



**IMO**  
**INTERNATIONAL MARITIME LAW INSTITUTE**  
Established under the auspices of the International Maritime  
Organization  
A specialized agency of the United Nations



**DRAFTING PROJECT**

**TOPIC**

**The Merchant Shipping (Carriage of Dangerous Goods) Regulations 2020, Regulations to Implement the provisions of the International Convention on Safety of Life at Sea(SOLAS) 1974 as modified by the Protocol of 1978 (and Incorporating the International Maritime Dangerous Goods (IMDG) Code), into the Laws of Kenya.**

*A Legislation Drafting Project submitted in partial fulfillment of the requirements for the award of the Degree of Master of Laws (LL.M.) in International Maritime Law at the IMO International Maritime Law Institute*

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**Academic Year: 2019-2020**

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## Explanatory Note

### 1. Introduction

Prior to the 19<sup>th</sup> Century, very few dangerous goods were carried by sea, but in the period following the Second World War, the transportation of such goods increased significantly.<sup>1</sup> This was due to the high demand contributed by the industrialization; particularly, the petrochemical industries and the modern fleet of ships with capacity to transport these goods.<sup>2</sup>

This increased number of dangerous goods transported by sea pose several dangers not only to human life, but also raise serious environmental concerns. These risks include, *inter alia*, explosion or fire on container ships, spillage of the dangerous goods, pollution and other related accidents.<sup>3</sup>

These goods are important in manufacturing and production as well as other industrial uses. As such, a complete ban on their carriage by sea is not an option. There is therefore, the need to strike a balance between the carriage of dangerous goods and the safety concerns associated with such carriage. Sea transportation is vital as the ship provides the most feasible mode of transporting the goods designated or classified as dangerous.<sup>4</sup> The world trade and economy equally depend on the transport of these goods which are either carried in bulk solid and liquid form, or transported in packaged form for various industrial uses.<sup>5</sup>

Advancement in technology has propelled the increase in production of, or in the use of dangerous goods in productions. The specialization of ships today so that we have, *inter alia*, ships designed to carry chemicals, container ships, ro-ro vessels and bulk carriers has essentially made it more possible to carry these dangerous goods by sea.<sup>6</sup> The issues

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<sup>1</sup> Philippe Boisson, *Safety at Sea: Policies, Regulations & International Law* (Denis Mahaffey tr, Bureau Veritas Paris, 1999)45.

<sup>2</sup> Ibid.

<sup>3</sup> Meltem Deniz Guner-Ozbek,(2008) Vol 12, *The Carriage of Dangerous Goods by Sea* (Hamburg Studies on Maritime Affairs),1.

<sup>4</sup> Cleopatra Elmira Henry, 'The Carriage of Dangerous Goods by Sea: The Role of The International Maritime Organization in International Legislation', a Publication of the Graduate Institute of International Studies Geneva (France Printer Publishers) 95.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid 93.

of safety and prevention and control of pollution are therefore critical if we are to strike the balance of demand for these goods and the safety of life and the marine environment.

Carriage of dangerous goods is generally prohibited except under various specified circumstances and conditions now set out in the SOLAS 1974<sup>7</sup> as amended. A shipper's freedom to ship his goods is therefore limited in terms of what he can legally transport by sea.<sup>8</sup> The focus then shifts to appreciating the risks and dangers of transporting such goods, and how these can be mitigated so that, a shipper can legitimately transport these goods taking into account these risks and the dangers attached to the carriage of such goods to human life and the environment.

### **1.1 Dangerous Goods and their Implications on Maritime Safety**

The increased movement of dangerous goods, particularly chemicals, around the world through the open seas and the oceans poses risks such as spillage, pollution accidents and other potential dangers with growing pressure on States to try and minimize these risks.<sup>9</sup>

The risks of transporting dangerous goods is not just a concern to those operating or using the ships. It equally affects those who may not be directly involved in sea transport. These include the people living within close proximity to the port areas, who may be victims of the explosion of dangerous goods and the coastal population, who may be the ultimate victims of toxic waste from the spillage on the seas.<sup>10</sup>

The explosion of the *Mont Blanc* for instance, which was carrying around 2,300 tonnes of picric acid and 3,000 tonnes of TNT and several barrels of petrol when it collided with another ship caused around 3,000 deaths. 9,000 people were injured and around 6,000 left homeless due to the impact and aftermath of the accident.<sup>11</sup>

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<sup>7</sup> International Convention on Safety of Life at Sea (signed in 1974, entered into force on 25 May 1980) 1184 UNTS 18961.

<sup>8</sup> The Shippers duty both under common law and under the Hague-Hague-Visby Rules and the Hamburg Rules not to ship dangerous goods.

<sup>9</sup> *Cleopatra* (n4)93.

<sup>10</sup> Boisson (n1) 271.

<sup>11</sup> Cited in Philippe Boisson, *Safety at Sea: Policies, Regulations & International Law* (Denis Mahaffey tr, Bureau Veritas Paris, 1999) 273.

The impact of such accidents on the environment cannot be overemphasized. On 8<sup>th</sup> December, 1993, following a storm, 88 containers filled with bags of pesticides fell overboard the *Sherbro* causing massive pollution to the French coastline.<sup>12</sup> This demonstrates but a few instances of the damage that these goods can cause to the marine environment if care is not taken in the manner they are transported by sea.

Annex III of MARPOL<sup>13</sup> contains general requirements relating to the prevention of pollution by harmful substances carried at sea. Its basic requirements echo those of the SOLAS in terms of the obligation of the State parties to issue or cause to be issued detailed requirements on, *inter alia*, packaging, marking and labelling documentation and stowage of dangerous goods.

The International Maritime Dangerous Goods (IMDG) Code was not initially intended to cater for the pollution of the environment, but it was later revised to assist with the implementation of ANNEX VI of MARPOL. The HNS<sup>14</sup> Convention does not cover the carriage of hazardous and noxious substances, but deals primarily with liability and the compensation for massive or catastrophic damage caused by substances carried in bulk as listed.

## **1.2 Definition of Dangerous Goods**

Defining what constitutes dangerous goods is paramount not only for purposes of determining how safely to carry them on board ships, but so as to also properly allocate the risks attached to the transportation of these.

The Chapter VII of SOLAS does not define the term “dangerous goods”. Instead, it makes reference to the different classes of goods considered dangerous in nature. Goods are therefore dangerous if they fall within the classes provided.

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<sup>12</sup> Ibid 276.

<sup>13</sup> International Convention for the Prevention of Pollution from Ships, (adopted 2 November 1973, entry into force 2 October 1983) 1340 UNTS 62 (as modified by the Protocol of 1978),

<sup>14</sup> International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (adopted 3 May 1996, not in force)

### **1.2.1 Hague/Visby Rules<sup>15</sup> on Definition of Goods.**

These Rules were adopted in 1924. The Rule attempts to define dangerous goods in Article IV (6) providing that “*Goods of inflammable, explosive or dangerous nature ...*” The definition here also focuses on the nature of the goods.

This definition is restrictive in nature and does not cover the various classes of goods designated by SOLAS as dangerous goods. It is important to note that the definition is with regards to liability of the carrier which explains the restrictive nature of the definition.

### **1.2.2 Hamburg Rules**

These Rules were adopted on 31<sup>st</sup> March 1978 by the United Nations Conference on the Carriage of Goods by Sea. These Rules do not define dangerous goods although it goes further to impose an obligation on a shipper to mark or label dangerous goods as ‘dangerous’ in a suitable manner,<sup>16</sup> and inform the carrier of such dangerous goods and how to handle the same, otherwise, the shipper is liable under Article 2.

### **1.2.3 International Maritime Dangerous Goods (IMDG) Code**

The Code does not define dangerous goods but proceeds to give the classifications of the goods considered as dangerous goods. It puts the goods into various categories to identify the dangerous components in the goods as will be discussed below. Under the IMDG Code, the goods are therefore considered dangerous by their contents and components.

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<sup>15</sup> International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, Brussels, (adopted on August 25, 1924) as Amended by the Brussel Protocol of 1968.

<sup>16</sup> Article 13 (1) of the United Nations Convention on the Carriage of Goods by Sea (adopted in 1978) (The Hamburg Rules).

## 2. International Convention on Safety of Life at Sea (SOLAS)

### 2.1 The Background and Scope of SOLAS

The number of dangerous goods that were carried by sea were limited until the latter part of the 19<sup>th</sup> century.<sup>17</sup> There was therefore no special regulations on this kind of goods. The first traceable reference to regulations on carriage of dangerous goods by sea can be traced to the British Merchant Shipping Act 1894.<sup>18</sup>

History suggests that the need for safety at sea only came gradually to the fore following accidents and disasters whose devastating nature not only called for, but demanded changes in the behaviours of those involved in the maritime activities.<sup>19</sup> The 1914 SOLAS was the first convention on safety being a reaction to the *Titanic* disaster in 1912.<sup>20</sup> It forbade carriage of goods, which by nature, quantity or stowage, were considered likely to cause danger to lives of passengers at sea. It however left it upon the various contracting States to determine what is 'dangerous'. This Convention never entered into force.

In the 1929 SOLAS, carriage of goods which by nature quantity or stowage were considered likely to cause danger to lives of passengers at sea largely remained prohibited. Article 24 dealt with dangerous goods. Like the 1914 convention, it left the question of dangerous goods open for the contracting State parties to determine. It entered into force in 1933.<sup>21</sup>

By the time the third SOLAS Conference was held in 1948, States began to appreciate the role of sea transport both in the industrial expansions technological innovations and the large amount of cargo that were now being transported by sea.<sup>22</sup> Up to the 1948 SOLAS, carrying dangerous goods was prohibited unless due precautions were taken. The Conference therefore introduced Chapter VI to 1948 SOLAS which dealt with carriage of grain and dangerous goods.

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<sup>17</sup> Ibid (n1).

<sup>18</sup> Meltem (n3)5.

<sup>19</sup> Boisson (n1)45.

<sup>20</sup> Ibid 53.

<sup>21</sup> Focus on IMO (May 1996) IMO and dangerous goods at sea, the transport by sea of dangerous and harmful goods including marine pollutants and wastes, available at

<[http://materials.zago.gr/CHAZMA\\_GS\\_2008/nomothesia\\_egxeiridia\\_software/IMDGdangerousgoodsfocus1997.pdf](http://materials.zago.gr/CHAZMA_GS_2008/nomothesia_egxeiridia_software/IMDGdangerousgoodsfocus1997.pdf)> Accessed 22 December 2019.

<sup>22</sup> Cleopatra (n4)96.

To stress the importance of having uniform safety precautions for transport of dangerous goods by sea, the Conference adopted recommendation 22<sup>23</sup> to supplement the provisions of the SOLAS 1948 which were considered not elaborate enough. The conference further established that goods should be considered dangerous on the basis of their properties and characteristic. This prompted the need to develop a labelling system using distinctive symbols to indicate the danger of each class of goods. The recommendations also suggested need to develop uniform international regulations on carriage of dangerous goods.

Not much was done with regards to enforcing or implementing these recommendations. This can be attributed to the fact that during that time, the Convention creating International Maritime Organization (IMO) (initially Inter-Governmental Maritime Consultative Organization (IMCO) adopted in 1948 at the UN Maritime Conference only entered into force in 1957 with IMO Assembly having its very first meeting in 1959.

Another conference was held in 1960 to revise the 1948 SOLAS with Chapter VII of the revised 1960 convention entering into force on 26<sup>th</sup> May 1965. This chapter dealt exclusively with carriage of dangerous goods.

In 1974 another conference was held to further revise SOLAS and it entered into force on 25<sup>th</sup> May, 1980 the same has since been modified and amended over time. Notably the amendments extended the application of Chapter VII from dangerous goods carried in packaged form to solid form in bulk and in liquid gas form.<sup>24</sup>

## **2.2 Salient Features of the SOLAS in Relation to Carriage of Dangerous Goods**

The Revised Chapter VII applies to all ships covered by SOLAS and to cargo ship of less than 500 gross tonnage. It deals with dangerous goods in packaged form or in solid form in bulk in Part A, liquid chemical in bulk in Part B and liquefied gases in bulk in Part C.

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<sup>23</sup> IMO Official Records, Doc.MSC II/10, of 30<sup>th</sup> September 1959 Responsibilities of the Maritime Safety Committee under the Recommendations made by the International Conference on Safety of Life at Sea 1948 available at <[www.imo.org](http://www.imo.org)> Accessed 22 December 2019).

<sup>24</sup> Regulation 1 (4) of Chapter VII of SOLAS 1974 as Amended.



This Chapter lays the legal framework for establishment of national and international regulations on carriage of dangerous goods as seen in the ensuing Regulations.

Regulation 1 generally prohibits the carriage of dangerous goods by sea except carried in accordance with the provisions of SOLAS. It however leaves it for the State parties to prescribe the safe packaging and their stowage.

Regulation 2 deals with the various classifications of dangerous goods ranging, *inter alia*, from explosives, radioactive substances, gases, inflammable liquids and solid substances to corrosive substances. This classification is reflected in the classes accorded to the various dangerous goods under the IMDG Code.

Regulation 3 deals with the packaging of the dangerous goods outlining conditions to be met by such packaging.

Regulation 4 provides for the labelling of the dangerous goods requiring that each receptacle containing dangerous goods be marked with the correct technical name and identified with distinctive label or stencil of the label making clear the dangerous character of the goods.

Regulation 5 deals with the documentations to accompany such goods, providing that the documents in relation of carriage of such goods shall contain their technical names and not trade name. It further requires the shipper in relation to the shipping documents to provide certification or declaration that the goods are properly packed and labelled as indicated in the regulations. The ship carrying the dangerous goods has to equally have a special list or manifest of the dangerous goods carries on board.

Regulation 6 gives the requirements for stowage of the dangerous goods prohibiting the carriage of substances that are susceptible to spontaneous heating or combustion unless adequate precautions are taken to prevent fire outbreak.

Regulation 7 deals with carriage of explosives in a passenger ship providing for the nature of the explosive permissible in the passenger ships for carriage.

One important feature of this Chapter VII is that it has given the Member States the power or lee way to provide for national legislations either in form of an Act or Regulations to properly and effectively implement the provisions of this Chapter. For

purposes of uniformity, the Chapter refers to the IMDG Code which provides for certain standards that if adopted by the State Parties in their implementation ensures this uniformity is achieved.

### **2.3 The International Maritime Dangerous Goods (IMDG) Code**

The International Maritime Dangerous Goods (IMDG) Code, which was first published by IMO in 1965,<sup>25</sup> amplifies the requirements of SOLAS and MARPOL Conventions and has become the standard guide to all aspects of handling dangerous goods and marine pollutants in sea transport as a whole.

The IMDG Code lays down basic principles detailed recommendations for individual substances, materials and articles, and a number of recommendations for good operational practice, including advice on terminology, packing, labelling, stowage, segregation and handling, and emergency response action.<sup>26</sup> The objective of the IMDG Code is to enhance the safe carriage of dangerous goods while facilitating the free unrestricted movement of such goods and prevent pollution to the environment.<sup>27</sup>

The IMDG Codes contains sections on special requirements for freight containers. It also deals with dangerous goods carried on ro-ro ships and is also devoted to details on each substance according to its class grouping. It provides a list with general and proper shipping names grouped according to their hazard class or division.<sup>28</sup>

Within each hazard class or division, the names are placed into three groups with specific entries covering a group of substances of a particular chemical or technical nature. It also includes general entries covering a group of substances or articles having one or more general dangerous properties. Each Class or division of the dangerous goods are assigned a special UN number.

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<sup>25</sup> See the IMO General Assembly Resolution A.81 adopted in September 1965 available at [www.imo.org](http://www.imo.org) “Accessed 30 December 2019”.

<sup>26</sup> Cleopatra (n4).

<sup>27</sup> See paragraph 1 of the Preamble to the IMDG Code 2018 Edition (Published in 2018 by the International Maritime Organization).

<sup>28</sup> Appendix A of the IMDG Code (Incorporating Amendment 39-18).

The IMDG Code is embodied in IV volumes. Volume I provides for the general introduction and its Annex1 dealing with packaging together with a list of definitions.

Volume II deals with classes 1, 2 and 3 of dangerous goods. Volume III deals with Classes 4 and 5 of the dangerous goods, while Volume IV deals with Classes 6, 7, 8 and 9 of the dangerous goods. A comprehensive overview of the IMDG Codes is provided in 2.3.2 below.

Reference to these codes also extends to its Annex 1 which contain the recommendations on packaging forming part of volume 1 (mentioned above) of the code which are mandatory requirements set out in Regulation 3 of Chapter VII of the 1974 SOLAS Convention.

### **2.3.1 Development of the IMDG Code**

Resolution 56 adopted by the 1960 SOLAS conference recommended a uniform code to supplement SOLAS to cover a wide range of matters like packaging, container traffic and stowage with particular reference to segregation of incompatible substances.<sup>29</sup>

It further recommended that IMO conduct studies on international code especially on labelling, classification description and a list of dangerous goods and shipping documents. In 1961, in implementing this recommendation, IMO established the working group on carriage of dangerous goods to prepare a unified international maritime code. By 1965 IMDG code draft had been prepared and adopted by the 4<sup>th</sup> IMO Assembly same year.<sup>30</sup>

The IMDG code has undergone changes to reflect current status. IMO in 1985 extended the Code to marine pollutants to assist in implementation of annex III of MARPOL 73/78. The code was reformatted in 2001 to align with United Nations model regulations on movement of dangerous goods by air rail and inland waters.

Although it is not binding in nature, the IMDG code tries to codify the varying customary rules and procedures on carriage of dangerous goods by sea. It gives comprehensive list of dangerous hazardous goods. They are revised biannually.

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<sup>29</sup> Available at <[www.imo.org](http://www.imo.org)> Accessed 4 January 2020.

<sup>30</sup> Ibid (29).

The IMDG code 2018 incorporating amendments 39-19 was adopted by IMO's Maritime Safety Committee (MSC) at its 99<sup>th</sup> session in May 2018. It revised various sections of the Code and the transport requirements for specific substances.

This revised version is mandatory from 1<sup>st</sup> January, 2020 when they officially become operational.<sup>31</sup>

### **2.3.2 Salient Features of the IMDG Code**

The current version of the Code is the 2018 Edition (Incorporating Amendment 39-18) and is divided into different Parts Part 1 to Part 7 and Appendices A and B which are embodied in various Volumes of the Code.

Part 1 deals with the general provisions, definitions and training. It is further divided into chapters with chapter 1.1 dealing with the application of the code, the conventions and a general prohibition of carriage of dangerous goods. Chapter 1.2 deals with the definitions, units of measurements and lists of abbreviations while chapter 1.3 is on the requirements for training of shore-side personnel. Chapter 1.4 deals with security provisions for companies, ships, port facility and shore- side personnel.

Part 2 of the Code is equally divided into chapters from 2.0 to 2.9 dealing with classification of the dangerous good, assignment of UN numbers and proper shipping names for the goods and divide the goods into classes. Class 1 of the code deals with the most dangerous of all substances carried by sea extending to explosive. Class 2 covers gases. Class 3 relates to liquid emitting inflammable vapour at certain temperature. Class 4 deals with substances readily combustible under certain conditions of transportation. Class 5 deals with oxidizing agents and organic peroxide. Class 6 deals with poisonous and infectious substances. Class 7 is on radioactive substances, Class 8 is on corrosive substances either in solid or liquid form and Class 9 deals with miscellaneous.

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<sup>31</sup> Available at [www.imo.org](http://www.imo.org) Accessed 3 January 2020.

Part 3 deals with List of dangerous goods, special provisions and exceptions. These are embodied in Volume II of the Code. The List of the Dangerous goods in this part are provided in Volume III of the Code.

Part 4 is divided into 3 chapter. Chapter 4.1 deals with packaging and tank provisions. It further provides for the use of packaging, including intermediate bulk containers (IBCs) and large packaging and instructions to this effect. Chapter 4.2 is on general provisions and instructions on use of portable tanks and multiple-element gas containers (ME GCs) and Chapter 4.3 provides for the use of bulk containers.

Part 5 of the Code deals with consignment procedures. Chapter 5.1 deals with general procedures, chapter 5.2 deals with marking and labelling of packages including IBCs. Chapter 5.3 deals with placarding and marking of cargo transport units and bulk containers, Chapter 5.4 provides the various documentation in relation to the dangerous goods together with those to be carried in a ship. Chapter 5.5 deals with special provisions including fumigation of the cargo transport unit.

Part 6 of the Code is divided into 9 Chapters. Chapter 6.1 gives provisions for the construction and testing of packaging. Chapter 6.2 has Provisions dealing with the construction and testing of pressure receptacles, aerosol dispensers, small receptacles containing gas (gas cartridges) and fuel cell cartridges containing liquefied flammable gas also providing for UN pressure receptacles.

Chapter 6.3 provides for the construction and testing of packaging for class 6.2 infectious substances of category A under Part 2 of the Code. The construction, testing and approval of packages for radioactive material and for the approval of such material are covered under Chapter 6.4. Chapter 6.5 provides for the construction requirements and testing inspections and certification of IBCs.

The construction and testing of large packaging including provisions for code for designating these large packaging are dealt with in Chapter 6.6. Chapter 6.7 provides for the design, construction, inspection and testing of portable tanks and multiple-element as containers (MEGCs). Chapter 6.8 covers provisions for road tank vehicles and road gas elements vehicles for long international voyages for substances of classes 3 to 9 in Part 2

of the Code. Chapter 6.9 deals with provisions for the design, construction, inspection and testing of BK1, BK2 and BK3 bulk containers.

Part 7 of the Code mainly deals with transport operations ranging from: general stowage provisions in Chapter 7.1; general segregation provisions in Chapter 7.2; consigning operations concerning the packing and use of cargo transport units (CTUs) in chapter 7.3; Stowage and segregation on container ships in chapter 7.4; Stowage and Segregation on ro-ro ships in chapter 7.5; stowage on general cargo ship in chapter 7.6; Shipborne barges on barge-carrying ships in chapter 7.7; Special requirements in the event of an incident and fire precautions involving dangerous goods in chapter 7.8; and chapter 7.9 dealing with exemptions, approvals and certificates and requirement for contact details of the designated national competent authority.

### **3. Implementation of the Convention**

#### **3.1 Why Kenya need to Implement the Convention**

The Port of Mombasa is Kenya's busiest and largest seaport, serving the hinterland by exporting important agricultural products and supporting the foundation of the Kenyan economy. In addition to serving Kenya, the port serves countries in inland Africa like Uganda, Tanzania, the Democratic Republic of the Congo, Southern Sudan, Rwanda, Sudan, Ethiopia, and Somalia.<sup>32</sup>

The Port of Mombasa is fully equipped to service a variety of cargoes from dry bulks (like fertilizers, grains, soda ash, and cement) to liquid bulks (like crude oil and petroleum products) to bagged products (like coffee, sugar, tea). The port is also equipped to handle breakbulk (timber and iron and steel), motor vehicles, machinery, and containerized cargo.

As in many ports around the world, containerized cargo is the fastest growing category, and the Port of Mombasa has a dedicated terminal equipped with ship-to-shore gantry cranes and a complete line of support machinery. Because the existing facility has

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<sup>32</sup> <[http://www.worldportsource.com/ports/commerce/KEN\\_Port\\_of\\_Mombasa\\_1365.php](http://www.worldportsource.com/ports/commerce/KEN_Port_of_Mombasa_1365.php)> Accessed 27 November 2019.

reached its maximum operating efficiency, the Port of Mombasa is building new container berths and a second container terminal. All these measures are purely to accommodate the various types of cargo going through the Kenya's ports.

There are no regulations in place currently to ensure safety with regards to the carriage of these goods, both to the human life and to the marine environment. Bearing in mind the devastating effect these goods may cause if not properly carried, it is of utmost importance that Kenya put in place regulations for the carriage of dangerous goods by sea. In so doing, it is equally critical that Kenya unify its regulations to those provided by IMO under SOLAS as well as the IMDG Code that vastly ensures uniformity for countries that adopts these recommendations.

Importantly, Kenya has a large number of coastal communities living along the Kenyan coast who depend on solely on activities like fishing and tourism related activities as a means of livelihood.

As discussed earlier in the introduction, dangers posed by carriage of dangerous goods proximately affects these coastal communities. The environmental impact of the pollution for instance, cause by spillage of these goods can have a lasting catastrophic effect on these communities.

In case of explosions, these communities are the likely ultimate victims of the impact of such accidents and this in turn affects the social economic activities of coastal communities and the Kenyan economy at large. We cannot therefore downplay the magnitude of the damage an accident in this regards can have to the Kenyan economy.

The evolution of the ultra large container ships and the improvements made to the Kenya's ports to accommodate these types of ships means, an increases on the risks of accidents associated with these ships. We cannot therefore, overlook the multifarious dangers that these goods pose to the Kenyan Ports as well as the maritime environmental concerns. An explosion or fire on a container ships, spillage of the dangerous goods, pollution and fatalities can cause overwhelming damage.

Having in place regulations to effectively implement the provisions of the SOLAS Convention as Amended, and to have an operational legal framework, operating on unified standards for all vessels carrying dangerous goods is of paramount importance to

Kenya. This is owing to the number of ships calling at its port, majority of which do not fly the flag of Kenya.

According to the African Union's 2050 Integrated Maritime Strategy, development of the African Maritime Domain (AMD) through the advancement of the Blue economy agenda is meant to boost growth opportunities and a network of significant sea-lanes for Africa's sustainable economic affluence, all-encompassing utilization of the ocean's natural resources, trade and industry.<sup>33</sup> We cannot therefore talk about utilization of the blue economy without discussing the critical issues of maritime safety if we are to attain the sustainable development of the Kenya's blue economy. This is not just safety of life at sea, but safety of the marine environment as well as the coastal communities.

A footnote to the Regulation 1 (4) of SOLAS<sup>34</sup> makes reference to the IMDG Code and relevant provisions of the code of safe practice for solid bulk cargoes (BC) Code which are more detailed in terms of instructions on packaging and stowage of dangerous goods which States must follow.

This makes it mandatory for Kenya to adopt and incorporate these IMDG Codes into the Regulations on carriage of dangerous goods by sea in to be effectively in compliance with the Convention. This is because these Codes are highly recommended for States by IMO and a State cannot purport to implement the Convention without incorporating and implementing the IMDG Codes.

Specifically, the IMDG Code adopted by resolution A.716 (17) and amended by amendments 27 to 30 was recommended to Governments for adoption or for use as the basis for national regulations in pursuance of their obligations under regulation VII/1.4 of SOLAS and regulation 1(3) of Annex III of MARPOL.<sup>35</sup> The IMDG Code, as amended, attained mandatory status from 1 January 2004 under the umbrella of SOLAS although some parts remained largely recommendatory. Incorporating the Code will ensure that Kenya harmonizes the practices and procedures followed in the carriage of dangerous goods by sea while ensuring compliance with the mandatory provisions of the SOLAS Convention and of Annex III of MARPOL.

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<sup>33</sup> Nahodha, The Official Kenya Maritime Authority E-Newsletter (issue 10 August-September 2019).

<sup>34</sup> Also regulation 4 (4) of part A of SOLAS.

<sup>35</sup> See the Forward of the International Maritime Dangerous Goods Code 2018 Edition (Incorporating Amendment 39-18).



Having ratified the SOLAS 1974 and domesticated the same by the enactment of the **Kenya's Merchant Shipping Act 2009** (Hereinafter the "Act"), the Act fails to outline any standards or requirements that effectively implement SOLAS as envisioned by the Convention in terms of the responsibility or obligation of Kenya as a member States with regards to enforceability. The Act itself is not self- enforceable as it makes reference to regulations to be further made so as to effectively operationalize the provisions of Chapter VII of SOLAS on Carriage of dangerous.

#### **4. How to Incorporate the Convention into the Laws of Kenya**

Prior to the promulgation of the Kenya's Constitution 2010,<sup>36</sup> Kenya was largely considered a dualist State in the sense that, any treaty or convention ratified by Kenya did not automatically become part of the laws of Kenya until the same was domesticated or incorporation into the national legislation.

This approach to international conventions essentially meant that international treaties, conventions and other instruments were only applied by the judicial arm of the government where they are not in conflict with the domestic laws, placing them at a lower level to the Kenyan domestic laws in the hierarchy of laws.

The Constitution of Kenya<sup>37</sup> now recognizes international law as forming part of the laws of Kenya upon ratification, clearly defining its place in the Kenya's legal system. Although this be the case, it is still crucial that the international convention be domesticated to make its application more practical owing to the fact that most of these conventions are not self-executory. This poses the major paradox of the direct application of the conventions as envisioned by the Constitution 2010.

Chapter IV of the SOLAS for instance is not self- executing as it requires member States to make regulations that set out the various requirement with regards to the packaging, labelling in the carriage of dangerous goods by sea.<sup>38</sup> The mere ratification of the SOLAS is therefore not enough to sufficiently and effectively implement its provisions. This is

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<sup>36</sup> The Constitution of Kenya 2010, Promulgated 27August 2010.

<sup>37</sup> Article 2(5) and 2(6).

<sup>38</sup> SOLAS Regulation 1 (4).

particularly because, the IMDG Codes vastly provides for the proper and effective way of implementing SOLAS by designating dangerous goods and going further to provide for their packaging and labelling to assist States meet their obligations under SOLAS.

#### **4.1 Why Regulations?**

The Kenya's **Merchant Shipping Act, 2009 (The Act)** has domesticated international maritime related instruments. It deals with Carriage of Bulk Cargoes and Dangerous Cargoes under its Part XI, which essentially domesticates Chapter VII of the SOLAS in relation to the Carriage of Dangerous Goods.

Having so domesticated the Chapter VII of the SOLAS, Section 297 of the Act empowers the Minister in charge of transport to make regulations, prescribing which goods, articles or materials to be carried in a ship are dangerous goods in accordance with the SOLAS Chapter VII. The section further stipulates that such regulations must incorporate, the International Maritime Dangerous Goods (IMDG) Code of the IMO.

This Draft Regulations will therefore seek to effectively implement the provisions of Chapter VII of SOLAS which is already domesticated into Kenya's national laws by virtue of the Act. The aforementioned Merchant Shipping Act gives a delegated power to the Minister to make these Regulations as the appropriate vehicle to achieve this.

In order to keep the Code up to date from the maritime transport operational aspect, the IMO Maritime Security Council is mandated to continually take into account technological developments, as well as changes to chemical classifications and the related consignment provisions that primarily concern the shipper or the consignor. For this reason, the UN Recommendations on Transport of Dangerous Goods are amended biannually to also provide the source of most future updating of the IMDG Code.

To cater for this regular updates, the Draft Regulations herein will therefore incorporate the IMDG Code by reference. This is particularly of importance because by incorporating the IMDG Code by reference, Kenya will ensure that the new editions if any, are automatically incorporated and implemented under these Draft Regulations without the need for the Minister to constantly amend or revise these Regulations to comply or be in tandem with each amendments or revisions to the IMDG Code.

The provisions of these Draft Regulations shall apply to all Kenyan ships and to all foreign ships while loading or discharging cargo or fuel, or embarking or disembarking passengers at any place in Kenya as they apply to Kenyan ships.<sup>39</sup> This is of importance with regards to ensuring the no more favourable treatment principle advanced by SOLAS with Kenya embracing its obligations as a port State in terms of port State control in relations to all vessels calling at its port.

These Draft Regulations will therefore ensure the effective implementation of SOLAS in relation to the carriage of dangerous goods as the Act itself has not provided the packaging or the labelling requirements in relation to the carriage of these goods. These are matters left within the purview of the Minister's powers to prescribe the regulations in this regards providing that in doing so the Regulations will incorporate the IMDG Codes.

#### **4.2 Offences and Penalties**

Another important element of implementation through these regulations is the creation of sanctions and or offences to deter and punish any contravention with regards to these Regulations which are essentially implementing Chapter VII of SOLAS.

Under the Kenyan Laws, only the National Assembly, vested with legislative authority, has the powers to create offences. This basically means that, a Regulation made by dint of a delegated authority cannot create offences.

Under **Section 24 (2) of the Statutory Instrument Act, No. 23 of 2013 of the Laws of Kenya** (Which is an Act of Parliament to provide for the making, scrutiny, publication and operation of statutory instruments and for matters connected therewith), these Regulations shall not be inconsistent with the provisions of the Merchant Shipping Act (the enabling legislation) or of any other Act of Parliament. If inconsistent with these Acts, it shall be void to the extent of that inconsistency.

To this end, section 299 of the Act, provides for the offences relating to dangerous goods stating that “...*Any person who contravenes any of the provisions of the Part dealing with dangerous goods, **including regulations made under section 297**, commits an offence and shall be liable, upon conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both such fine*

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<sup>39</sup> Section 292 (3) of the Kenya's Merchant Shipping Act, No. 4 of 2009 (Revised in 2012).

*and imprisonment and that, where a contravention involves the marking, packing, stowing or quantity of dangerous goods within a ship, that ship shall be deemed, for the purposes of Part XII (dealing with Unsafe Ships), to be unsafe by reason of improper loading.”*

These Draft Regulations will therefore NOT have a Part specifically designated for offences. However, each Part will have within that Part, if need be, a provision dealing with contravention of any provisions therein and thus making specific reference to section 299 of the Act, which is the Section of the Act creating the offence and the penalty.

Section 299 of the Act provides for the maximum penalty that cannot be exceeded. **Section 24 (5)** of the said **Statutory Instruments Act**, however allows the Minister to provide for penalties for the breach of the Regulations not exceeding twenty thousand shillings or such term of imprisonment not exceeding six months, or both, which the regulation making authority may think fit.

The Draft Regulations has also taken advantage of this discretion under the said Section 24 (5) of the Statutory Instruments Act, and prescribed penalties for breaches which, in the opinion of the Minister ought to attract a lesser penalty than the general offences created under section 299 of the Act.

The same is therefore not an oversight, but a deliberate drafting technique to procure compliance with the Regulations and in compliance with the Statutory Instruments Act, No. 23 of 2013 of the Laws of Kenya.

### **4.3 Commencement and Interpretation**

For purposes of consistency, and to avoid any inconsistency with the enabling legislation (the Merchant Shipping Act), the Regulations adopt the meaning of terms as defined by the parent Act. The Regulations will however define terms not already defined in the parent Act. Other than consistency, this will also ensure that in the event the any of the terms referenced in the parent Act is amended, there will be no need to amend these Regulations as well as the new definitions of the terms would be automatically adopted by reference.

To this end therefore, reference to the ‘Authority’ in the Regulations shall refer to the Kenya Maritime Authority as established under the Kenya Maritime Authority Act, No.5 of 2006 as defined in the parent Act.

The Regulations shall commence 14 days after the date of publication in the Kenya Gazette in accordance with the provisions of section 23 of the Statutory Instruments Act.

## **5. The Proposed Draft of the Merchant Shipping Act (Carriage of Dangerous Goods) Regulations, 2020**

These Regulation will be divided into six Parts. Part I will be on the General Provisions dealing with the interpretation and the application of the Regulations.

Part II will deal with the General duties of operators, employers, masters and employees and the penalties for breach of these duties.

Part III deals with the Carriage of goods in packaged form providing for such matters as duties of the shipper and offences of masters and operators in regards to accepting for carriage of such goods without complying to the set requirements, Marking and labelling of goods in accordance with the IMDG Code, Stowage of packaged goods on board a ship and the requirements to carry Cargo Securing Manual.

Part IV deals with Carriage of dangerous goods in bulk and the requirements to give notification of the nature of dangerous goods carried on board and documentation and offences under this Part.

Part V deals with Spaces for carriage of packaged goods and dangerous goods in solid form in bulk providing for which ships the Part applies to and offences for contravention of this Part.

Part VI will deal with enforcement, generally providing for penalties for those breaches not specifically provided for in the Regulations, power of detention of a Ship and incidental matters.

### **5.1 ANNEXTURES**

#### **1. The Draft Regulations**

LEGAL NOTICE NO. [            ]

MERCHANT SHIPPING ACT

(No. 4 of 2009)

THE MERCHANT SHIPPING (CARRIAGE OF DANGEROUS GOODS)  
REGULATIONS, 2020

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IN EXERCISE of the powers conferred by section 8 and section 297 of the Merchant Shipping Act, the Minister makes the following Regulations:

## **THE MERCHANT SHIPPING (CARRIAGE OF DANGEROUS GOODS) REGULATIONS, 2020**

### **PART I: PRELIMINARY PROVISIONS**

1. These Regulations may be cited as the Merchant Shipping (Carriage of Citation Dangerous Goods) Regulations, 2020 and shall come into force 14 days after publication in the Kenya Gazette.
  
2. (1) In these Regulations, unless the context otherwise requires: Interpretation
  - “Act” means the Merchant Shipping Act (No. 4 of 2009);
  - “Authority” has the meaning assigned to it in the Act;
  - “Authorised Officer” has the meaning assigned in the Act
  - “Bulk Cargoes Code” means the IMO Code of Practice for Solid Bulk Cargoes;
  - “BCH Code” means the IMO Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk;
  - “cargo transport unit” means a road freight vehicle, a railway freight wagon, a freight container, a road tank vehicle, a railway tank wagon and a portable tank;
  - “classify” means to determine whether goods are dangerous goods for purposes of sea transport. This is the determination (by appropriate method) of whether the goods possess the hazardous characteristics of classes from 1 to 9 of the IMDG Code in accordance with the most hazardous property of the goods and it extends to goods—
    - (i) listed in the IMDG Code; and
    - (ii) not specifically listed but falling within the defining criteria for the classes from 1 to 9 of the IMDG Code;
  - “correct technical name” means a description of the goods sufficient to identify

their dangerous characteristics;

“dangerous goods” means goods classified in the IMDG Code or in any other IMO publication referred to in these Regulations as dangerous for carriage by sea, and any other substance or article that the shipper has reasonable cause to believe might meet the criteria for such classification;

This expression also includes—

- (i) residues in empty receptacles, empty tanks or cargo holds which have been used previously for the carriage of dangerous goods unless such receptacles, empty tanks or cargo holds have been cleaned and dried, purged, gas freed or ventilated as appropriate or, in the case of radioactive materials, have been both cleaned and adequately closed; and
- (ii) goods labelled, marked or declared as dangerous goods.

The expression shall not include goods forming part of the equipment or stores of the ship in which they are carried;

“dangerous goods declaration” means, subject to regulation 8, a certificate or declaration in writing, signed by the person making it, that the shipment offered for carriage is properly classified, packaged, marked, labelled and placarded, as appropriate, in accordance with the IMDG Code and is in proper condition for carriage by sea;

“Director General” has the meaning assigned in the Act;

“employee” has the meaning assigned to a “Seafarer” in the Act;

“Explosive substance” means a solid or liquid substance or mixture of substances which is in itself capable by chemical reaction of producing gas at such a temperature and pressure and at such a speed as to cause damage to the surroundings.

“Explosive article” means an article containing one or more explosive substances.

“forwarder” means the person by whom the dangerous goods declaration and

packing certificate are received, and any person responsible for packing the goods into a cargo transport unit, for eventual delivery to the ship or its agent;

“Gas Carrier Code” means the IMO Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk;

“Gas Carrier Code for Existing Ships” means the IMO Code for Existing Ships Carrying Liquefied Gases in Bulk, as amended from time;

“handling” includes the operations of loading, unloading and transferring dangerous goods and cleaning, purging, gas freeing, ullaging, sounding, sampling and similar operations required for the carriage of such goods in a ship; and cognate expressions shall be construed accordingly;

“IBC Code” means the IMO International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk;

“IGC Code” means the IMO International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk;

“IMDG Code” means the consolidated 2018 edition of the International Maritime Dangerous Goods Code as amended or revised from time to time;

“IMO” means the International Maritime Organisation;

“in bulk” means directly and without intermediate form of containment in a hold, tank or cargo space, which is a structural part of or permanently attached to a ship;

“Merchant Shipping Notice” means a Notice described as such, issued by the Authority and any reference to a particular Merchant Shipping Notice includes a reference to any Merchant Shipping Notice amending or replacing it which the Minister considers relevant from time to time;

“Minister” has the meaning assigned in the Act and the term “Cabinet Secretary” shall be construed accordingly;

“operator” in relation to a ship includes any owner, charterer, manager and agent

of the ship;

“owner” or “Shipowner” in relation to a ship has the meaning assigned in the Act;

“package” means an individual package or receptacle described in the IMDG Code an intermediate bulk container;

“packaged goods” means packaged dangerous goods;

“shipper” means a person who, whether as principal or agent for another, consigns for carriage by sea dangerous goods;

“SOLAS” means the Safety of Life at Sea Convention 1974, as Amended;

“UN number” means the number allocated to the dangerous substance, article or material by the IMDG Code or in any other IMO publication referred to in these Regulations;

“Kenyan ship” has the meaning assigned to it in the Act;

- (2) Any reference in these Regulations to the Bulk Cargoes Code, the BCH Code, the Gas Carrier Code, the Gas Carrier Code for existing ships, the IBC Code, the IGC Code, the IMDG Code, or IMO Recommendations shall include a reference to any document amending that publication which is considered by the Minister to be relevant from time to time and as published in the Gazette Notice.
- (3) Where these Regulations require the carriage of dangerous goods to be in accordance with a Code or Recommendation referred to in paragraph (2), and the Minister has specified in the Gazette Notice conditions in relation to such carriage then (whether or not the Code or Recommendation contains conditions on such matters) the Code or Recommendation shall have effect for the purposes of these Regulations as if it contains the conditions so specified by the Minister. “Carriage” in this paragraph includes packing, documentation, packaging, marking, labelling, stowage, segregation and handling.
- (4) Any reference in these Regulations, unless otherwise stated,

(a) to a numbered regulation is to the regulation of that number in these Regulations;

(b) to a numbered paragraph is to the paragraph of that number in that regulation.

3. Unless expressly provided otherwise in the Act, the provisions of this Application Regulations shall apply to-

(1) all ships to which SOLAS applies and to cargo ships of less than 500 gross tonnage; and

(2) to all Kenyan ships and to all foreign ships while loading or discharging cargo or fuel, or embarking or disembarking passengers at any place in Kenya as they apply to Kenyan ships.

4. The Minister may grant exemptions from all or any of the provisions of these Exemptions regulations (as may be specified in the exemption) for classes of cases or individual cases on such terms (if any) as the Minister may so specify and may, subject to giving reasonable notice, alter or cancel any such exemption.

## **PART II: PACKAGING, MARKING, LABELLING AND PLACARDING**

5. The packaging of dangerous goods shall be- Packaging

(1) well made and in good condition;

(2) of such a character that the interior surface with which the contents may come in contact is not dangerously affected by the substance being conveyed; and

(3) capable of withstanding the ordinary risks of handling and carriage by sea.

6. (1) Where the use of absorbent or cushioning material is customary in the packaging of liquids in receptacles, that material shall be- Packaging of liquids in Receptacles

(a) capable of minimizing the dangers to which the liquid may give rise;

(b) so disposed as to prevent movement and ensure that the receptacle remains

surrounded; and

(c) where reasonably possible, of sufficient quantity to absorb the liquid in the event of breakage of the receptacle.

(2) Receptacles containing dangerous liquids shall have an ullage at the filling temperature sufficient to allow for the highest temperature during the course of normal carriage.

(3) Cylinders or receptacles for gases under pressure shall be adequately constructed, tested, maintained and correctly filled.

(4) Empty uncleaned receptacles which have been used previously for the carriage of dangerous goods shall be subject to the provisions of this Part for filled receptacles, unless adequate measures have been taken to nullify any hazard.

7. Packaging containing dangerous goods shall be durably marked with the correct technical name; trade names alone shall not be used. Marking
8. Packages containing dangerous goods shall be provided with distinctive labels or stencils of the labels, or placards, as appropriate, so as to make clear the dangerous properties of the goods contained therein. Labelling and Placarding
9. The Method marking the correct technical name and of affixing labels or applying stencils of labels, or of affixing placards on packages containing dangerous goods, shall be such that this information will still be identifiable on packages surviving at least three months' immersion in the sea. In considering suitable marking, labelling and placarding methods, account shall be taken of the durability of the materials used and of the surface of the package. Method of marking
10. Packages containing dangerous goods shall be so marked and labelled except- Exception from labelling requirements
- (1) Packages containing dangerous goods of low degree of hazard or packaged in limited quantities as provided for in the IMDG Code; or
- (2) When special circumstances permit, packaging that are stowed and handled in units that are identified by labels or placards as provided by the IMDG Code;

May be exempted upon application to the Director General from labelling requirements.

### **PART III: GENERAL DUTIES OF OPERATORS, MASTERS AND EMPLOYEES**

- 11 (1) It shall be the duty of every operator, every employer of persons aboard a ship and every master of a ship to ensure that, so far as is reasonably practicable, when dangerous goods are being handled, stowed or carried on the ship nothing in the manner in which those goods are handled, stowed or carried as the case may be is such as might create a significant risk to the health and safety of any person. Duties of Operators, Employers and Masters
- (2) Without prejudice to the generality of the operator's, employer's or master's duty under paragraph (1) the matters to which the duty of the operator and of the employer extends shall include in particular-
- (a) the provision and maintenance of ship's structure, fittings and equipment for the handling, stowage and carriage of dangerous goods;
  - (b) the provision of such information, instruction, training and supervision to all employees in connection with the handling, stowage and carriage of dangerous goods in the ship.
- (3) An operator, employer, or master who contravenes the provisions of paragraphs (1) and (2) herein, commits an offence under Section 299 of the Act and shall be liable, upon conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment. Offence
- (4) It shall be a defence to a charge under this regulation in relation to the handling of dangerous goods that such handling was carried out in accordance with appropriate provisions of the IMO Recommendations. Defence
- 12 (1) It shall be the duty of every employee aboard ship: Duties of employees
- (a) to take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions in connection with the

handling, stowage and carriage of dangerous goods in the ship; and

(b) as regards any duty or requirement imposed on the operator and master or the employee's employer by the Act or any regulation or rule made thereunder with regard to the health and safety of persons aboard a ship to which these Regulations apply, to cooperate with the operator, master or employer so far as is necessary to enable that duty or requirement to be performed or complied with in connection with the handling, stowage and carriage of dangerous goods in the ship.

(2) Any employee aboard a ship carrying dangerous goods who contravenes this provisions of paragraph (1) commits an offence and shall liable, upon conviction, to a fine of twenty thousand shillings, or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment. Offence by employee

13 In any proceedings for an offence under regulation 11 or 12 consisting of a failure to comply with a duty or requirement to do something so far as is reasonably practicable, it shall be for the accused to prove that it was not reasonably practicable to do more than was in fact done to satisfy the duty or requirement. Burden of proof

#### **PART IV: CARRIAGE OF PACKAGED GOODS**

14 (1) No packaged goods shall be offered for carriage or taken on board any ship unless a dangerous goods declaration, as appropriate has been provided to the master or operator. Declaration

(2) The declaration referred to in paragraph (1) shall accurately identify the date the document was prepared and the name, status and company or organisation of the signatory.

(3) No packaged goods shall be offered for carriage or taken on board any ship unless the master or operator has been provided with a document including without prejudice to regulation 15(2). Such details include the following details—



- (a) the proper shipping name,
  - (b) the class and division where applicable in accordance with the IMDG Code,
  - (c) the United Nations (UN) numbers where allocated by the IMDG Code
  - (d) where relevant the packaging or packing group,
  - (e) the number and kind of packages,
  - (f) the total quantity of dangerous goods or net explosive mass of the contents,  
and
  - (g) any other information required by the IMDG Code
- (4) The declaration referred to in paragraph (1) shall be combined with the document referred to in paragraph (3).
- (5) It shall be the duty of the shipper to deliver to the operator or master the declaration required by this regulation, unless he does not deliver the goods to the ship or its agent.
- (6) In consigning the goods for carriage by sea, the shipper shall make proper provision to ensure the onward delivery of the declaration and document required by this regulation to the ship or its agent.
- (7) In the case that the goods are not delivered by the shipper to the ship or its agent, but are provided to another person for onward delivery of the goods or for the consolidation of the goods with other goods or cargoes for eventual delivery, responsibility for providing the document and declaration shall rest upon the forwarder and each person responsible for onward transfer and delivery as it does for the shipper in paragraphs (5) and (6). Responsibility for providing the document and declaration shall not extend to those persons who are solely engaged in the loading of the goods onto the ship or moving the goods around the port or terminal.
- (8) The requirements of paragraph (7) shall be without prejudice to the duties of the

shipper contained in regulations 15 and 16.

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|--------|---|--|
| (9)    | A shipper, a forwarder, or other person referred to in paragraph (7)—   | Offence by<br>Shipper                    |
|        | (a) fails to provide the operator or master of the ship with the document and declaration as required by this regulation, or  |  |
|        | (b) provides a declaration or document which he knows to be false or recklessly makes a declaration which is false in a material particular, commits an offence under section 299 of the Act and shall be liable, upon conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.   |  |
| (10)   | An operator or master who accepts for carriage, or takes or receives on board any packaged goods for which a document and declaration which is required by this regulation has not been provided commits an offence under section 299 of the Act and shall be liable, upon conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment. | Offence by<br>operator or<br>master      |
| 15 (1) | The shipper shall not offer packaged goods for carriage unless:   | Preparation<br>of goods for<br>transport |
|        | (a) all the conditions specified in the IMDG Code have been complied with in relation to their declaration, classification, marking, packaging, labelling, placarding and prior notification to the Authorised Officer or consignee, as appropriate; and  |  |
|        | (b) in the case of goods in a portable tank or tank container or vehicle the goods have been properly and safely prepared for carriage by sea by comply with applicable tank requirements in accordance with the IMDG Code.   |  |
| (2)    | In preparing any goods for shipment it shall be the duty of the shipper to identify and classify dangerous goods in order to ensure that the proper precautions and preparations can be made for transport as required by these Regulations.  |  |
| (3)    | No declaration required by regulation 14 above shall be signed by the shipper   |  |

unless paragraphs (1) and (2) have been complied with.

- (4) Any Shipper who contravenes the provisions of paragraphs (1) to (3) commits an offence under section 299 of the Act and shall be liable, upon conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment. Offence by the Shipper
- 16 (1) Where packaged goods are to be packed or shipped in or on a cargo transport unit, the person responsible for packing such goods therein shall: Container or Vehicle Packing Certificates
- (a) ensure that the stowage, segregation and securing of the goods is adequate and in accordance with the IMDG Code;
- (b) provide the operator or master or shipper or forwarder, with a signed packing certificate in accordance with the requirements of the IMDG Code, indicating the cargo transport unit, identification number or numbers and identifying the place and date of the operation, the name of the person responsible for the packing and his status, and company or organisation.
- (2) This regulation does not apply in relation to goods packaged within a portable tank, road tank vehicle, rail tank wagon or tank container.
- (3) (a) A person responsible for packing such goods who contravenes paragraph (1) commits an offence and shall be liable, upon conviction, to a fine not exceeding twenty thousand shillings, or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.
- (b) Any shipper or forwarder who fails to provide the operator or master of the ship with the signed packing certificate commits an offence under Section 299 of the Act and shall be liable, upon conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.
17. An operator or the master shall not accept on any ship any cargo transport unit with such goods as referred to in regulation 16 (1) and (2) above in it without a signed packing certificate. Any operator or the master who contravenes the provisions of this paragraph commits an offence under section 299 of the Act Offence by operator and master

and shall be liable, upon conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

- |        |   |   |
|--------|---|---|
| 18     | A dangerous goods declaration, any accompanying documentation required by regulations 8 and 10 and a packing certificate may be provided directly to the master or owner either in paper form or by electronic data processing or electronic data interchange methods   | Use of Electronic data                                    |
| 19 (1) | The master of any ship carrying packaged goods shall cause a special list, manifest or stowage plan to be carried in the ship-  | Details to be contained in List, manifest or stowage plan |
|        | (a) setting out details, obtained from the shipping documents submitted by the shipper, of the packaged goods on board including the correct technical name of the goods, their classification in accordance with the IMDG Code and their mass or volume; and   |   |
|        | (b) showing details of the location in the ship where the goods are stowed.   |   |
| (2)    | The master shall also carry in the ship any additional special documents where required by the IMDG Code for the carriage of packaged dangerous goods.  |   |
| (3)    | Any such list, manifest or stowage plan and any additional special documents required for the acceptance of goods for carriage in the ship pursuant to paragraph (2) shall be kept available for reference or inspection on board the ship until the goods have been discharged from the ship.  |   |
| (4)    | A master of a ship carrying packaged goods who fails to cause a list, manifest or stowage plan or additional special documents to be carried in the ship or kept available as required by paragraph (3) commits an offence under section 299 of the Act and shall be liable, upon conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment | Failure to keep list, manifest or stowage plan            |
| 20 (1) | Packaged goods shall not be taken on any ship for carriage in that ship unless they are marked, labelled and placarded, and display a fumigation warning sign,  | Marking and Labelling                                     |

as appropriate and specified in the IMDG Code.

(2) Any breach of paragraph (1) relating to the marking, labelling or placarding of packaged goods shall be an offence on the part of the shipper of those goods and the shipper shall be liable, upon conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

(3) Any operator or master who accepts dangerous goods on board a ship in any package which has not been marked, labelled or placarded or does not display a fumigation warning sign, as required by paragraph (1), commits an offence under section 299 of the Act and shall be liable, upon conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

21 (1) Packaged goods shall not be accepted on board if their stowage on board is prohibited by the IMDG Code. Stowage on board ship

(2) Packaged goods shall not be accepted on board unless any necessary additional safety equipment is provided in accordance with the IMDG Code.

(3) Packaged goods shall be adequately stowed, segregated and secured on board ship in accordance with the IMDG Code.

(4) Any operator master who accepts on board ship packaged goods in contravention of paragraph (1) or (2) commits an offence under section 299 of the Act and shall be liable, upon conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

(5) Any operator or master who fails to comply with the provisions of paragraph (3) commits an offence under section 299 of the Act and shall be liable, upon conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

- 22 (1) Where the vessel carries a cargo securing manual pursuant to regulation 17, cargo transport units, including containers, shall be loaded, stowed and secured throughout any voyage in accordance with the cargo securing manual. Cargo securing manual
- (2) An operator or master who fails to comply with paragraph (1) commits an offence under section 299 of the Act and shall be liable, upon conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.
- 23 (1) On and after the commencement of these Regulations, no packaged goods shall be carried on ships of the following descriptions— Requirement s to carry Cargo Securing Manual
- (i) all ships engaged on international voyages;
- (ii) passenger ships engaged on voyages other than international voyages; and
- (iii) cargo ships of 500 gross tons or over engaged on voyages other than international voyages;
- without carrying a Cargo Securing Manual drawn up to a standard contained in the IMO Maritime Safety Committee Circular and approved by or on behalf the administration of the State in which the ship is registered, or whose flag the ship is entitled to fly.
- (2) An operator or master who fails to comply with paragraph (1) commits an offence under section 299 of the Act and shall be liable, upon conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.
- 24 (1) The operator and master shall ensure all employees are familiar with the essential actions to be taken in an emergency involving such packaged goods as are carried on the ship. Operational requirements
- (2) An operator or master who fails to comply with paragraph (1) commits an offence and shall be liable, upon conviction, to a fine not exceeding twenty thousand shillings, or to imprisonment for a term not six months or to both such

fine and imprisonment.

## **PART V: CARRIAGE OF DANGEROUS GOODS IN BULK**

- 25 Dangerous goods shall not be handled or carried in bulk in any ship if the operator has any cause to believe that such goods may not be so handled or carried safely in that ship. Carriage of dangerous goods in bulk is prohibited
- (2) Without prejudice to paragraph (1)—
- (a) where the dangerous goods in question are goods listed in Chapter VI of the BCH Code, or in Chapter 17 of the IBC Code, or in Chapter XIX of the Gas Carrier Code for Existing Ships, or in Chapter XIX of the Gas Carrier Code, or in Chapter 19 of the IGC Code, or are classified dangerous goods listed in Appendix B of the Solid Bulk Cargoes Code, they shall be handled and carried in accordance with the requirements of whichever of the codes is appropriate; or
- (b) where the dangerous goods in question consist of a liquid chemical or a liquefied gas which is not listed in the Codes mentioned in sub-paragraph (a), they shall be handled and carried in accordance with an approval given by the Director General. Any such approval shall be given in writing and shall specify the date on which it takes effect and the conditions (if any) on which it is given.
- (3) If there is any breach of paragraphs (1) or (2) the operator and master commits an offence under section 299 of the Act and shall each be liable, upon conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.
- 26 (1) The shipper of any dangerous goods to be carried in bulk shall provide the operator or the master with a notification in writing giving notice of the nature of the goods and, in the case of liquid goods with a flashpoint at or below 60 degrees celsius (closed cup), specifying the flashpoint of those goods. Such notification shall specify the correct technical name of the goods, their UN Notification of dangerous goods and documentatio

number (if any) and, for dangerous goods carried in solid form in bulk, the classification as listed in the IMDG Code to which those goods belong.

- (2) (a) A shipper of any dangerous goods in bulk who—
  - (i) fails to provide the operator or the master with a notification in writing, or
  - (ii) provides a notification which the shipper knows to be false or recklessly provides a notification which is false in a material particular,commits an offence under section 299 of the Act and shall be liable, upon conviction, to a fine not exceeding five hundred thousand or to imprisonment for a term not exceeding three year or to both such fine and imprisonment
- (b) Without prejudice to the provisions of paragraph (a) herein, the master or operator of the ship may cause such goods, together with any package or container thereof, to be thrown overboard in accordance with section 300 of the Act, and neither the master nor the operator of the ship shall be subject to civil or criminal liability in any court in respect of such action.
- (3) The master of a ship carrying dangerous goods in bulk shall cause a specific list, manifest or stowage plan to be carried in the ship for the voyage on which it is currently engaged—
  - (a) setting out details, obtained from the shipping documents submitted by the shipper, of the dangerous goods carried aboard the ship for the voyage on which it is currently engaged including the correct technical name of the goods, their mass or volume and, where the dangerous goods are shown in Appendix B of the Bulk Cargoes Code, the Classification in accordance with the IMDG Code; and
  - (b) showing details of the location in the ship where the goods are stowed.
- (4) The master shall also carry in the ship any additional special documents where required by the Bulk Cargoes Code, the BCH or IBC Codes or the IGC or Gas Carrier Codes for the carriage of dangerous goods.
- (5) Any such list, manifest or stowage plan and any additional special documents



required for the acceptance of such goods for carriage in the ship shall be kept available for reference or inspection on board the ship until the goods have been discharged from the ship.

- (6) Any master of a ship carrying dangerous goods in bulk who fails to cause a list or stowage plan or any additional special documents referred to in paragraph (3) to be carried in the ship or kept available as required by paragraph (5), commits an offence under section 299 and shall be liable, upon conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

**PART VI: STOWAGE REQUIREMENTS OF DANGEROUS GOODS**

- |    |   |                            |
|----|---|----------------------------|
| 27 | Dangerous goods shall be stowed safely and appropriately in accordance with the nature of the goods. Incompatible goods shall be segregated from another.   | General                    |
| 28 | Explosives (except ammunition) which present risk shall be stowed in a magazine which shall be kept securely closed while at sea. Such explosives shall be segregated from detonators. Electrical apparatus and cables in any compartment in which explosives are carried shall be so designed and used as to minimise the risk of fire or explosion. | Explosives                 |
| 29 | In ships carrying flammable liquids or gases, special precautions shall be taken where necessary against fire explosion.  | Flammable liquids or gases |
| 30 | Substance which are liable to spontaneous heating or combustion shall not be carried unless adequate precautions have been taken to minimize the likelihood of the outbreak of fire.  | Combustible substances     |

**PART VII: CARRIAGE OF EXPLOSIVES IN PASSENGER SHIPS**

- |        |   |                      |
|--------|---|----------------------|
| 31 (1) | Explosives in Division 1.4, compatibility with group S of the IMDG Code may be carried in any amount in a passenger ship. No other explosives may be carried except for those listed below; | Permitted explosives |
|        | (a) Explosive articles for life-saving purpose, if the total net explosives mass of   |                      |

such articles does not exceed 50kg per ship; or

- (b) Explosives in compatibility groups C, D and E, if the total net explosives mass does not exceed 10kg per ship; or
- (c) Explosive articles in compatibility group G other than those requiring special stowage, if the total net explosives mass does not exceed 10kg per ship; or
- (d) Explosive articles in compatibility group B, if the total net explosives mass does not exceed 5kg per ship.

32 Notwithstanding the provisions of paragraph 1, additional quantities or types of explosives may be carried in passenger ships in which special safety measures approved by the Minister are taken. Additional quantities

## **PART VIII: SPACES FOR CARRIAGE OF PACKAGED GOODS AND DANGEROUS GOODS IN SOLID FORM IN BULK**

- 33 (1) (a) This regulation applies to— Application of this part
- (i) passenger ships constructed on or after 1<sup>st</sup> September 2009;
  - (ii) cargo ships of 500 tons or over, constructed on or after 1<sup>st</sup> September 2009; and
  - (iii) cargo ships of less than 500 tons constructed on or after 1<sup>st</sup> September 2009
- (b) In this paragraph—
- (i) “cargo ship” means a ship other than—
    - (aa) a passenger ship;
    - (bb) a pleasure vessel within the meaning of the Act; or
    - (cc) a fishing vessel;
  - (ii) “passenger ship” means a ship carrying more than 12 passengers;

(iii) the date on which a ship was constructed is the date on which the keel was laid, or on which it was at a similar state of construction; and “similar stage of construction” means a stage at which:

(aa) construction identifiable with a specific craft begins; and

(bb) assembly of that craft has commenced comprising at least 50 tonnes or 1% of the estimated mass of all structural material, whichever is the less.

(2) No packaged goods or solid dangerous goods in bulk shall be taken on board or accepted for carriage or carried on any ship unless the spaces in which they are to be carried or are carried, as the case may be, comply with the provisions of Regulation 54 in Chapter II-2 of SOLAS (whether or not the ship is engaged on international voyages).

(3) In the case of ships engaged on international voyages no packaged goods or solid dangerous goods in bulk shall be taken on board, or carried, unless the ship has on board a Document of Compliance issued by or on behalf of the Minister or the competent Authority of the State in which it is registered.

34 Any operator or master who accepts for carriage, or carries, packaged goods or dangerous goods in solid form in bulk- Offence

(a) on a ship in which the spaces in which they are to be or are carried in do not comply as required by regulation 33 paragraph (2); or

(b) in the case of a ship engaged on international voyages, on a ship which does not have on board a Document of Compliance as required by regulation 33 paragraph (3),

Commits an offence under section 299 of the Act and shall be liable, upon conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

## **PART IX: GENERAL ENFORCEMENT AND PENALTIES PROVISIONS**

- 35 In any case where a ship does not comply with the requirements of these Regulations the ship shall be deemed unsafe for purposes of Part XII of the Act and shall be liable to be detained under section 302 of the Act. Power to detain ship
- 36 (1) A person convicted of an offence under these Regulations for which no penalty is expressly provided for in the Regulations, shall be liable, upon conviction, to a fine not exceeding the statutory maximum or, to imprisonment for a term not exceeding three years or both as stipulated under section 299 and any other section of the Act dealing with general penalties for contravening the relevant provisions of Part XI of the Act. General Penalties
- (2) In any proceedings for an offence under Parts II, III, IV or V of these Regulations it shall be a defence for a person to prove that:
- (a) they had taken all reasonable steps to ensure compliance with the Regulations; or
  - (b) they did not know nor ought to have known nor had reasonable grounds for suspecting the goods to be dangerous goods as the case may be; or
  - (c) that the goods were handled and carried in accordance with the provisions of the IMDG Code where appropriate; or
  - (d) if the person charged is the operator or master, in the case of goods packed in a freight container or vehicle, that before the freight container or vehicle was taken on board the ship the person responsible for packing the goods into the freight container or vehicle had provided the operator or master of the ship with a signed packing certificate certifying that the goods had been properly packed in the freight container or vehicle; or
  - (e) the goods being solid dangerous goods in bulk were being handled and carried in accordance with the Bulk Cargoes Code; or
  - (f) the goods being liquid chemical or gaseous dangerous goods in bulk such goods were being handled and carried in accordance with the relevant requirements of the BCH Code, the IBC Code, the Gas Carrier Code, the

Gas Carrier Code for Existing Ships or the IGC Code.

37. Where the commission by any person of an offence under any Parts of this these Regulations is due to the act or default of some other person, that other person commits an offence, and a person may be charged with and convicted of the offence by virtue of this regulation whether or not proceedings are taken against the first-mentioned person. Offences due to default of 3<sup>rd</sup> party
38. Where a contravention involves the marking, packing, stowing or quantity of dangerous goods within a ship, that ship shall be deemed, for the purposes of Part XII of the Act, to be unsafe by reason of improper loading and shall be liable to detention under the said part XII. Ship deemed unsafe
- 39 (1) Notwithstanding the provision in relations to offences under these Regulations, the Director General may cause a person who breaches the provisions of these Regulation, which breach has not be stated in the Regulation to be an offence to pay a fine of twenty thousand shillings for each of such breaches. Penalty by Director General
- (2) Any person who fails to pay the fine stipulated in paragraph (1) above commits an offence and shall be liable upon conviction to both a fine of twenty thousand shilling and imprisonment for a term not exceeding six months.

Made on the \_\_\_\_\_ day of \_\_\_\_\_, 2020

\_\_\_\_\_  
**Cabinet Secretary**  
**Ministry of Transport and Infrastructure**