	Security measures applied in lieu	
1						
2						
3						

4					
5					
6					
7					
8					
9					
10					
3.5 - General description of the cargo aboard the ship (XI-2 / 9.2.1.6 e B/4.39.5 ISPS Code)					
3.5.1 - Is the ship carrying any dangerous substances as cargo covered by any of Classes 1, 2.1, 2.3, 3, 4.1, 5.1, 6.1, 6.2, 7 or 8 of the IMDG Code?			YES <input type="checkbox"/>	NO <input type="checkbox"/>	3.5.2 - If YES, confirm Dangerous Goods Manifest (IMO FAL Form 7) (or relevant extract) is attached <input type="checkbox"/>
3.6 - Confirm a copy of ship's crew list is attached (I.M.O. FAL Form 5) (XI-2 / 9.2.1.6 e B/4.39.4 ISPS Code)			YES <input type="checkbox"/>	3.7 - Confirm a copy of the ship's passenger list is attached (XI-2 / 9.2.1.6 e B/4.39.6 ISPS Code)	YES <input type="checkbox"/>
4 - Other security related information					
4.1 - Is there any security-related matter you wish to report?	YES <input type="checkbox"/>	4.1.1 - Provide details:			NO <input type="checkbox"/>
5 - Agent of ship at intended port of arrival					
5.1 - Name: Luise Associates Sicily Srl		Contact details (Tel. no.): +39 0931 1960670			
6 - Identification of person providing the information					
6.2 - Title or Position (delete as appropriate): Master / SSO / CSO / Ship's agent (as above) Date/Time/Place of completion of report		6.1 - Name:		Signature:	

Six Schedule
(Reguation 13/15)
Certificate of Compliance/International Ship Security Certificate

APPENDIX 2

Form of the Interim International Ship Security Certificate

INTERIM INTERNATIONAL SHIP SECURITY CERTIFICATE

(official seal)

(State)

Certificate No.

Issued under the provisions of the

INTERNATIONAL CODE FOR THE SECURITY OF SHIPS AND OF PORT FACILITIES
(ISPS CODE)

Under the authority of the Government of _____
(name of State)

by _____
(persons or organization authorized)

Name of ship : _____
Distinctive number or letters : _____
Port of registry : _____
Type of ship : _____
Gross tonnage : _____
IMO Number : _____
Name and address of company : _____
Is this a subsequent, consecutive interim certificate? Yes/ No*
If Yes, date of issue of initial interim certificate: _____

THIS IS TO CERTIFY THAT the requirements of section A/19.4.2 of the ISPS Code have been complied with.

This Certificate is issued pursuant to section A/19.4 of the ISPS Code.

This Certificate is valid until _____

Issued at _____
(place of issue of the certificate)

Date of issue _____
(signature of the duly authorized official
issuing the Certificate)

(Seal or stamp of issuing authority, as appropriate)

* Delete as appropriate

MADE this 01 day of AUGUST , 2020.

**DIDIER DOGLEY
MINISTER OF TOURISM, CIVIL AVIATION AND
MARINE**

