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PART 1
EXPLANATORY NOTE
CHAPTER 1

INTRODUCTION TO MARITIME SECURITY

To many observers maritime security appears to be a large and sometimes nebulous concept. In fact it has become a large task involving many entities from international, public and private sectors, aiming at preserving the freedom of the seas, facilitating and defending commerce, and maintaining good governance at sea.¹

Transnational forces and irregular challenges continue to be the primary threat today and in the foreseeable future, especially in the maritime domain.²

Maritime security has to be distinguished from maritime safety. Maritime security is the combination of preventive and responsive measures to protect the maritime domain against threats and intentional unlawful acts. It is therefore a risk management activity focusing on preventive and responsive measures, aiming at both law enforcement as a civilian and military requirement and defence operations as a military, in this case naval requirement.³

Maritime Safety on the other hand is the combination of preventive and responsive measures intended to protect the maritime domain against, and limit the effect of, accidental or natural damage to environment, risks or loss.⁴

Maritime security has no clear definition in terms of maritime security

operations and it is a governmental responsibility and it is a matter of sovereignty on who does what in each

¹ The Institute for Strategic, political, security and economic consultancy (ISPSW) journal Strategy Series: Focus on Defence and International Security, Issue No.222 Apr.2013 p.2.² Ibid.

³ Ibid.

⁴ Ibid.

government. Maritime security has no universal legal or agreed definition due to the fact that it is a broad topic, covering many policy sectors.⁵

After the 1985 attack on the *Achille Lauro*, the Maritime Safety Committee (MSC) of the International Maritime Organization (IMO) issued guidance on the security of cruise ships and the ports that they use. The guidance covered:⁶

1. the appointment within government of a designated authority responsible for cruise ship and cruise port security;
2. the appointment of an operator security officer by shipping companies operating cruise ships;
3. the appointment of a ship security officer for each cruise ship;
4. undertaking a ship security survey of each cruise ship;
5. preparation of a ship security plan for each cruise ship and its approval by a designated authority within Government;
6. appointment of facility security officers at cruise ports;
7. undertaking a facility security survey for each cruise port; and
8. Preparation of a facility security plan for each cruise port and approval by the designated authority.

In 1996, the MSC extended the application of the above guidance to international passenger ferry services and the ports that they use. This further guidance recommended the use of three threat levels; the background, moderate and high.⁷

⁵ The Institute for Strategic, political, security and economic consultancy (ISPSW) journal Strategy series: Focus on Defence and International security, Issue No.222 Apr.2013, p.2. ⁶ The IMO, Guide to Maritime security and the ISPS Code, 2012 Edition, p.2.

On 7th October 1985, four members of one of the Palestines Liberation Organization's (PLO's) factions, the Palestine Liberation Front (PLF),

hijacked the Italian cruise ship, *Achille Lauro* and demanded the release of Palestinian prisoners held in Israel. Egyptian president Hosni Mubarak as he then was, persuaded the hijackers to surrender but not before they shot to death a wheel chair bound passenger from the United States dumping his body overboard. Please see back the guideline how to write such information source.

⁷ Ibid, p.3.

In November 2001, IMO issued a resolution A.924 (22), which 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 aboard and ashore.⁸ The aim was to reduce risks to passengers, crew and port personnel onboard ships and in port areas as well as to ships and their cargoes, to enhance ship and port security and to prevent shipping from becoming a target of international terrorism.⁹

The *Achille Lauro* incident mentioned above led to an outcry by the international community. The IMO acted accordingly by adopting Resolution A584 on measures to prevent unlawful acts which threaten the safety of ships and security of their passengers and crews. Some countries, namely Austria, Egypt and Italy, as well as the International Transport Workers Federation (ITF), urged the IMO in 1986, to prepare a convention to tackle unlawful acts against the safety of maritime navigation on the basis that there was a gap that needed to be filled by having a new convention to deal with maritime terrorism because the international law for unlawful acts against ships was far behind, compared to the civil aviation sector which had adopted the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation* in 1973, otherwise commonly known as the Montreal Convention.¹⁰

A conference was thus held in the early part of March 1988 in Rome, and with support from more States, on 10th March 1988 the conference adopted the *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention) 1988*. The SUA Convention 1988 was to ensure that appropriate action is taken against persons committing unlawful acts against ships and requires governments to extradite or prosecute offenders.¹¹

⁸ The IMO, Guide to Maritime security and the ISPS Code, 2012 Edition, p.2.

⁹ Ibid.

¹⁰ Anyiam Herbert, “ISPS”: operational benefits, administrative burdens, Center for International maritime Security, Aug, 2014, available online at <http://cimsec.org/isps-operational-benefits-administrative-burdens/12233> last accessed on 20 April 2016.

¹¹ Ibid.

At the time of the 11th September 2001 (9/11) terrorist attacks in the United States, the SUA Convention which came into force on 1st March 1992 had been ratified by only 67 countries worldwide.¹²

After the 9/11 attacks, the number of ratifications for the SUA Convention skyrocketed significantly to 146 States by spring of 2008, which reflects how serious the international community now regarded the issue of terrorism and its potential threat to the maritime sector. Unfortunately the SUA Convention 1988 was seen as a *toothless bulldog* as it had no law enforcement provisions to deal with impending offences and failed to address the growing trend of global terrorism with proliferation of weapons of mass destruction. Thus after the 9/11 attacks, in November 2001 the IMO adopted Resolution A.924 (22) to review existing measures to prevent and suppress terrorist acts against ships at sea and in ports, to improve security aboard and ashore so as to reduce risk to passengers and crew, as well as port workers on board ships and ashore, and to ships and their cargoes.¹³

Consequently, a diplomatic conference took place at the IMO Secretariat in London from 9th to 13th December 2002 for measures to be taken to strengthen maritime security and to prevent and suppress acts of terrorism against shipping. That conference adopted a number of amendments to the International Convention for the Safety of Life at Sea (SOLAS) 1974, the most important of which introduced the ISPS Code as chapter XI-2 of SOLAS. The ISPS Code came into force on 1st July 2004.¹⁴

¹² Anyiam Herbert, “ISPS: operational benefits, administrative burdens, Center for International maritime security, Aug, 2014, available online at <http://cimsec.org/isps-operational-benefits-administrative-burdens/12233> last accessed on 20 April 2016.

¹³ Ibid.

¹⁴ Ibid.

CHAPTER 2

THE ISPS CODE

2.1 GENERAL OVERVIEW

The International Ship and Port Facility Security Code (ISPS Code) is a comprehensive set of measures to enhance the security of ships and port facilities.

As mentioned, the ISPS Code is implemented through Chapter XI-2 Special measures to enhance maritime security in the International Convention for the Safety of Life at Sea (SOLAS). The Code has two parts, one mandatory and one recommendatory.¹⁵ Part ‘A’ of the ISPS Code contains detailed security-related requirements for Governments, Port Authorities and Shipping Companies which are mandatory, and Part ‘B’ contain guidelines on how the mandatory requirements are to be met.

In essence, the code takes the approach that ensures the security of ships and port facilities is a risk management activity and that, to determine what security measures are appropriate, an assessment of the risks must be done in each case. The purpose of the code is to provide a standardized, consistent framework for evaluating risk, enabling Governments to offset changes in threat with changes in vulnerability for ships and port facilities through determination of appropriate security levels and corresponding security measures.¹⁶

As part of the SOLAS Convention, the ISPS Code is mandatory for all the Contracting Parties under SOLAS even though the IMO does not have a list of which ports or Flag States which are not in compliance with the code.¹⁷

The ISPS Code provides for the establishment of three levels of security:

¹⁵ **The IMO, ‘our work, SOLAS XI-2 and the ISPS Code’, available online at: www.imo.org, last accessed on 28 March 2016.**

¹⁶ **Ibid.**

¹⁷ **Ibid.**

- a. *Security level 1: normal*, the level at which the ship or port facility normally operates. Security level 1 means the level for which minimum appropriate protective security measures shall be maintained at all times.
- b. *Security level 2: heightened*, the level applying for as long as there is a heightened risk of security incident. Security level 2 means the level for which appropriate additional protective security measures shall be maintained for a limited period of time as a result of heightened risk of a security incident.
- c. *Security level 3: exceptional*, the level applying for the period of time when there is the probable or imminent risk of a security incident. Security level 3 means the level for which further specific protective security measures shall be maintained for a limited period of time when a security incident is probable or imminent. Security level 3 should be an exceptional measure applying only when there is credible information that a security incident is probable or imminent. Security level three should only be set for the duration of the identified security threat or actual security incident.

While security levels may change from security level 1, through security level 2 to security level 3, it is possible that the security levels will change directly from security level 1 to security level 3.¹⁸

2.2 WHAT HAS CHANGED SINCE 2004?

The supporters of the ISPS Code may argue that the code has been successful since there have been no serious maritime terrorist attacks since its implementation. Detractors may argue that the code did not help much in protecting seafarers against the menace of modern day piracy. Whatever opinion someone may have, the Code was developed to protect the international community against terrorism, and as such it has been a success. Piracy and terrorism are different crimes, needing different approaches.¹⁹

¹⁸ The IMO, 'our work, SOLAS XI-2 and the ISPS Code' available online at: www.imo.org, last accessed on 28 March 2016.

¹⁹ Bergqvist H. Lars 'the ISPS Code and Maritime Terrorism' available online at www.maritime-executive.com accessed on 29th March 2016.

The biggest change is that the Contracting Governments to the SOLAS Convention are able to formally exercise control over ships in accordance with the provisions of Chapter XI-2 and the ISPS Code. At the same time the Contracting Governments are obliged to address all the objectives and the functional requirements of the ISPS Code and to ensure that appropriate security measures and procedures are in place in the port facilities and waterways located within their territory.²⁰

The ISPS Code requirements are the international framework through which, Governments, ships and port facilities can cooperate to detect and deter acts which threaten security in the maritime transport sector. The whole idea of the ISPS Code is to reduce the vulnerability of the industry to attack, thus countering the threat and reducing the risk.²¹

As mentioned above, maintaining the ship and port facility security is a risk management activity, as with all risk management efforts, the most effective course of action is to eliminate the source of the threat. Eliminating the source of the threat, which in this case is those that would commit acts of terrorism or otherwise threaten the security of ships or of port facilities, is essentially a Government function. 100% security is an aim but cannot be guaranteed hence the risk reduction approach to lessen possibilities to the lowest practicable.²²

In order to determine what security measures are appropriate, Governments must assess the threat and evaluate the risk of a potential unlawful act. The ISPS Code provides a standardized, consistent framework for managing risk and permitting the meaningful exchange and evaluation of information between Governments, companies, port facilities and ships. Because each ship and each port facility is subject to different threats, the method by which they

will meet the specific requirements of the ISPS Code will be determined and eventually by approved the government.²³

²⁰ **The IMO, ‘our work, SOLAS XI-2 and the ISPS Code’ available online at www.imo.org, lastaccessed on 28 March 2016.**

²¹ **Ibid.**

²² **Ibid.**

²³ **Ibid.**

Those ships which do comply with ISPS requirements should not be issued with the International Ship Security Certificate or the interim international ship security certificate. A ship which is required to comply with the requirements of chapter XI-2 and the ISPS Code, is subject to control and compliance measures when in a port of another Contracting Country.

Although there has been a positive impact on the security situation from the code, there have been some serious incidents:²⁴

- a. ***Don Ramon***: the second maritime terrorist attack by Abu Sayyaf, which took place in August 2005 onboard the passenger ship Don Ramon in Filipino waters. Terrorists had placed a timed bomb beneath gas cylinders in the ship's galley, causing the ship to sink and wounding 30 passengers.
- b. ***M. Start***: In July 2010 the Japanese owned crude oil carrier experienced an explosion when transiting the Strait of Hormuz. Although no craft was sighted, the explosion made a large dent in the hull, parts of accommodation were slightly damaged and one crew member was injured. After two days the terrorist group Brigades of Abdullah Azzam claimed responsibility.
- c. ***Yemen, Level 3***: In August 2013 due to a high level of activity by Al Qaeda affiliated groups in Yemen the Government of the United Kingdom raised the ISPS security level to level 3 for British flagged ships in Yemen territorial waters. A serious situation indeed since an elevation to level 3 was unprecedented since the ISPS Code was introduced in 2004.
- d. ***Cosco Asia***: in September 2013, while on transit in the Suez Canal, the Chinese owned vessel under the flag of Panama, was hit by a rocket propelled grenade. The ship only sustained minor damages and there were no casualties. An Islamist group named Al-Furqan claimed responsibility for the attack. Although a minor attack, it was of great concern to the Egyptian Government, due to the economic importance of the canal. To increase security a protective wall along the canal is in the process of being constructed.

²⁴ Bergqvist H.Lars ‘the ISPS Code and Maritime Terrorism’ available online at www.maritime-executive.com last accessed on 29 March 2016.

2.3. THE FUTURE OF THE ISPS CODE

Like with all new regulations, the ISPS Code was initially met with some skepticism from the end users, i.e. Port States, seafarers, shipping companies and associations. To date, the Code has been accepted as an essential part of shipping.²⁵

As mentioned above, the mandatory and recommendatory measures under ISPS code are a risk management effort, which largely relies on the initiatives of the individual countries for their full implementation. On the other side, IMO has also monitored the effectiveness of the Code to reduce the vulnerability of the industry in maritime transportation to be attacked since it was established.

The IMO has listed some of the remaining challenges:²⁶

- a. Lack of the national legislation/guidelines on the ISPS Code implementation
- b. ISPS Code as a mean to address all maritime security threats
- c. Deciding on an appropriate risk assessments methodology
- d. Dissemination of good practices on port facility security
- e. Who audits the auditor?
- f. Ships encountering difficulties after calling at a high-risk port.

2.4. APPLICATION OF THE CODE

Having entered into force under the SOLAS chapter XI-2, on 1st July 2004, the ISPS Code has since formed the basis for a comprehensive mandatory security regime for international shipping.

The Code is divided into two sections, namely *Part A* and *Part B*. The mandatory Part A outlines detailed maritime and port security-related requirements which

SOLAS Contracting Governments, port authorities and shipping companies must adhere to, in order to be in

²⁵ **Bergqvist H.Lars ‘the ISPS Code and Maritime Terrorism’ available online at www.maritime-executive.com last accessed on 29 March 2016.**

²⁶ **Ibid.**

compliance with the Code. Part B of the Code provides a series of recommendatory guidelines on how to meet the requirements and obligations set out within the provisions of part A.²⁷

The main objectives of the ISPS Code include:²⁸

- a. to establish an international framework involving co-operation between Contracting Governments, Government agencies, local administrations and the shipping and port industries to detect security threats and take preventive measures against security incidents affecting ships or port facilities used in international trade;
- b. to establish the respective roles and responsibilities of the Contracting Governments, Government agencies, local administrations and the shipping and port industries, at the national and international level for ensuring maritime security;
- c. to ensure the early and efficient collection and exchange of security-related information;
- d. to provide a methodology for security assessments so as to have in place plans and procedures to react to changing security levels; and
- e. to ensure confidence that adequate and proportionate maritime security measures are in place.

In order to achieve its objectives, the Code embodies a number of functional requirements which include but are not limited to:²⁹

- a. gathering and assessing information with respect to security threats and exchanging such information with appropriate Contracting Governments;
- b. requiring the maintenance of communication protocols for ships and port facilities;
- c. preventing unauthorized access to ships, port facilities and their restricted areas;
- d. preventing the introduction of unauthorized weapons, incendiary devices or explosives to ships or port facilities;
- e. providing means for raising the alarm in reaction to security threats or security incidents;
- f. requiring ship and port facility security plans based upon security assessments; and

²⁷ The IMO, 'our work, SOLAS XI-2 and the ISPS Code' available online at

www.imo.org last accessed on 29 March 2016.

²⁸ Article 1.2 of the ISPS Code, Part A.

²⁹ Article 1.3 of the ISPS Code, Part A.

- g. requiring training, drills and exercises to ensure familiarity with security plans and procedures.

The Code applies to passenger ships, including high-speed passenger craft, cargo ships, including high-speed craft of 500 gross tonnage and upwards-engaged on international voyages and mobile offshore drilling units and to port facilities serving such ships.³⁰

Contracting Parties are however at liberty to decide the extent of application of the relevant sections of part A of the ISPS Code to those port facilities within their territory which, although used primarily by ships not engaged on international voyages, are required, occasionally, to serve ships arriving or departing on an international voyage. The Code however does not apply to warships, naval auxiliaries or other ships owned or operated by a Contracting Party and used only on Government non-commercial service.³¹

2.4.1 SECURITY RESPONSIBILITIES OF GOVERNMENT AND THEIR NATIONAL AUTHORITIES

Essential to the successful implementation and oversight of the Maritime Security Measures (used to encompass both Part A and Part B of the ISPS Code) is the drafting and enactment of appropriate national legislation. As a minimum, this should provide for the full implementation and oversight of the maritime security measures.³²

A Government has the discretion to extend the application of the Maritime Security Measures, or requirements drawn from them, to the following elements under them, the IMO has encouraged Governments to consider such

extensions to ships and port facilities.³³

- a. non-SOLAS ships;
- b. The port facilities used by non-SOLAS ships; and

³⁰ **Regulation 2 of Chapter XI-2 of SOLAS.**

³¹ **The IMO ‘our work, SOLAS XI-2 and the ISPS Code’ available online at www.imo.org. Last accessed on 29th March 2016.**

³² **The IMO, ‘Guide to Maritime Security and the ISPS Code, 2012 Edition, p. 23.**

³³ **Ibid.**

c. Offshore activities.

The legislation should also specify the powers needed for Government officials to undertake their duties, including the inspection and testing of security measures and procedures in place at ports and port facilities and on ships, and the application of enforcement actions to correct incidents of non-compliance.³⁴

The term legislation encompasses all primary and secondary legislation promulgated to implement the maritime security measures. Primary legislation refers to acts, laws and decrees while secondary legislation refers to regulations, instructions, orders and by-laws issued under powers granted in primary legislation.³⁵

The ISPS Code differentiates between the roles of the designated authority (as the organization within Government responsible for port facility security) and the administration (with responsibility for ship security). It is a matter for each Government where the specific responsibilities of the designated authority and administration are located within the Government's administrative structures.³⁶

Enhanced port facility, port and ship security forms part of Government's efforts to counter efforts to counter terrorism and combat threats and can involve many organizations in addition to the national authorities responsible for applying the measures.³⁷

Governments can authorize recognized security organizations (RSOs) to

³⁸ Ibid,

undertake certain of their responsibilities under the maritime security measures. Under the Code, Governments are required to provide IMO with the name and contact details of any RSO authorized to act on their behalf as well as details of their specific responsibilities and conditions of authority delegated to such organizations.³⁸

³⁴ The IMO, ‘Guide to Maritime Security and the ISPS Code, 2012 Edition, p. 23.

³⁵ Ibid.

³⁶ Ibid, p.29.

³⁷ Ibid.

³⁸ Ibid,

The Code requires Contracting Governments to gather and assess information with respect to security threats which could occur at a port facility or on, or against, a SOLAS ship. This process is essential to allow their national authorities to set the appropriate security level applying to their port facilities and to ships flying their flags.³⁹

A declaration of Security (DOS) is an agreement between a port or port facility and a ship or between a ship and another ship. It confirms the security responsibilities of each party during a ship/port interface or a ship-to -ship activity. As such, a DoS should detail what measures can be shared or additionally provided and by which party. The Code requires Governments to determine when a DoS is required by assessing the risk that the ship/port interface or ship-to-ship activity poses to persons, property or the environment.⁴⁰

Fundamental to the successful implementation of the maritime security measures is the identification by the designated authority of all the port facilities within its territory used by SOLAS ships. The designated authority has to determine whether:⁴¹

- a. the port facility is required to appoint a port facility security officer (PFSO) and submit a port facility security plan (PFSP) ;or
- b. the port facility is occasionally used by SOLAS ships and does not have to appoint a PFSO.

2.4.2 SHIP SECURITY RESPONSIBILITIES

Shipping companies are responsible for the appointment of company security

³⁹ The IMO, ‘Guide to maritime security and the ISPS Code, 2012 Edition, p.34

⁴⁰ Ibid, p.37.

⁴¹ Ibid, p.40.

officers (CSOs), ship security officer (SSOs) and other personnel with security duties. The Code provides guidance on the knowledge and training that these security personnel should have, however from January 2012, IMO's Standards of Training, Certification and Watchkeeping (STCW) Convention and related STCW Code establish mandatory minimum requirements for the

³⁹ The IMO, 'Guide to maritime security and the ISPS Code, 2012 Edition, p.34

⁴⁰ Ibid, p.37.

⁴¹ Ibid, p.40.

security-related training and instruction for all SSOs and shipboard personnel serving on SOLAS ships but it does not encompass the security related requirements for the CSOs.⁴²

2.4.3 INTERNATIONAL SHIP SECURITY CERTIFICATES

Ships falling under the maritime security measures must carry either the International Ship Security Certificate (ISSC) or, in limited circumstances, the Interim ISSC, both of which are issued by their administration. Administrations inspect ships entitled to fly their flag in connection with the issue, intermediate verification and renewal of ISSCs; the issue of Interim ISSCs; and at any other time to assess the ship's compliance with the Maritime Security Measures.⁴³

2.4.4 CONTROL AND COMPLIANCE MEASURES

Governments can apply specific control and compliance measures to foreign-flagged SOLAS ships using, or intending to use, their ports when assessing their compliance with the Maritime Security Measures. Elements of these control and compliance measures are unique, including:⁴⁴

- a. the authority to require ships to provide security-related information prior to entering port;
- b. the authority to inspect ships intending to enter into port when there are clear grounds for doing so once the ship is within the territorial sea, and the right of a master to refuse such an inspection; and
- c. the authority to refuse to allow a ship to enter port or to expel a ship from port.

⁴² The IMO, 'Guide to maritime security and the ISPS Code, 2012 Edition, p.46.

⁴³ Ibid, p.51.

⁴⁴ Ibid, p.55.

Those authorized to undertake control and compliance measures under the Maritime Security Measures may also carry out control functions in respect of foreign-flagged vessels under the SOLAS Convention provisions as well as under other Conventions adopted by IMO and under International Labour Organization (ILO) Conventions. The exercise of such control measures is

⁴² The IMO, 'Guide to maritime security and the ISPS Code, 2012 Edition, p.46.

⁴³ Ibid, p.51.

⁴⁴ Ibid, p.55.

traditionally described as port State control. Governments often co-operate through regional Memorandum of Understanding (MOUs) on port state control.⁴⁵

Governments should not give more favourable treatment to ships flying the flag of a State which is not a signatory to the SOLAS Convention and should apply the same control and compliance measures. However, ships that fall outside the Maritime Security Measures because of their size are subject to the measures established by Government.⁴⁶

2.4.5 SHIP SECURITY COMMUNICATIONS

Under the Maritime Security Measures, all SOLAS ships have to have a Ship Security Alert System (SSAS). Under the SOLAS Convention, the following SOLAS ships are required to be fitted with an Automatic Identification System (AIS):⁴⁷

- a. passenger ships irrespective of size;
- b. cargo ships of 300 gross tonnage and upwards engaged on international voyages;
- c. cargo ships of 500 gross tons and upwards not engaged on international voyages.

Further the following SOLAS ships engaged on international voyages have to be fitted with along-range identification and tracking (LRIT) system:⁴⁸

- a. passenger ships, including high-speed craft;
- b. cargo ships, including high-speed craft, of 300 gross tonnage and upwards; and
- c. mobile offshore drilling units.

Governments are ultimately responsible for ensuring that their port facilities and SOLAS ships fully comply with the Maritime Security Measures. For

SOLAS ships, failure to comply with the Maritime Security Measures could lead to Governments applying control measures against non-compliant ships. The application of control measures in this way can ultimately have significant

⁴⁵ **The IMO, Guide to Maritime Security and the ISPS Code, 2012 Edition, p.55.**

⁴⁶ **Ibid.**

⁴⁷ **Ibid, p.60**

⁴⁸ **Ibid.**

implications for all ships flying the States' flag, and is best avoided by ensuring compliance with the maritime security measures⁴⁹

2.4.6 TRAINING OF GOVERNMENT OFFICIALS WITH SECURITY RESPONSIBILITIES

Government officials undertake an extensive range of responsibilities under the Maritime Security Measures relating to all aspects of the security of port facilities and ships. Ensuring individual officials have the knowledge and competencies needed to undertake their responsibilities can make a significant contribution to the effective implementation of the Maritime Security Measures.⁵⁰

⁴⁹ The IMO, Guide to Maritime Security and the ISPS Code, 2012 Edition, p.66.

⁵⁰ Ibid, p.68.

PART II
CHAPTER 3
THE NEED TO AMEND KENYA'S MARITIME SECURITY REGULATIONS

The Kenya police officers in March of 2014 seized two terror suspects and recovered a number of explosive devices packed in a pick-up car at the port of Mombasa. The two were planning to detonate explosives targeting unspecific buildings inside the Mombasa port. The two claimed to belong to the Al-shabaab terror group.

The Constitution of Kenya 2010, under the fifth schedule required laws that were in force prior to its coming into force to be amended or repealed to bring them in line with the provisions of the constitution. Article 210 of the Constitution of Kenya establishes the National Security Council which is the overall body in control over all matters touching on the security of the country and this therefore needs to be reflected in the maritime security regulations.

The national values and principles of governance provided for under Article 10 of the Constitution of Kenya binds all State organs and State officers when making or implementing public policy decisions as well as the right to a fair administrative action provided for under Article 47 of the constitution all of which have to be taken into account in the current amendments.

The current maritime security regulations were hurriedly enacted in the year 2005 to meet the deadline that had been placed of July 2004 as the date when the ISPS Code would become mandatory in its application. The implementation of the Code was achieved through subsidiary legislation under the Merchant Shipping Act, revised edition 1983 (1968). The regulations are generally

referred to as the Merchant Shipping (Maritime Security) Regulations of 2004.

The policy relating to Merchant Shipping legislation is addressed under the Integrated National Transport policy 2009.

Kenya's policy mission statement in relation to the maritime sector is stated in the Integrated National Transport Policy as

"...to promote an efficient, safe, secure and environmentally sound maritime transport system that supports [...] the improvement of the quality of life and well-being of Kenyans"⁵¹

To achieve this mission, the Government has undertaken through the policy "to expedite enactment of appropriate legislation to deal with maritime security, prevention, reduction and control of marine pollution as well as liability and compensation for pollution damage of the sea or other waters".⁵²

The Government aims to achieve its mission by coming up with laws that are in tune and up to date with the developments with the rest of the world and to combat the ever increasing challenges and in particular in the field of maritime security.

This objective was partially realized by the enactment of the Merchant Shipping Act, Act No.4 of 2009 (MSA 2009), which repealed the Merchant Shipping Act revised Edition 1983 (1968).

Although the Merchant Shipping Act revised Edition 1983 (1968) was repealed by the MSA 2009, the attendant subsidiary legislation was not repealed and/or amended to bring it in line with the MSA 2009 as well as to bring the subsidiary legislation up to date with the developments at the international arena.

There is therefore need to amend the current maritime security regulations to bring them in line with the provisions of the Constitution of Kenya 2010 as well as the MSA 2009.

3.1 PROVISIONS ENABLING THE AMENDMENT OF THE CURRENT REGULATIONS

As posited above, the Merchant Shipping Act revised Edition 1983 (1968) was repealed and in its place a new law was enacted i.e. the Merchant Shipping Act, Act no. 4 of 2009 (MSA 2009)

⁵¹ The Integrated National Transport Policy, 2009, available online at <http://www.krb.go.ke/documents/mot.pdf> last accessed on 20th January 2016.⁵² Ibid.

with the aim of incorporating all the international maritime conventions that Kenya was a party to.

The MSA 2009 is the primary law that domesticates the ISPS Code into our national laws. The long title to the Merchant Shipping Act provides that the Merchant Shipping Act, is *[A]n Act of parliament to make provision for, inter alia “...maritime security and other matters ancillary thereto.”*

Section 374 to 380 of the MSA 2009 provides that

“ the Minister may make regulations for all or any of the following purposes-

(b) prescribing the security requirements for a ship or port facility, including, but not limited to-

i) a declaration of security, a ship security plan;

ii) a port facility security plan

iii) an assessment of a ship security plan or a port facility security plan;

iv) an identification system for accessing a specified port security area or a specified port facility...”⁵³

3.2 THE VALUE OF ENHANCING OUR MARITIME SECURITY

Kenya holds special interests in maritime transport and navigation as a coastal, port and a flag State with a strategic location along the Eastern Africa Coast.

Kenya has a land area that is approximately 582,650km², bordering the Indian Ocean and Somalia to the East and the Americas. The total sea area is approximately 221,778 km², with an Exclusive Economic Zone (EEZ) stretching 200 nm with a claim to the commission on the limits of the continental shelf to have an extended continental shelf. Kenya also has strategic inland water bodies covering approximately 10,812 Km².

The Kenyan coastline lies along major maritime trading and tanker routes between Europe, the Far East and the Americas. The Kenyan port of Mombasa

is the largest and most important gateway to the Eastern and Central Africa region. Indeed the port serves a large number of

⁵³ Section 378 (1) (b) of the MSA 2009.

countries through what is commonly known as the Northern Corridor that brings together Uganda, Rwanda, Burundi, the Democratic Republic of Congo, Southern Sudan, Ethiopia and northern parts of Somalia under the Northern Transit Transport Corridor Agreement, in a region that hosts a combined population of over three hundred (300) million people. Kenya is currently in the process of constructing its second port in the coastal town of Lamu.

That Kenya has been facing serious security threats from the Somalia militant group, Al-Shabaabis no secret. The group has been blamed for recent attacks on civilians and security personnel. There has also been concern about the incessant trafficking of small arms, drugs and contraband sugar worth millions of shillings.

Investment in the maritime sector can only thrive if undertaken in a peaceful and secure environment. With expected growth in ship traffic into Kenyan ports, the need for Kenya to build capacity for the provision of search and rescue services and equipment, sea patrol and surveillance and enhance its maritime law enforcement capacity cannot be overemphasized.

CHAPTER 4

HOW TO AMEND SUBSIDIARY LEGISLATION IN KENYA

Delegated or subsidiary legislation is law made by an executive authority under powers given to them by a primary legislation in order to implement and administer the requirements of that particular legislation. The power to make or amend delegated or subsidiary legislation is provided for under Article 94 (5) of the constitution, which provides that

“No person or body, other than parliament, has the power to make provision having the force of law in Kenya except under authority conferred by this Constitution or legislation.”

It is by the power provided under the above article that parliament enacted Section 378 (1) (b) of the MSA 2009, which empowers the Minister to make regulations inter alia prescribing the security requirements for a ship or port facility.

For a subsidiary law to be enacted or amended in Kenya, it has to be moved by the responsible Cabinet Secretary (the name for Ministers under the Constitution of Kenya, 2010) which means the Cabinet Secretary for the time being responsible for administering the relevant Act or provision under which or in relation to which the statutory instrument is made or preserved; in this case it will be the Cabinet Secretary in charge of Transport, to whom the proposed amendments will be submitted.

The Cabinet Secretary then reviews the proposed amendments and ensures that they are in line with the set policy guidelines and if that has been achieved then the amendments are forwarded to the Attorney General who is the

Government's chief legal advisor who will then advise whether the draft is in line with the Government's objectives and also whether the amendments are in line with the prevailing Kenyan legislative drafting practice.

The amendments will then be sent to the Parliamentary Legislative counsel for a confirmation that the amendments are in line with Kenya's legislative drafting practice and in as much the

amendments will not go through the motions of being debated in parliament, within seven (7) sitting days of their publication, the amendments will have to be forwarded to parliament for scrutiny by the Parliamentary Committee on delegated legislation.

Upon confirmation by the parliamentary legislative counsel, the amendments are then sent back to the concerned Cabinet Secretary for his signature and thereafter the concerned Cabinet Secretary forwards the amendments back to the Attorney General who authenticates the Cabinet Secretary's signature after which the amendments are forwarded to the Government printer for publication in the Official Kenya Gazette.

Section 17 of the Interpretation and the General Provisions Act, provides that upon publication in the Official Gazette, the amendments then come into effect on the date of the publication or on the date specified by the relevant Cabinet Secretary.

The proposed amendments to the maritime security regulations 2004 are to provide for a comprehensive legal framework to enable Kenya apply, implement and enforce the requirements under the ISPS Code.

CHAPTER 5

EXPLANATION OF THE PROPOSED AMENDMENTS TO THE MERCHANT SHIPPING (MARITIME SECURITY) REGULATIONS, 2004

5.1 OBJECTIVE OF THE AMENDMENTS

The proposed amendments are aimed at reconciling the provisions of the Constitution of Kenya 2010 especially the national values and principles of governance as well as bring the regulations in line with the MSA 2009 in line with the Kenyan practice of aligning regulations to a parent legislation when an act of parliament is repealed.

5.2 THE PROPOSED AMENDMENTS

1. Reference to the Minister in the regulations has been amended and replaced with the Director General. As at the time of the enactment of the current regulations, the Kenya Maritime Authority had not been established being the authority dealing with the administration of maritime affairs in the country. The Kenya Maritime Authority Act, established the office of the Director General and he is therefore the person suited to perform the functions that had initially been assigned to the Minister under the regulations in line with the provisions of the ISPS Code. The Director General will be the person appointed as such under Section 11 of the Kenya Maritime Authority Act.
2. In keeping with the amendment practice in Kenya, where there is an added regulation to an already existing regulation, the addition has been given the same number only differentiating the regulation by adding a lettered suffix after the number of the regulation.
3. The application of the regulations has also been expanded to include not necessarily the port area but also a port related area that may be designated as such by the Director General.
4. The application of the regulations has been excluded from installations either being used by the Kenya Defence Forces or members of a visiting force.

5. The Director General while setting the security levels under the regulations will now be required to consult with the National Security Council the body in charge of security affairs in the country at the national level in accordance with Article 240 of the Constitution and the Director General's decisions will also be implemented through the port security authority which is the body that will be in charge of the day to day security affairs of the port. The purpose of this body is to ensure fair administration of the security decisions at the port in line with the requirements of the constitution while at the same time meeting the requirements of the ISPS Code.

6. Amendments have also been effected to the First Schedule to reflect the changes reflected above. For ease of reference the proposed amendments have been combined in the main body of the regulations and annexed hereto. The amendments have been put in bold and underlined.

PART III

PROPOSED AMENDMENTS

THE MERCHANT SHIPPING (MARITIME SECURITY) AMENDMENT REGULATIONS, 2016

Regulation 1

The citation is amended to read as follows:

These regulations may be cited as the Merchant Shipping (Maritime Security) Amendment Regulations, **2016** and shall be deemed to have come into effect **on a date prescribed by the Cabinet Secretary in the Official Kenya Gazette.**

Regulation 2

**The interpretation part of the regulations is amended to
read as follows: The meaning of the word Act is amended
by adding 2009.**

“Authorized officer” has been replaced with **Director General who shall mean a person appointed as such under Section 11 of the Kenya Maritime Authority Act.**

The meaning of **controlled building** is added which shall mean **a building or part of a building in a port that has been-**

- (a) Described as a controlled building or a port facility security plan that has been integrated into a port security plan, or**
- (b) Designated as a controlled building.**

“Designated Authority” is amended to read **designated** which shall mean **designated by the Director General in an order.**

The words directed party have been added and they shall mean a **person who has been served with a direction of the Director General in relation to a harbor area or a harbor operation which is in force.**

Meaning of the word Government has been repealed.

Meaning of the ISPS Code is amended to mean the International Code for the Security of Ships ~~and of Port Facilities~~, as amended from time to time.

The meaning of words Maritime security is

repealed. The meaning of the word

Minister is repealed.

The meaning of the word Organization is repealed.

Meaning of the word port is amended to mean **an area of land and water within the boundaries that have been identified in the Kenya Ports Authority Act, chapter 391 of the laws of Kenya and that contains at least one port facility that is covered by an approved port facility security plan.**

Port authority is amended to read port **security** authority which shall **mean a body that has been designated as a port security Authority for a port.**

Meaning of the word port facility is amended by deleting the words as determined by the Minister and inserting the words **and for this purpose “ship/port interface” means the interactions that occur when a ship is directly and immediately affected by actions involving the movement of persons or goods or the provision of port services to or from the ship immediately after the word appropriate.**

Port facility security officer is amended by replacing the word designated with the word **identified** and by adding the words **in accordance with section 17.1 of Part A of the ISPS Code** immediately after the words officers.

Port facility security plan is amended to mean **in accordance with the provisions of Section 16 of Part A of the ISPS Code, and “approved port facility security plan means a plan**

that has been approved by the Director General in accordance with the requirements of section 16.2 of Part A of the ISPS Code.

Meaning of the words port related area is added to the interpretation section which shall mean an area designated as such by the Director General;

Meaning of the words prohibited article is added which shall mean;

- (a) any firearm, or any article having the appearance of being a firearm, whether capable of being discharged or not,
- (b) any explosive, any article manufactured or adapted so as to have the appearance of being an explosive, whether it is capable of producing a practical effect by explosion or not, and any article marked or labelled so as to indicate that it is or contains an explosive, or
- (c) any article (not falling within paragraph (a) or (b)) which is capable of use for causing injury to or incapacitating a person or for destroying or damaging property, or intended by the person having it with them for such use, whether by that person or by any other person;

Meaning of the word recognized security organization is amended to mean an organization that has been appointed by the Director General for the purposes of the regulations.

Meaning of the word Restricted zone is amended to read restricted area and its meaning is amended to mean an area that has been-

- (a) Described, in accordance with section 16.3.2 of Part A of the ISPS Code, as a restricted area in a port facility security plan that has been integrated into a port security plan, or
- (b) Designated as a restricted area;

Meaning of the Safety Convention is amended by inserting the words **as amended from time to time** immediately after 1974.

The meaning of all ships is amended by replacing the word Minister with the words Director General.

The second meaning of all ships is deleted.

Meaning of the word ship/port interface is repealed.

The word Minister at sub regulation 2 has been replaced with the words Director General.

Regulation 3

Regulation 3 (1) is amended by inserting a new sub-regulation 1 A which provides as follows:

(1A) These Regulations apply to ports in Kenya and every reference to a port includes a reference to any port related area that has been designated in relation to that port.

Regulation 3(6) is amended as follows:

(6) (a) These regulations do not apply to installations used by the Kenya Defence Forces or members of a visiting Force, in ports.

(b) In this regulation Kenya Defence Forces include the Kenya Army, the Kenya Airforce and the Kenya Navy while the visiting force means any body, contingent or detachment of the forces of a country for the time being present in Kenya on the invitation of the Government of Kenya.

Regulation 4

The heading of regulation 4 is amended to read **Duties of the Director General**

Regulation 4 (1) is amended to read as follows: Without prejudice to any other duties under these regulations the **Director General** shall **in consultation with the National Security Council through the port security authority:**

The word Minister on regulation 4(2) is amended and replaced with

the word DirectorGeneral.

Regulation 4 is further amended by inserting new regulations 4A, 4B, 4C, 4D and 4 E as follows:

Port Security Authorities

4 A. A body may be designated as the Port Security Authority for more than one port.

Duty to apply for or nominate membership of a port Security Authority

4B. An application for membership of the Port Security Authority for a port must be made to the Director General by the port facility security officer of each port facility within the port, or an individual nominated by that port facility security officer or to represent the port facility on the Port Security Authority;

Duty to apply for or nominate membership of a Port Security Authority

4 C. An application for membership of the Port Security Authority for a port must be made to the Director General by the port facility security officer of each port facility within the port, or an individual nominated by that port facility security officer or by the owner of the port facility plan to represent the port facility on the Port Security Authority.

Port Security Authority: Objection to decisions

4 D.—(1) A person affected by a decision of a Port Security Authority (“the objector”) may require the Director General to consider an objection to that decision by serving on the Director General a notice in writing within 30 days of the date on which the decision was made.

(2) A notice under paragraph (1) must be copied to the Port Security Authority.

(3) A notice under paragraph (1), and the copy served on the Port Security Authority under paragraph (2), must be accompanied by a statement in writing—

(a) specifying the grounds on which the objector is objecting to the decision; and

(b) providing such further information as may be appropriate.

(4) The Port Security Authority may provide the Director General with a response to the objector’s notice under paragraph (1) within 30 days of receipt of that notice, and a copy of any such response must be sent at the same time by that Port Security Authority to the objector.

(5) If the Director General requests any further information that the Director General considers necessary from either party that information must be provided to the Director General within 30 days of receipt of such a request or such longer time as the Director General may allow.

(6) If the information requested under paragraph (5) is not supplied within 30 days, or such longer time as the Director General may have allowed, the Director General may serve a notice in writing either—

(a) confirming the decision;

(b) directing the Port Security Authority to reconsider the decision; or

(c) imposing a new or modified decision on the Port Security Authority.

(7) If, no later than 30 days after the latest of—

(a) the date of service of a notice under paragraph (1),

(b) the date of service of a response (if any) under paragraph (4), and

(c) the date that information requested under paragraph (5) is provided,

either party so requests in writing to the Director General, the Director General must allow both parties the opportunity of appearing before and being heard by a person appointed by the Director General for that purpose.

(8) After considering the notice and statement served under paragraphs (1) and (3), any response provided under paragraph (4), any further information provided under paragraph (5) and the report of any person appointed under paragraph (7), the Director General must serve on both parties a notice in writing either—

(a) confirming the decision;

(b) directing the Port Security Authority to reconsider the decision; or

(c) imposing a new or modified decision on the Port Security Authority.

(9) A notice served by the Director General under paragraph (8) shall be binding on the Port Security Authority and the objector.

(10) For the purposes of this regulation “a decision” is a decision of the Port Security Authority—

(a) that will result in the adoption or amendment of a port security plan; or

(b) regarding the charging of fees.

Port Security Authority: Fees

4E.—(1) Subject to paragraph (2), a Port Security Authority may charge a port facility security officer, directed party or security manager such a fee in connection with, or incidental to, carrying out any function under these Regulations as it may decide.

(2) The fee charged under paragraph (1) must not exceed the costs reasonably incurred or to be incurred by the Port Security Authority in carrying out the function in question.

(3) A fee charged under paragraph (1) shall be—

(a) due upon written demand; and

(b) recoverable only as a civil debt.

Regulation 7

The heading of regulation 7 is amended to read **Director General** may declare maritime security level, 2 or 3.

The word Minister is amended in regulation 7 and replaced with the word Director General and thus will read as follows:

7(1) The Director General may, in writing, declare that maritime security level 2 or maritime security level 3 shall be in force for, one or more of the following as specified in the declaration:—

(2) the Director General may in writing, declare that maritime security level 3 is in force for a foreign regulated ship.

(3) The Director General shall not make a declaration under paragraph (1) or (2) unless it is appropriate for a higher level of security to be put into place for the port facility, ship, area or port

service provider concerned because a heightened risk of unlawful interference with maritime transport has been identified.

Regulation 8

Regulation 8 is amended by replacing the word Minister with the word **Director General** and by inserting the words **National Security Council** immediately after the words consultation with the, and will thus read:

8. Before making a declaration under regulation 7 (1) or (2), the **Director General** shall make appropriate Consultation with the **National Security Council**.

Regulation 8 is further amended by inserting a new regulation 8A, and 8B, and as follows:

8 A. Power to require information from a Port Security Authority

(1) The Director General may, by notice in writing, require a Port Security Authority to provide information and documentation relating to—

(a) the security of the port;

(b) the proceedings of that Authority; or

(c) the membership of that Authority.

(2) A Port Security Authority must provide the Director General with any information or documentation requested under paragraph (1) within 30 days of the notice being served on it, or such longer period as the Director General may allow.

Power of the Port Security Authority to require information

8B. (1) A Port Security Authority may, by notice in writing, require a port facility security officer, directed party or security manager, to furnish it with such information relating to the security of the port in relation to which that Authority has been designated, as that Authority may consider necessary for the carrying out of its functions.

(2) A person served with a notice under paragraph (1) must provide the Port Security Authority with the information requested in that notice within 30 days of that notice being served on that person, or such longer period as the Port Security Authority specifies in that

notice.

Regulations 9, 10, 12 and 14

The word Minister under regulation 9(b), 10, 12 (2), and 14 (1), 14 (2) is amended and replaced with the words **Director General** and will thus read as follows:

(9) (b) the declaration is revoked in writing by the **Director General**.

10. If the **Director General** declares that a maritime security level is in force for a Maritime security facility that maritime security level shall be in force for each of the following within the port facility—

12. (2) Prior to entering a port or whilst in a port within the territory of any other state, a ship shall comply with the requirements for the security level set by that State, if such security level is higher than the security level set by the **Director General**, for that ship.

14. (1) whenever the **Director General** declares that a maritime security level is in force for a port facility, the **Director General** shall, as soon as practicable, notify—

(2) Whenever the **Director General** gives a port facility operator notice of a declaration under paragraph (1), the port facility operator shall soon as practicable, give notice of the declaration to—

Regulation 14 (1) (a) has further been amended by adding the words the port Security Authority and will thus read as follows:

14. (1) (a) **the Port Security Authority** and the port facility operator;

Regulations 15,16,17,18,22,23,24,26,27,28,29,31,32 and 33

The word Minister under regulations 15, 16, 17 (1) (a), 17(1) (b), 17 (2) (b), 18 (1),18 (3), 22 (4)

, 23 (4), 23 (5), 24 (2) (a), 24 (6), (7), 26 (2), 26 (3) 26 (4) (b) (ii), 26 (4) (c), 26 (5), 27 (1), 27

(3), 27 (3), 27 (7), 27 (8), 27 (9) 27 (11), 27 (12) (b), 28 (1), 28 (2), 29 (1) (c), 29 (2), 29 (4), 29

(5) 31 (1), 32 (1), 32 (2), 32 (5), 33 (1) (b), 33 (2) and 33 (4) is amended and replaced with the words Director General and will thus read as follows:

Regulation 15

Notifying regulations covering security regulated ships.

15. Whenever the **Director General** declares that a maritime security level is in force for a Kenyan regulated ship or a foreign regulated ship, the **Director General** shall, as soon as practicable, notify—

Regulation 16

16. Notifying declarations covering areas within ports.

16. Whenever the **Director General** declares that a maritime security level is in force for an area within a port facility, the Ministers shall as soon as practicable, notify—

Regulation 17

Notifying revocations.

17. (1) whenever—

(a) the **Director General** has notified a person in terms of regulations 14, 15, 16 that a maritime security level is in force; and

(b) the **Director General** revokes the declaration concerned, the **Director General** shall, as soon as practicable, notify all persons concerned of the revocation.

(2) Whenever—

(a) a port facility operator has notified a person in terms of regulation 14(2) that a maritime security level is in force; and

(b) the **Director General** revokes the declaration concerned,

the facility operator shall, as soon as practicable, notify all persons concerned of the revocation.

Regulation 18

Communicating declarations and revocations.

18. (1) The **Director General** may notify a person of a declaration under regulation 14(1) or

(2) by facsimile, courier or electronic mail.

(2) A port facility operator required to give notice of a under regulation 14(2) may do so by facsimile, courier or electronic mail.

(3) The **Director General** may also notify a person of the revocation of a declaration under regulation 17(1) by facsimile, courier or electronic mail.

(4) A port facility operator required to notify a person of the revocation of a declaration under regulation 17(2) may do so by facsimile, courier or electronic mail.

Regulation 20

Responsibilities of company and ship security officers.

20. (1) The company security officer shall for each ship under the company's control ensure—

(a) that the ship security officer is kept informed potential threats and other information relevant to the ship's security;

Regulation 23

Masters discretion for ship safety and security

23. (4) The **Director General** shall determine which changes to an approved ship security plan or to any security equipment specified in the approved plan shall not be implemented unless the relevant amendments to the plan are approved by the Minister and any such changes shall be at least as effective as those measures prescribed in this part and in the First schedule to these regulations.

(4) In such cases, the master may implement temporary security measures and shall forthwith inform the **Director General** and, if appropriate the Contracting Government in whose port the ship is operating or intends to enter.

(5) Any such temporary security measures under these regulations shall, to the highest possible degree, be commensurate with prevailing security level. When such cases are identified, the **Director General** shall ensure that such conflicts are resolved and possibility of recurrence is minimized.

Regulation 24

24. Ship security alert system.

(2) the security alert system, when activated, shall—

(a) initiate and transmit a ship-to-shore security alert to a competent authority designated by the **Director General**, which in circumstances may include the Company, identifying the ship, its location and indicating that the security of the ship is under threat or it has been compromised;

(6) When the **Director General** receives notification of a ship security alert relating to a ship entitled to fly the Kenyan flag he shall immediately notify the State or States in the vicinity of which the ship is presently operating.

(7) When the **Director General** receives notification of a ship security alert from a ship which is not entitled to fly the Kenyan flag he shall immediately notify the relevant Administration and, if appropriate, the State or States in the vicinity of which the ship is presently operating.

Regulation 26

Verification for ship

26. (2) The verification of ships shall be carried out by an officer authorized by the, **Director General** or, if he entrusts it, by a recognized security organization.

(3) The security system and any associated security equipment of the ship after verification shall be maintained to conform with the provisions of regulations 20 and 21 and of the approved ship security plan and after any verification under paragraph (1), no changes shall be made in the security system and in any associated security equipment or the approved ship security plan without the sanction of the **Director General**.

(4) A Kenyan regulated ship is verified for International Ship Security Certificate (ISSC)

if—

(a) an authorized officer has inspected the ship; and

- (b) the authorized officer has verified that the ship—
 - (i) is fitted with a ship security alert system in accordance with regulation 24; and
 - (ii) otherwise meets the requirements determined in writing by the **Director General**; and
 - (c) the period, determined in writing by the **Director General**, within which the ship must be next inspected has not ended.
- (5) In making a determination under paragraph (1), the **Director General** shall have regard to the obligations set out in these Regulations and Chapter XI-2 of the Safety Convention and the ISPS Code.

Regulation 27

Issue, endorsement, duration and validity of certificate.

27. (1) when an initial or renewal verification is satisfactorily completed pursuant to regulation 26 the **Director General** or a recognized security organization acting on his behalf shall issue or, as the case may be, endorse an International Ship Security Certificate.

(3) The International Ship Security Certificate shall be issued for a period specified by the **Director General** which shall not exceed five years, and shall remain valid until—

(a) the International Ship Security Certificate is cancelled by the **Director General**;

(7) If a certificate is issued for a period of less than five years, the **Director General** may extend the validity of the certificate beyond the expiry date to the maximum period specified in paragraph (3) provided that the verifications referred to in regulation 26 applicable when a certificate is issued for a period of five years is carried out as appropriate.

(8) If a renewal verification has been completed and a new certificate cannot be issued or placed on board the ship before the expiry date of the existing certificate, the **Director General**, or recognized security organization acting on behalf of the **Director General** may endorse the existing certificate and such a certificate shall be accepted as valid for a further period which shall not exceed five months from the expiry date.

(9) If a ship, at the time when a certificate expires, is not in a port in which it is to be verified, the **Director General** may extend the period of validity of the certificate provided that the extension shall be granted only for the purpose of allowing the ship to complete its voyage to the port in which it is to be verified.

(11) The **Director General** may extend a certificate issued to a ship engaged on short voyages which has not been extended under paragraph (9) and (10) for a period of one month from the date of expiry and when the renewal verification is completed, the new certificate shall be valid to a date not exceeding five years from the date of expiry of the existing certificate before the extension was granted.

(12) (2) A certificate so issued shall contain a statement to the effect that it has been issued at the request of the **Director General** and it shall have the same effect as if it was issued by the **Director General**.

Regulation 28

Certificates issued or endorsed on behalf of another Government.

28. (1) The **Director General** may at the request of another Contracting Government verify the ship and, if satisfied that the provisions of regulation 26 are complied with, issue or authorize the issue of an International Ship Security Certificate to the ship and, where appropriate, endorse or authorize the endorsement of that Certificate on the ship, in accordance with these Regulations.

(2) A certificate so issued shall contain a statement to the effect that it has been issued at the request of that Government and it shall have the same effect as if the certificate was issued or endorsed by that Government and not by the Director General.

Regulation 29

Interim certification.

29. (1) After 1st July 2004, for the purposes of—

(a) a ship without a certificate, on delivery or prior to its entry or re-entry into service; (b) transfer of a ship from the flag of another Government to the

Kenyan register;

(c) a company assuming the responsibility for the operation of a ship not previously operated by that company;

until the certificate referred to in regulation 28(1) or 29(1) is issued, the Director General may cause an Interim International Ship Security Certificate to be issued, in the prescribed form set out in the Second Schedule.

(2) any Interim International Ship Security Certificate shall only be issued if the Director General or a recognized security organization on his behalf is satisfied that—

(4) No subsequent consecutive Interim International Ship security Certificate shall be issued to a ship if, in the judgment of the Director General or the recognized security organization, one of the purposes of the ship of a company in requesting such certificate is to avoid full compliance with this Part beyond the period of the initial Interim Certificate as specified in paragraph (2).

(5) For the purposes of regulations 31, 32 and 33 the Director General may prior to accepting an Interim International Ship Security Certificate as a valid Certificate ensure that the requirements of this regulation have been complied.

Regulation 31

Control of ships in port.

31. (1) For the purpose of these Regulations every ship to which this Part applies is subject to control when in a port in Kenya by officers duly authorized by the Director General and such control shall be limited to verify that there is on board a valid Certificate which, if valid, shall be accepted, unless there are clear grounds for believing that the ship is not in compliance with the requirements of these Regulations.

Regulation 32

Ships intending to enter a port.

32. (I) The **Director General** may require that any ships intending to enter a port in Kenya shall provide the following information to duly authorized officers to ensure

compliance with this Part prior to entry into port with the aim of avoiding the need to impose control! Measures or steps:

(2) Where requested by the Director General, the ship or the company shall provide confirmation, acceptable to it, of the information required under paragraph (1).

(5) Where, after receipt of the information described in paragraph (1), officers duly authorized by the Director General have clear grounds for believing that the ship is not in compliance with the requirements of these Regulations such officers shall attempt to establish communication with and between the ship and its Administration in order to rectify the Non-compliance.

(8) Prior to initiating any such steps prescribed in paragraph (7) the Director General shall inform the ship of his intentions and upon receipt of this information the master may withdraw the intention to enter that port, in which case, this regulation shall not apply.

Regulation 33

Additional control and compliance provisions.

33(1) (b) any of the steps referred to in regulation 32(7) are taken, an officer duly authorized by the Director General shall forthwith inform the Administration in writing, specifying which control measures have been imposed or steps taken and the reasons thereof and the authorized officer shall also notify the recognized security organization which issued the Certificate relating to the ship concerned, and the Organization when any such control measures have been imposed or steps taken.(2) When entry into port is denied or the ship is expelled from a port in Kenya, the Director General shall communicate the appropriate facts to the authorities of the

State of the next appropriate ports of call, when known, and any other appropriate coastal States, taking into account any guidelines developed by the Organization and confidentiality and security of such notification shall be ensured.

(4) The control measures referred to in regulation 31(1) and the steps referred to in regulation 32 (7) shall only be imposed, pursuant to regulations 31 and 32, until the Non-compliance giving rise to the control measures or steps has been corrected to the satisfaction of Director General, taking into account actions proposed by the ship or the Administration or the Director General, if any.

reference to the Minister under regulation 20(1) (b) and 20 (1) (c) has been amended and replaced with the words port security officer.

(b) that the ship security assessment and any amendment thereto are done and submitted to the port security Authority for approval;

(c) that a ship security plan and any amendment is done and submitted to the port security Authority for approval;

Regulation 34

Regulation 34 is repealed and replaced with a new regulation 34 as follows:

Port facility security assessment.

34.—(1) A Port Security Authority must complete a port security assessment in respect of each port for which it has been designated.

(2) The port security assessment must be carried out taking into account—

(a) the port facility security assessments carried out for the port facilities situated within the port;

(b) specificities of different sections of—

(i) the port; and

(ii) any areas adjacent to the port referred to in a notice under paragraph (3).

(3) The Director General may by notice in writing require a Port Security Authority to include in its port security assessment any area adjacent to the port that the Director General considers could have an impact on the security of the port.

(4) Where international maritime transport services operate from a port, the Port Security Authority must, when conducting the port security assessment, co-operate with the authorities of the other Member States to which those services operate. (5) The Port Security Authority may appoint a recognised security organisation to carry out the port security assessment on its behalf.

(6) A Port Security Authority must request approval from the Director General for the port security assessment within 9 months of the designation of that Port Security Authority

coming into force. (7) A request for approval under paragraph (6) must be made in writing and be accompanied by information demonstrating that the assessment has been carried out in accordance with paragraph (2). (8) After receiving a request for approval under paragraph (6) the Director General may— (a) approve, (b) refuse to approve, or (c) approve subject to amendment, the port security assessment.

(9) If the Director General fails to give or refuse approval within 30 days of receipt of a request under paragraph (6), the Director General shall be deemed to have refused to approve the port security assessment.

(10) If the Director General has, or is deemed to have, refused to approve the port security assessment, the Port Security Authority must revise that assessment and submit a further request for approval within 30 days of that refusal or deemed refusal.

(11) Paragraphs (7), (8), (9) and (10) apply to a further request made under paragraph (10) as they do to a request made under paragraph (6).

Regulation 36

Regulation 36 is repealed and replaced with a new regulation 36 as follows:

36.—(1) A Port Security Authority must develop, maintain and update the port security plan for each port for which it has been designated.

(2) The Port Security Authority must ensure that the port security plan—

(a) addresses the specificities of different sections of the port;

(b) has integrated into it—

(i) the approved port facility security plans for every port facility situated in that port;

(ii) the port related area security plans created for all port related areas (if any) designated in relation to the port; and

(c) where and to the extent appropriate, sets out the security measures to be applied to passengers and vehicles set for embarkation on seagoing vessels;

(d) identifies for each of the security levels-

- (i) the procedures to be followed,**
- (ii) the measures to be put in place, and**
- (iii) the actions to be taken, for the port, or where appropriate, for each part of the port, and**
- (f) identifies the person or persons responsible for each of the measures contained in that plan.**
- (3) Nothing in this regulation requires the Port Security Authority to carry out work that has been carried out in the course of developing a port facility security plan, a portrelated area security plan.**
- (4) The Port Security Authority may appoint a recognised security organisation to develop the port security plan on its behalf.**
- (5) The Port Security Authority must ensure that, if a recognised security organisation has carried out a port security assessment or review of a port security assessment for a port, that recognised security organisation does not develop or review the port security plan for that port.**

Regulation 36 is further amended by inserting regulation 36 A, 36B, 36 C and 36 D as follows:

Approval of the port security plan

36 A.—(1) A Port Security Authority must request approval from the Director General for the port security plan within 12 months of the designation of that Port Security Authority.

(2) The Director General may, in respect of a request under paragraph (1)—

(a) approve,

(b) refuse to approve, or

(c) approve subject to amendment, the port security plan.

(3) When, Director General or at any time after, approving a port security plan (whether or not subject to amendment), the Director General may notify the Port Security Authority

of types of amendments to the port security plan that must be submitted to the Director General for approval before those amendments are implemented.

(4) Where a Port Security Authority has received a notification under paragraph (3), that Port Security Authority must request an approval from the Director General before implementing an amendment to the port security plan of any type specified in that notification and must not implement that amendment until an approval has been obtained.

(5) The Director General may in respect of a request under paragraph (4)—

(a) approve,

(b) refuse to approve, or

(c) approve subject to further amendment, an amendment to a port security plan.

(6) Any request under this regulation must be in writing, and a request for approval under—

(a) paragraph (1) must be accompanied by a copy of the port security plan;

(b) paragraph (4) must be accompanied by a copy of the port security plan and an explanation of the proposed amendments.

(7) Director General may request additional information in support of a request for approval under paragraph (1) or paragraph (4).

(8) If the Director General fails to give or refuse approval within 30 days of the date of receipt of a request under paragraph (1) or (4), or of the date on which the Director General requested additional information under paragraph (7), whichever is later, the Director General shall be deemed to have refused to give approval for the plan or amendment in question.

(9) If the Director General has, or is deemed to have, refused to approve a request made under paragraph (1) the Port Security Authority must, within 30 days of that refusal or deemed refusal, revise the port security plan and submit a further request for approval.

(10) Paragraphs (2), (6), (7), (8) and (9) apply to a further request made under paragraph (9) as they do to a request made under paragraph (1).

Implementation of the port security plan

36 B.—(1) A Port Security Authority must satisfy itself that the port security plan is implemented.

(2) Any person who is identified as being responsible for a measure contained in a port security plan, as required by regulation 36(2)(f), must implement that measure.

Review of the port security assessment and port security plan

36 C.—(1) A Port Security Authority must complete a review of the port security assessment and the port security plan—

(a) at each meeting of the Port Security Authority;

(b) within 30 days of a major operational change in the port;

(c) within 30 days of a major structural change in the port;

(d) within 30 days of a major security incident at the port;

(e) within 30 days of any written request of the Director General; and

(f) not more than 5 years after that assessment was last approved or that plan was last approved.

(2) A review of a port security assessment under paragraph (1)(a) must consist of a review of the security risks highlighted in the port security assessment, the likelihood of these security risks occurring, the impact such an occurrence would have and the actions to be taken to address those security risks.

(3) A review of a port security assessment under paragraph (1) (b), (c), (d), (e) or (f) must consist of a review of the matters that the Port Security Authority is required to take into account by regulation 34(2).

(4) A review of a port security plan under paragraph (1) must consist of a review of the matters that the Port Security Authority is required to comply with under regulation 36(2).

(5) Following a review under paragraph (1) the Port Security Authority must amend the port security assessment and port security plan as appropriate.

(6) Where a port security plan or a port security assessment has been reviewed under paragraph (1) (b), (c), (d), (e) or (f), the Port Security Authority must request approval from the Director General for the port security plan or port security assessment (as amended if appropriate under paragraph (5)) no later than 30 days after the deadline for undertaking the review specified in that provision.

(7) The provisions of regulation 34(7),(8),(9) and (10) apply to a request for approval from the Director General of a port security assessment following a review of that port security assessment under paragraph (1)(b), (c), (d), (e) or (f) as they apply to a request for approval under regulation 34(6).

(8) The provisions of regulation 36 A (2),(6),(7),(8) and (9) apply to a request for approval from the Director General of a port security plan following a review of that port security plan under paragraph (1)(b),(c),(d), (e) or (f) as they apply to a request for approval under regulation 36 A (1).

(9) The Port Security Authority may appoint a recognised security organisation to carry out a review of the port security assessment or port security plan on its behalf.

(10) In this regulation—

(a) “major operational change” means a major change to a commercial maritime transport operator or its operations that will have an impact on the security of the port; and

(b) “major structural change” means a major change to any physical structures in the port that will have an impact on the security of the port.

Security clearance and protective marking of documents

36 D.—(1) A person who carries out security inspections of a port, or handles confidential information relating to the security of a port, must be approved for such work by the Director General.

(2) A person who creates pursuant to these Regulations any document that relates to the security of a port must ensure that the document is clearly marked so as to indicate the degree of sensitivity with which that document is to be treated.

(3) In determining whether paragraph (2) has been complied with, account shall be taken of any Guidance issued by the Director General on the protective marking of documents.

Regulation 37

Regulation 37 is amended by inserting a new regulation 37A as follows:

Offences in relation to prohibited articles

37 A.—(1) It is an offence for a person, without lawful authority or reasonable excuse, to have with them when attempting to enter or when in a controlled building or restricted area, any prohibited article.

(2) A person guilty of an offence under this regulation is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months; or

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years.

Regulation 38

Reference to Minister under regulation 38 (d) and (f) is amended by replacing it with the words Director General as follows:

Port facility operator- further duties.

38 (d) provide to the Director General the information necessary for the conduct of a security assessment of the port facility in accordance with regulation 34;

38 (f) report any significant security threat, breach of security or security incident to the

Director General:

Regulation 39

Regulation 39 is repealed by replacing it with a new regulation 39 as follows:

Port security officer

39. (1) A Port Security Authority must appoint a person to be the port security officer for the port.

(2) The Port Security Authority must notify the Director General of any appointment made under paragraph (1) within 30 days of that appointment and request approval for the appointment.

(3) If the Director General fails to give or refuse approval within 30 days of receipt of a request under paragraph (2), the Director General shall be deemed to have approved that appointment.

(4) If, within 30 days of receipt of a request made under paragraph (2) the Director General gives the Port Security Authority notice of refusal to approve the appointment, the appointment of the port security officer terminates and the Port Security Authority must appoint under paragraph (1) a new person to be the port security officer for the port within 30 days of receiving that notice.

(5) A person may be appointed and approved as a port security officer under this regulation for more than one port.

Regulation 40

Regulation 40 is repealed by replacing it with a new regulation 40 as follows:

Functions of the port security officer

40. (1) A port security officer for a port—

(a) is the point of contact for port security related issues; and

(b) must co-operate with—

(i) port facility security officers of port facilities situated in the port;

and

(ii) security managers of port related areas (if any) for the port.

(2) A port security officer for a port may require a port facility security officer of a port facility situated in the port or a security manager of a port related area for the port, to furnish him with such information as he may consider necessary to carry out his functions.

Regulations 44, 45, 48, 55, 56, 57, 58, 59 and 60

The word Minister under regulation 44 (3), 45 (2) (b), 48 (1), 48 (1)(a), 48 (1) (d), 48 (2), 48(3), 48 (4), 48 (5), 48 (6), 55 (1), 56 (1) , 56 (2), 56 (3), 57 (1), 57 (2), 57 (3), 57 (4), 57 (5), 57 (6), 58 (7), 58 (8), 58 (9), 59 (2), 59 (3), 59 (4), 60 (a) and 60 (d) is amended and replaced with the words **Director General and will thus read as follows:**

Regulation 44

Record keeping.

44. (3) The port facility security officer shall ensure that the records are kept for at least two years after they are made and make them available to the **Director General** on request.

Regulation 45

Communications.

45. (2) (b) with the **Director General** and local law enforcement authorities.

Regulation 48

Requirement to provide information.

48. (1) Without prejudice to regulation 33, but subject to section 9.8 and 9.8.1 of part A of the ISPS Code (providing— that ship security plans will not be subject to inspection except in limited circumstances) the **Director General may, by notice in writing served on any of the following persons:**

(a) the owner, charterer, manager or master of any ship which is in, or appears to the

Director General to be likely to enter, a port facility;

d) any person who is permitted to have access to a restricted area of a port facility for the purposes of the activities of a business carried on by him, require that person to provide the Director General with such information specified in the notice as the Director General may require in connection with the exercise by the Director General of his functions under this Part.

(2) A notice under paragraph (1) shall specify a date before which the information required by the notice is to be furnished to the Director General.

(3) Any such notice may also require the person on whom it is served, after he has furnished to the Minister the information required by the notice, to inform the Director General if at any time the information previously furnished to the Director General (including any information furnished in pursuance of a requirement imposed by virtue of this regulation) is rendered inaccurate by any change of circumstances (including the taking of any further measures for purposes of this Part or the alteration or discontinuance of any measures already being taken)

(4) In so far as such a notice requires further information to be— 6 furnished to the Director General in accordance with paragraph (3), he shall require that information to be furnished to him before the end of such period as is specified in the notice for the purposes of this regulation.

(5) A notice served on any person under paragraph (1) may at any time—

(a) be revoked by a notice in writing served on him by the Director General;

(6) The port facility security officer may in like manner require the owner, charterer, manager or master of any Kenyan ship to provide him with information, and paragraphs (1) to (5) shall apply as if references to the port facility security officer were references to the Director General.

Regulation 52

The word restricted zone under regulation 52 is amended to read restricted area as shown below:

Unauthorized presence in restricted areas.

52. (1) (a) go, with or without a vehicle or ship, onto or into any part of a restricted area zone of a port facility except with the permission of the port

facility operator or any person acting on behalf of the port facility operator and in accordance with any conditions subject to which that permission is for the time being granted; or

(2) Paragraph (1) (a) shall not apply unless it is proved that, at the material time, notices stating that the area concerned was a restricted area was posted so as to be readily seen and read by persons entering the restricted area.

(3) For the purposes of this Part any person is permitted to have access to a restricted area of a port facility if he is permitted to enter that area, or if arrangements exist for permitting any of his employees or agents to enter the area.

Regulation 55

Bilateral or multilateral agreements

55. (1) The Director General may, when implementing these Regulations, conclude in writing bilateral or multilateral agreements with other Contracting Governments on alternative security arrangements covering short international voyages on fixed routes between port facilities located within their territories.

Regulation 56

Equivalent security arrangements.

56. (1) The Director General may allow a particular ship or a group of Kenyan ships to implement other security measures equivalent to those prescribed in these Regulations, provided such security measures are at least as effective as those prescribed in these Regulations and the Director General, where he allows such security measures, shall communicate to the Organization particulars thereof.

(2) When implementing these Regulations, the Director General may allow a particular port facility or a group of port facilities located within Kenya, other than those covered by an agreement concluded under regulation 56, to implement security measures equivalent to those prescribed in these Regulations, provided such security measures are at least as effective as those prescribed in these Regulations as read together with part A of the ISPS code.

(3) Where the Minister allows the security measures under paragraph (2), the Director General shall communicate to the Organization particulars thereof.

Regulation 57

Communication of information.

57. (1) The **Director General** shall, not later than the 1st July 2004, communicate to the Organization and shall make available for the information of Companies and ships:

(2) The **Director General** shall, not later than the date referred to in paragraph (1), communicate to the Organization the names and contact details of any recognized security organizations authorized to act on his behalf together with details of the specific responsibility and conditions of authority delegated to such organizations and such information shall be updated as and when changes relating thereto occur.

(3) The **Director General** shall, not later than the date referred to in paragraph (1), communicate to the Organization a list showing the approved port facility security plans for the port facilities located within their territory together with the location or locations covered by each approved port facility security plan and the corresponding date of approval and thereafter shall further communicate when any of the following changes take place:

(4) The **Director General** shall, at five year intervals after 1st July 2004, communicate to the Organization a revised and updated list showing all the approved port facility security plans for the port facilities located within their territory together with the location or locations covered by each approved port facility security plan and the corresponding date of approval (and the date of approval of any amendments thereto) which will supersede and replace all information communicated to the Organization, pursuant to paragraph (3), during the preceding five years.

(5) The **Director General** shall communicate to the Organisation information that an agreement under regulation 55 has been concluded and the information communicated shall include—

(6) Where the **Director General** allows, under the provisions of regulation 56, any equivalent security arrangements with respect to a ship entitled to fly the Kenyan flag or with respect to a port facility located within Kenyan territory, he shall communicate to the Organization particulars thereof.

Regulation 58

Continuous Synopsis Record.

58. (7) In case of any changes relating to the entries referred to in sub-paragraph (a) of paragraph (4) the **Director General** shall issue, as soon as is practically possible but not later than three months from the date of the change, to the ships entitled to fly the Kenyan flag either a revised and updated version of the Continuous Synopsis Record or appropriate amendments thereto.

(8) In case of any changes relating to the entries referred to in sub-paragraph (a) of paragraph (4) the **Director General**, pending the issue of a revised and updated version of the Continuous Synopsis Record, shall authorize and require either the Company or the master of the ship to amend the Continuous Synopsis Record to reflect the changes.

(9) In such cases referred to in paragraph (6), after the Continuous Synopsis Record has been amended the Company shall, without delay, inform the **Director General** accordingly.

Regulation 59

Transfer of flag by ship.

59. (2) When a ship is to be transferred to the flag of another State, the Company shall notify the Administration of the name of the State under whose flag the ship is to be transferred so as to enable the **Director General** to forward to that State a copy of the Continuous Synopsis Record covering the period during which the ship was under their jurisdiction.

(3) When a ship is transferred to the flag of another State the Government of which is a Contracting Government, the **Director General** shall transmit to the Administration as soon as possible after the transfer takes place a copy of the relevant Continuous Synopsis Record covering the period during which the ship was under Kenyan jurisdiction together with any Continuous Synopsis Records previously issued to the ship by other States.

(4) When a ship is transferred to the flag of another State, the **Director General** shall append the previous Continuous Synopsis Records to the Continuous Synopsis Record to the Continuous Synopsis Record the **Director General** will issue to the ship so to provide the continuous history record intended by this regulation.

Regulation 60

Offences by the company.

60. Any Company which fails, in relation to each *of* its ships—

(a) To provide to the **Director General** the information required by regulation 58(4) if requested by the **Director General**;

(b) to inform the **Director General** *of* the changes referred to in regulation 58(6);

(c) to make the changes in the Continuous Synopsis Record as he is required to make under regulation 58(6);

(d) to inform the **Director General** as is required by regulation 58 (9); or (e) to ensure the Continuous Synopsis Record is left on the ship and is available for inspection as required by regulation 58(5), commits an offence.

THE FIRST SCHEDULE

Regulation 2

Regulation 2 (1) of the first schedule is amended by replacing the word Minister with the words port security authority.

The word Minister at regulation 2 (4) (d) is amended and replaced with the words Director General and will thus read as follows:

2 (4) (d) Has the authority to act on instructions received from the Director General.

Regulations 3, 4, 5, 19, 25, 27, 45 and 50

The word Minister under regulations 3 (1), 3 (4) (d), 4 (4) (d), 5 (4) (d), 19 (2) (b), 25 (a), 27, 45

(3) and 50 (b) is amended and replaced with the words Director General and will thus read as follows:

Regulation 3

3. (1) Before requesting the Director General to approve a security plan, a port service provider shall designate, in writing, a person as security officer (port service provider security officer or PSPSO).

3 (4) (d) has the authority to act on instructions received from the Director General.

Regulation 4

4 (4) (d) has the authority to act on instructions received from the Director General.

Regulation 5

5 (4) (d) has the authority to act on instructions received from the Director General or ship operator.

Regulation 19

19 (2) (b) A report indicating compliance or Non-compliance with the maritime security level is made to the Director General;

Regulation 25

25. A port facility security plan shall set out, for the purpose of coordinating security -related activities, a mechanism for consultation—

(a) Between the port security authorities and the Director General.

Regulation 27

27. A port facility security plan shall set out, in relation to maritime security levels 2

and 3, the additional security measures That the operator will implement if the Director General declares that Maritime security level 2 or 3 is in force for the port facility.

Regulation 45

45 (3) A ship security plan shall set out how the CSO will communicate with the master of the ship or the Director General or a port facility or service provider acting on behalf of the Director General;

Regulation 50

50 (b) the additional security measures that the ship will implement if the Director General declares that maritime security level 2 or 3 is in force for the ship.

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**THE MERCHANT SHIPPING (MARITIME
SECURITY)**

AMENDMENT

REGULATIONS, 2016

ARRANGEMENT OF REGULATIONS

Preliminary

1. Citation.
2. Interpretation.

Part I—Special Measures to Enhance Maritime Security

General

3. Application.
4. Responsibilities of the **Director General**.

4A. Port Security Authorities.

4B. Duty to apply for or nominate membership of a port Security Authority.

**4C. Duty to apply for or nominate
membership of a port Security
Authority.**

4D. Port Security Authority: Objection to decisions of the

4 E. Port Security Authority fees

5. Threat to ships

Maritime Security Levels and Security Directions.

6. Maritime security levels.

7. Minister may declare maritime security level, 2 or 3.

8. Requirement for consultation.

**8A. Power to require information
from a Port Security Authority.**

8B. Power of the Port Security Authority to require information.

9. When maritime security level in force.

- 10. Maritime security level declaration for port covers all port operations.
- 11. Security levels and complying with plans.
- 12. Maritime security level 1, 2 or .3 applies with security directions.

13 Requirements for ships.

Notifying Maritime Security level 2 and 3 Declarations and Revocations

- 14. Notifying declarations covering ports.
- 15. Notifying regulations covering security regulated ships.
- 16. Notifying regulations covering areas within ports.
- 17. Notifying revocations.
- 18. Communicating declarations and revocations.

Ships and Ship Security Plan

19 . Companies shall comply with the relevant requirements.

- 20. Responsibilities of company and ship security officers.
- 21. Ship security survey and assessment.
- 22. Ship security plan.
- 23. Master's discretion for ship safety and security.
- 24. Ship security alert system.
- 25. Ship security records.

International Ship Security Certificates.

- 26. Verification for ships.
- 27. Issue, endorsement, duration and validity of certificate.

- 28. Certificates issued or endorsed on behalf of another Government.
- 29. Interim certification.
- 30. Prohibition on proceeding to sea without an appropriate certificate.

Control and Compliance Measures

- 31. Control of ships in port.
- 32. Ships intending to enter a port.
- 33. Additional control and compliance provisions.

Port Facilities

- 34. Port facility Security assessment.
- 35. Port facilities: duties of port facility operator.
- 36. Port Security Plan

36 A. Approval of the port security plan.

36 B. Implementation of the port security plan.

36 C. Review of the Port Security Assessment and Port security plan

36 D. Security clearance and protective marking of documents.

37. Offences.

37 A. Offence in relation to prohibited articles

38. Port facility operator - further studies.

39. Port security officer.

40.. Functions of the port security officer.

Security drills and exercises

41. Security drills and exercise requirements.

- 42. Security drills.
- 43. Security exercises.
- 44. Record keeping.
- 45. Communications.
- 46. Coordination of security procedures during interfacing.

Declarations of security

- 47. Declarations of security.

Enforcement

- 48. Requirement to provide information.
- 49. Powers of inspection.
- 50. False statements relating to baggage, cargo e.t.c.
- 51. False statements in connection with identity documents
- 52 unauthorized presence in restricted zones.
- 53. Offences relating to unauthorized persons.
- 54. Offences and Penalties.

Supplementary

- 55. Bilateral or multilateral agreements.
- 56. Equivalent security arrangements.
- 57. Communication of information.

P58. Continuous synopsis record.

Part II—Continuous Synopsis Record

- 59. Transfer of flag by ship.

60. Offences by the company.

61. Offences by the master.

THE MERCHANT SHIPPING (MARITIME SECURITY)

AMENDMENTREGULATIONS, 2016

PRELIMINARY

Citation.

1. These regulations may be cited as the merchant Shipping (Maritime security) **Amendment** Regulations, **2016** and shall be deemed to have come into effect on **on a date prescribed by the Cabinet Secretary in the Official Kenya Gazzete.**

Interpretation.

2. (1) in these regulations unless the context otherwise requires—

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

“Administration” means the maritime administration of the State,
other than Kenya, whose flag the ship is entitled to fly;

“**Director General**” means the **person appointed as such under Section 11 of the Kenya Maritime Authority Act** for the purposes of these regulations;

“bulk carrier” means a ship which is constructed generally with a single deck, top side tanks and hopper side tanks in cargo spaces, and is intended primarily to carry dry cargo in bulk and includes such types as ore carriers and combination carriers;

“certificate” means an international ship security certificate

(ISSC) or an interim international ship security certificate issued
with accordance with regulation 29;

“chemical tanker” means a cargo ship constructed or adapted and
bused for the carriage in bulk of any liquid product listed in chapter 17

of the international bulk chemical (IBC) code;

“company” means the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed 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 chapter XI-2 of the Safety Convention, the ISPS Code and these Regulations;

“company security officer” means the person designated by the company for ensuring that a ship security assessment is carried out; that a ship security plan is developed, submitted for approval, and thereafter implemented and maintained, and for liaison with the port facility security officers and the ship security officer;

“controlled building” means a building or part of a building in a port that has been-

- (a) **Described as a controlled building or a port facility security plan that has been integrated into a port security plan, or**
- (b) **Designated as a controlled building**

“Contracting Government” means the government of a state which is Party to the International Convention for the Safety of Life at Sea, (SOLAS), 1974, as amended;

“declaration of security” means an agreement reached between a ship and either a port facility or another ship with which it interfaces, specifying the security measures each will implement;

“designated” means **designated by the Director General in an order;**

“directed party” means a person who has been served with a direction of the Director General in relation to a harbor area or a harbor operation which is in force.

“enforcement order” means an order issued by the Minister prohibiting or restricting certain action by a person named in the enforcement order or requiring the person named in the enforcement order to take specified action;

“gas carrier” means a cargo ship constructed or adapted for carriage in bulk of any liquefied gas or other liquid product in chapter 19 of the International Gas Carrier Code (IGC);

“high speed craft” means a vessel capable of a maximum speed in meters per second (m/s) equal to or exceeding:

$3.7 \sqrt{0.1667}$

Where:

∇ = displacement corresponding to the design waterline (m³);

“in writing” means printed, typewritten, or otherwise visibly represented, copied, or

reproduced, including by facsimile or electronic mail or other electronic means;

“internal waters”, in relation to Kenya, means Kenyan waters landward of the baselines for measuring the breadth of its territorial sea;

“ISM Code” means the International Management Code for the Safe Operation of Ships and for Pollution Prevention as adopted by Resolution A.741 (18) of the IMO and as amended from time to time and to which Kenya is a party;

“ISPS Code” means the International Code for the Security of Ships and of Port Facilities, as amended from time to time;

“Kenyan waters” means—

- (a) The internal waters;
- (b) The territorial waters; and
- (c) The waters of the exclusive economic zone of the Republic;

“mobile offshore drilling unit” means a mechanically propelled unit or ship that is capable of engaging in drilling for the exploration for, or exploitation of, resources beneath the seabed such as liquid or gaseous hydrocarbons, sulphur, salt, when not on location;

**“port” for the purpose of these Regulations
means an area of land and water within the**

boundaries that have been identified in the
Kenya Ports Authority Act, chapter 391 of the
laws of Kenya and that contains at least one port
facility that is covered by an approved port
facility security plan.

"port **security** authority" means **a body that has been designated as a port**
security Authority for a port

"port facility" means a location, where the ship/port interface takes
place and includes areas such as anchorages, waiting berths and
approaches from seaward as appropriate **and**

for this purpose “ship/port interface” means the interactions that occur when a ship is directly and immediately affected by actions involving the movement of persons or goods or the provision of port services to or from the ship;

“port facility operator” means any person operating a port facility or such other person as may be designated for the purposes of these Regulations as a port facility operator for one or more port facilities by the Minister;

"port facility security assessment" means an assessment of the security of a port facility (or more than one port facility) carried out in accordance with regulation 34;

"port facility security officer" means the person identified as responsible for the development, implementation, revision and maintenance of the port facility security plan and for liaison with the ship security officers and company security officers in accordance with section 17.1 of Part A of the ISPS Code;

“port facility security plan” means a plan developed in accordance with the provisions of Section 16 of Part A of the ISPS Code, and “approved port facility security plan means a plan that has been approved by the Director General in accordance with the requirements of section 16.2 of Part A of the ISPS Code

“port related area” means an area designated as such by the Director General;

"port service provider” means any operator who is involved in a

ship/port interface but who is not a port facility operator and includes the following—

- (a) Commercial vessel operators, including lighter or barge operators;
- (b) Cargo handling operators;
- (c) tug operators;
- (d) Towage and salvage operators; and
- (e) Any person who provides any of the following port service:—
 - (i) Offshore provisioning of ships

(ii) Offshore transshipment of persons, or goods; and

(iii) Offshore ship repairer;

“port service provider security officer” means the person designated by the port service provider as responsible for the development, implementation, revision and maintenance of the port Service provider security plan and for liaison with the ship security' officer, port facility security officer and the company security officer, as applicable;

“prohibited article” means-

- (a) **any firearm, or any article having the appearance of being a firearm, whether capable of being discharged or not,**
- (b) **any explosive, any article manufactured or adapted so as to have the appearance of being an explosive, whether it is capable of producing a practical effect by explosion or not, and any article marked or labelled so as to indicate that it is or contains an explosive, or**
- (c) **any article (not falling within paragraph (a) or (b)) which is capable of use for causing injury to or incapacitating a person or for destroying or damaging property, or intended by the person having it with them for such use, whether by that person or by any other person;**

"recognized security organization" means an organization **that has been appointed by the Director General for the purposes of**

"restricted **area** " means **an area that has been-**

- (a) **Described, in accordance with section 16.3.2 of Part A of the ISPS Code, as a restricted area in a port facility security plan that has been integrated into a port security plan, or**

(b) **Designated as a restricted area:**

"Safety Convention" means the International Convention for safety of Life at Sea

(SOLAS) 1974 **as amended from time to time;**

**"security incident" means any suspicious act or circumstance in the security of
a;**

- (a) Ship, including a mobile offshore drilling unit and high-speed craft; or
- (b) port facility; or
- (c) Crew, passengers or other persons working on board ship; or
- (d) ship-port interface; or
- (e) ship-to-ship activity;

“all ships” when used in these Regulations, means any ship to which these Regulations apply and for the purposes of these regulations reference to the Administrator shall in relation to Kenyan ships be reference to the Director General;

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

“security level 1” means the level for which minimum appropriate protective security measures shall be maintained at all times;

“security level 2” means the level for which appropriate additional protective security measures shall be maintained for a period of time as a result of heightened risk of a security incident;

“security Level 3” means the level for which further specific security measures shall 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;

"security regulated ship" or "security regulated port" means—

- (i) A Kenyan regulated ship;
- (ii) A Kenyan regulated port facility;
- (iii) A foreign regulated ship;

“ship” means every description of vessel⁸⁹, 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; and

"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;

"territorial waters" has the meaning assigned to it under the

Maritime Zones Act, Cap.371; and

"tons" means gross tonnage.

(2) for the purposes of these Regulations, references to the administration shall in relation to Kenyan ships be reference to the Director General.

PART I—SPECIAL MEASURES TO ENHANCE MARITIME SECURITY

General

1

Application.

3. (1) Subject to paragraph (6), Part 1 of these Regulations applies to—

(a) the following types of ships engaged on international voyages—

(i) passenger ships, including high-speed passenger craft,

(ii) Cargo ships, including high-speed craft of 500 tons or more; and

(iii) Mobile offshore drilling units; and

(b) port facilities serving such ships engaged on international voyages.

(1A) These Regulations apply to ports in Kenya and every reference to a port includes a reference to any port related area that has been designated in relation to that port.

(2) Part 1 of these Regulations shall also apply to any port specified in a notice issued by the Minister which, although used primarily by ships not engaged on international voyages, is required occasionally to serve ships arriving or departing on international voyages.

(3) A notice referred to in paragraph (2) shall not be issued without a port facility security assessment for that port facility having been done in accordance with regulation 34 and the notice shall specify the extent of application of this Part and the relevant provisions of these Regulations relevant to the facility.

(4) any notice under paragraph (2) shall not compromise the level of security intended to be provided by these Regulations.

(5) Regulations 31, 32 and 33 shall also apply to a port facility not falling within paragraph (1) **(b) or (2) of this regulation.**

(6) (a) These regulations do not apply to installations used by the Kenya Defence Forces or members of a visiting Force, in ports.

(b) In this regulation Kenya Defence Forces include the Kenya Army, the Kenya Airforce and the Kenya Navy while the visiting force means any body, contingent or detachment of the forces of a country for the time being present in Kenya on the invitation of the Government of Kenya.

(c) other ships owned or operated by parties to the Safety Convention and used only on Government non commercial service.

Duties of the Director General.

4. (1) Without prejudice to any other duties under these regulations the **Director General** shall **in consultation with the National Security Council through the port security**

authority:

- (a) set security levels and ensure the provision of

security level information to port facilities within Kenya, and to ships prior to entering a port whilst in a port within Kenya;

- (b) When changes in security level occur, update security level information as the circumstance dictates;
- (c) Determine which of the port facilities located within Kenya are required to designate a port facility security officer (PFSO) who will be responsible for the preparation of the port facility security plan;
- (d) Determine which of the port service providers are required to prepare port service provider security plans;
- (e) Approve the port facility security plan (PFSP) and any subsequent amendments to a previously approved plan;
- (f) Approve port service provider security plans and any subsequent amendments to a previously approved plan; and
- (g) Serve as a contact point for Kenya and to other states and to facilitate follow up and disseminate information on the application of the maritime security measures laid down in these Regulations.

(2) The **Director General** may delegate to a recognized security organization his duties under these Regulations, except—

- (a) Setting of the applicable security level for port facilities or ship to ship interface in Kenyan waters;
- (b) Approving a port facility security assessment and subsequent amendments to an approved assessment;
- (c) determining the port facilities which will be required to designate a port facility security officer;
- (d) Approving a port facility security plan and subsequent amendments to an approved plan;
- (e) Approving port service providers security assessments and security plans.

(f) exercising control and compliance measures pursuant to regulations 31, 32 and 33;

and

(g) Establishing the requirements for a declaration of security.

Port Security Authorities

Port security Authorities

4 A. A body may be designated as the Port Security Authority for more than one port.

Duty to apply for or nominate membership of a port Security Authority

4B. An application for membership of the Port Security Authority for a port must be made to the Director General by the port facility security officer of each port facility within the port, or an individual nominated by that port facility security officer or to represent the port facility on the Port Security Authority;

Duty to apply for or nominate membership of a Port Security Authority

4 C. An application for membership of the Port Security Authority for a port must be made to the Director General by the port facility security officer of each port facility within the port, or an individual nominated by that port facility security officer or by the owner of the port facility plan to represent the port facility on the Port Security Authority

Port Security Authority: Objection to decisions

4 D.—(1) A person affected by a decision of a Port Security Authority (“the objector”) may require the Director General to consider an objection to that decision by serving on the Director General a notice in writing within 30 days of the date on which the decision was made.

(2) A notice under paragraph (1) must be copied to the Port Security Authority.

(3) A notice under paragraph (1), and the copy served on the Port Security Authority under paragraph (2), must be accompanied by a statement in writing—

(a) specifying the grounds on which the objector is objecting to the decision; and

(b) providing such further information as may be appropriate.

(4) The Port Security Authority may provide the Director General with a response to the objector's notice under paragraph (1) within 30 days of receipt of that notice, and a copy of any such response must be sent at the same time by that Port Security Authority to the objector.

(5) If the Director General requests any further information that the Director General considers necessary from either party that information must be provided to the Director General within 30 days of receipt of such a request or such longer time as the Director General may allow.

(6) If the information requested under paragraph (5) is not supplied within 30 days, or such longer time as the Director General may have allowed, the Director General may serve a notice in writing either—

(a) confirming the decision;

(b) directing the Port Security Authority to reconsider the decision; or

(c) imposing a new or modified decision on the Port Security Authority.

(7) If, no later than 30 days after the latest of—

(a) the date of service of a notice under paragraph (1),

(b) the date of service of a response (if any) under paragraph (4), and

(c) the date that information requested under paragraph (5) is provided,

either party so requests in writing to the Director General, the Director General must allow both parties the opportunity of appearing before and being heard by a person appointed by the Director General for that purpose.

(8) After considering the notice and statement served under paragraphs (1) and (3), any response provided under paragraph (4), any further information provided under paragraph (5) and the report of any person appointed under paragraph (7), the Director General must serve on both parties a notice in writing either—

(a) confirming the decision;

(b) directing the Port Security Authority to reconsider the decision; or

(c) imposing a new or modified decision on the Port Security Authority.

(9) A notice served by the Director General under paragraph (8) shall be binding on the Port Security Authority and the objector.

(10) For the purposes of this regulation “a decision” is a decision of the Port Security Authority—

(a) that will result in the adoption or amendment of a port security plan; or

(b) regarding the charging of fees.

Port Security Authority: Fees

4E.—(1) Subject to paragraph (2), a Port Security Authority may charge a port facility security officer, directed party or security manager such a fee in connection with, or incidental to, carrying out any function under these Regulations as it may decide.

(2) The fee charged under paragraph (1) must not exceed the costs reasonably incurred or to be incurred by the Port Security Authority in carrying out the function in question.

(3) A fee charged under paragraph (1) shall be—

(a) due upon written demand; and

(b) recoverable only as a civil debt.

Threat to ships.

5. (1) The Minister shall set maritime security levels and ensure the

provision of maritime security level information to ships operating in or having communicated an intention to enter Kenyan waters.

(2) The Minister shall provide a point of contact through which such ships can request advice or assistance and to which such ships can report any security concerns about other ships, movements or communications.

(3) Where a security threat has been identified, the Minister shall advise the ships concerned and their Administrations of—

(a) the current security level.

(b) any security measures that should be put in place by the ships concerned to protect themselves from security threat, in accordance with the provisions of part A of the ISPS Code and these Regulations; and

(c) Security measures that the Minister has put in place, as appropriate.

Maritime Security Levels and Security Directions

6. Unless a declaration under regulation 7 provides otherwise, maritime security level 1 shall be in force for each designated—

(a) Kenyan ship;

(b) Port facility; and

(c) Port service provider.

Director General may declare maritime security level, 2 or 3.

7. (1) The **Director General** may, in writing, declare that maritime security level 2 or maritime security level 3 shall be in force for, one or more of the following as specified in the declaration:—

(a) A port facility;

(b) An area within a port facility;

- (c) A Kenyan regulated ship;
 - (d) A port service provider; and
 - (e) Operations conducted by a port service provider within, or in connection with, a port facility.
- (2) the **Director General** may in writing, declare that maritime security level 3 is in force for a foreign regulated ship.
- (3) The **Director General** shall not make a declaration under paragraph (1) or (2) unless it is appropriate for a higher level of security to be put into place for the port facility, ship, area or port service provider concerned because a heightened risk of unlawful interference with maritime transport has been identified.

Requirement for consultation.

8. Before making a declaration under regulation 7 (1) or (2), the **Director General** shall make appropriate Consultation with the **National Security Council**.

8 A. Power to require information from a Port Security Authority

(1) The Director General may, by notice in writing, require a Port Security Authority to provide information and documentation relating to—

(a) the security of the port;

(b) the proceedings of that Authority; or

(c) the membership of that Authority.

(2) A Port Security Authority must provide the Director General with any information or documentation requested under paragraph (1) within 30 days of the notice being served on it, or such longer period as the Director General may allow.

Power of the Port Security Authority to require information

8B. (1) A Port Security Authority may, by notice in writing, require a port facility security officer, directed party or security manager, to furnish it with such information relating to

the security of the port in relation to which that Authority has been designated, as that Authority may consider necessary for the carrying out of its functions.

(2) A person served with a notice under paragraph (1) must provide the Port Security Authority with the information requested in that notice within 30 days of that notice being served on that person, or such longer period as the Port Security Authority specifies in that notice.

When maritime security level in force.

9. If a declaration is made under regulation 7(1) or (2), the level declared in the Declaration shall remain in force for the port facility, ship area, port service provider or operations covered by the declaration until either of the following occurs—

- (a) period (if any) specified in the declaration expires; or
- (b) the declaration is revoked in writing by the **Director General**.

Maritime security level declaration for port covers all port operations.

10. If the **Director General** declares that a maritime security level is in force for a Maritime security facility that maritime security level shall be in force for each of the following within the port facility—

- (a) Every Area and every security regulated ship; and
- (b) any operations conducted by a port service provider.

Security levels and complying with plans.

11. (1) For The purposes of regulation 36, if—

- (a) a facility operator or a port service provider is required to comply with a security plan; and

- (b) the minister makes a declaration under regulation 7(1); and
- (c) the effect of the declaration is that maritime security level 2 or 3 is in force for—
 - (i) port facility operator;

(ii) the provider.

(iii) the area controlled by either facility operator or the provider; or

(iv) Port operations of the facility operator or the service provider,

the port facility operator or the port service provider security plan is not complied with unless the facility operator or provider implements the measures set out in the plan for the area or operations, as the case requires, for that maritime security level.

2. for the purposes of regulation 22, if—

(a) a ship security plan is in force for a Kenyan ship; and

(b) the minister makes a declaration under regulation 7(1); and

(c) the effect of the declaration is that maritime security level 2 or 3 is in force for the ship.

the ship security plan for the ship is not complied with unless the measures set out in the plan for that maritime Security level are implemented.

Maritime security level 1, 2 or 3 applies with security directions.

12. For the avoidance of doubt, if maritime security level 1, 2 or 3, (hereinafter referred to as the existing security level) is in force for—

(a) a port facility

(b) a Kenyan regulated ship.

(c) an area within a port facility.

(d) a port service provider, or

(e) the operations of a port service provider.

and a security direction is given to or in relation to the port facility, ship, area, port service provider or operation; the existing security level shall continue to be in force.

Requirements for ships.

13. (1) Ships shall comply with the relevant requirements of this part and of regulations 19 to 25 as read together with Part A of the ISPS Code.

(2) Prior to entering a port or whilst in a port within the territory of any other state, a ship shall comply with the requirements for the security level set by that State, if such security level is higher than the security level set by the **Director General**, for that ship.

(3) Ships shall respond without undue delay to any change to a higher security level.

(4) Where a ship is not in compliance with the requirements of regulations 19 to 25, as read together with Part A of the ISPS Code or cannot comply with the requirements of the security level set by the **Director General** or other Contracting Government and applicable to that ship shall notify the appropriate competent authority prior to conducting any ship/port interface or prior to entry into port, whichever occurs earlier.

(5) Where there is a breach of paragraphs (1) to (4) of this regulation in relation to a ship, then the company and the master shall each be guilty of an offence.

Notifying Maritime Security Level 2 and 3, Declarations and Revocations

Notifying declarations covering Ports.

14. (1) whenever the **Director General** declares that a maritime security level is in force for a port facility, the **Director General** shall, as soon as practicable, notify—

(a) **the Port Security Authority** and the port facility operator; and

(b) each port service provider who is required to have a security plan and who—

(i) controls an area within the boundaries of the port facility; or

(ii) operates within the boundaries of the port facility.

(2) Whenever the **Director General** gives a port facility operator notice of a declaration under paragraph (1), the port facility operator shall soon as practicable, give notice of the declaration to—

- (a) every port service provider who is covered by the port facility operator's security plan and who—
 - (i) controls an area within the boundaries of the port;
 - (ii) operates within the boundaries of the port; and
- (b) the master of every security regulated ship that is within the port facility or about to enter the port facility.
- (3) If a port facility operator fails to comply with paragraph (2), the port facility operator commits an offence.

Notifying regulations covering security regulated ships.

15. Whenever the **Director General** declares that a maritime security level is in force for a Kenyan regulated ship or a foreign regulated ship, the **Director General** shall, as soon as practicable, notify—

- (a) The port security Authority and** the ship operator for the ship; or
- (b)** the master of the ship; and
- (c)** if the ship is in port, the port authority.

Notifying declarations covering areas within ports.

16. Whenever the **Director General** declares that a maritime security level is in force for an area within a port facility, the Ministers shall as soon as practicable, notify—

- (a) The port service provider who controls the area; and
- (b) If the port service provider is not the port facility operator, also the port facility operator.

Notifying revocations.

17. (1) whenever—

- (a) the **Director General** has notified a person in terms of regulations 14, 15, 16 that a

maritime security level is in force; and

(b) the **Director General** revokes the declaration concerned, the **Director General** shall, as soon as practicable, notify all persons concerned of the revocation.

(2) Whenever—

(a) a port facility operator has notified a person in terms of regulation 14(2) that a maritime security level is in force; and

(b) the **Director General** revokes the declaration concerned,

the facility operator shall, as soon as practicable, notify all persons concerned of the revocation.

(3) If a port facility operator fails to comply with paragraph (2) the port facility operator commits an offence.

Communicating declarations and revocations.

18. (1) The **Director General** may notify a person of a declaration under regulation 14(1) or

(2) by facsimile, courier or electronic mail.

(2) A port facility operator required to give notice of a under regulation 14(2) may do so by facsimile, courier or electronic mail.

(3) The **Director General** may also notify a person of the revocation of a declaration under regulation 17(1) by facsimile, courier or electronic mail.

(4) A port facility operator required to notify a person of the revocation of a declaration under regulation 17(2) may do so by facsimile, courier or electronic mail.

Ships and Ship Security Plans

Companies shall comply with the relevant requirements.

19. (1) Every Company shall comply with the relevant requirements of this Part and of the First Schedule and in particular and without prejudice to any other duties under this Part, the Company shall ensure that—

(a) a company security officer (CSO) is appointed, and is properly trained and qualified in his duties and responsibilities;

(b) a ship security officer (SSO) is appointed for each of the ships and is properly trained and qualified in his duties and responsibilities;

(c) each ship has a ship security plan (SSP);

(d) the master has available on board, at all times information through which officers duly authorized by any State can establish—

(i) who is responsible for appointing the members of the crew or other persons currently employed engaged on board the ship in any capacity on the business of that ship;

(ii) who is responsible for deciding the employment of the ship; and

(iii) in cases where the ship is employed under the terms of charter party or parties, who are the parties to such charter party or parties.

(2) Any company which fails to comply with this regulation shall be guilty of an offence.

Responsibilities of company and ship security officers.

20. (1) The company security officer shall for each ship under the company's control ensure—

(a) that the ship security officer is kept informed potential threats and other information relevant to the ship's security;

(b) that the ship security assessment and any amendment thereto are done and submitted to **the port security Authority** for approval;

(c) that a ship security plan and any amendment is done and submitted to **the port security Authority** for approval;

(d) that the ship security plan is implemented and amended when necessary;

(e) that security drills and exercises are conducted;

- (f) that the ship's security activities are audited;
- (g) the timely correction of problems identified by audits or inspections;
- (h) the enhancement of security awareness and vigilance within the company;
- (i) that personnel with security responsibilities receive adequate security training to fulfill those responsibilities;
- (j) that there is proper communication and cooperation between the ship, port facility, port service provider and offshore facilities with which the ship interfaces;
- (k) consistency between the security and safety requirements;
- (l) that if a common ship security plan is prepared for more than one ship, the plan accounts for characteristics specific to each ship; and
- (m) that the safe manning document is applied in the development of security procedures.

(2) The ship security officer shall in addition to the duties and responsibilities specified in these Regulations—

- (a) undertake regular security inspections of the ship to ensure that appropriate security measures are maintained;
- (b) maintain and supervise the implementation of the security plan, including any amendments to the plan;
- (c) co-ordinate the security aspects of the handling of cargo ship's stores with other shipboard personnel and with relevant port facility security officers;
- (d) propose modifications to the ship security plan;
- (e) reporting to the company security officer any deficient and Non-conformities identified during internal audits, periodic reviews, security inspections and verifications compliance and implementing any corrective actions;
- (f) enhance security awareness and vigilance on board ship;

- (g) ensure that adequate training has been provided to ship personnel, as appropriate;
 - (h) report all security incidents;
 - (i) co-ordinate implementation of the ship security plan with, company security officer and the relevant port facility security officer; and
 - (j) ensure that security equipment is properly operated, tested, calibrated and maintained, if any.
- (3) Any contravention of this regulation by the company security officer or the ship security officer shall be an offence.

Ship security survey and assessment.

21. The ship security officer appointed under regulation 19(1) (b) shall ensure that an on- scene survey of the ship is conducted to examine and evaluate protective measures, procedures and operations existing on board the ship, including measures, procedures or operations to—

- (a) ensure the performance of all ship security duties;
- (b) control access to the ship, through the use of identification systems or otherwise;
- (c) control the embarkation of ship personnel and other persons and their effects, including personal effects and baggage whether accompanied or unaccompanied;
- (d) supervise the handling of cargo and the delivery of ship's stores;
- (e) monitor Restricted areas and other areas that have restricted access to ensure that only authorized person's have access.
- (f) monitor Deck areas and areas surrounding the ship; and
- (g) ensure the ready availability of security communications, information and equipment.

Ship security plan.

22. (1) On Conclusion of the survey and assessment of the ship, the ship security officer shall prepare a ship security plan taking cognizance of the matters specified in regulation

21.

(2) Every Ship security plan or amendment thereto shall be submitted to the Minister, or to a recognized security organization authorized by the Minister, for approval in accordance with the provisions of the ISPS Code and the First schedule to these regulations.

(3) A Recognized security organization authorized under paragraph (2), shall not have been involved in the preparation of the ship security plan or the amendment in question.

(4) The **Director General** shall determine which changes to an approved ship security plan or to any security equipment specified in the approved plan shall not be implemented unless the relevant amendments to the plan are approved by the Minister and any such changes Shall be at least as effective as those measures prescribed in this part and in the First schedule to these regulations.

(5) Any company which does not comply with paragraph (1) and (2) or otherwise fails to comply with the First Schedule shall be guilty of an offence.

Masters discretion for ship safety and security.

23.(1) The master of a Kenyan ship shall not be constrained by the company, the charterer or any other person from taking or executing any decision which, in the professional judgment of the master, is necessary to maintain the safety and security of the ship.

(2) Such measures may include denial of access to persons (except those identified as duly authorized by a Contracting Government) or their effects and refusal to load cargo, including containers or other closed cargo transport units.

(3) Where, in the professional judgment of the master, a conflict between any safety and security requirements applicable to the ship arises during its operations, the master shall give effect to requirements necessary to maintain the safety of the ship.

(4) In such cases, the master may implement temporary security measures and shall forthwith inform the **Director General** and, if appropriate the Contracting Government in whose port the ship is operating or intends to enter.

(5) Any such temporary security measures under these regulations shall, to the highest possible degree, be commensurate with prevailing security level. When such cases are identified, the **Director General** shall ensure that such conflicts are resolved and possibility of recurrence is minimized.

Ship security alert system.

24. (1) all ships shall be provided with a ship security alert system, as follows

(a) Ships constructed on or after 1 July 2004;

(b)) passenger ships, including high-speed passenger craft, constructed before

1st July 2004, not later than the first survey of the radio installation after 1st July, 2004;(c) Oil tankers chemical tankers, gas carriers, bulk carriers and high speed craft, of

500 tons and upwards constructed 1st July, 2004, not later than the first survey of the installation after 1st July, 2004; and

(d) Cargo ships of 500 tons and upwards and mobile offshore drilling units constructed before 1st July, 2004, not later than the first survey of the radio installation after 1st July, 2004.

(2) the security alert system, when activated, shall—

(a) initiate and transmit a ship-to-shore security alert to a competent authority designated by the **Director General**, which in circumstances may include the Company, identifying the ship, its location and indicating that the security of the ship is under threat or it has been compromised;

(b) not to send any security alert to any other ships;

(c) not raise any alarm on-board the ship; and

(d) continue the ship security alert until deactivated and/or reset

(3) The security alert system shall—

(a) be capable of being activated from the navigation bridge and in at least one other location; and

(b) conform to performance standards not inferior to those adopted by the organization.

(4) The ship security alert system activations points shall be designed so as to prevent the inadvertent initiation of the ship security alert.

(5) The requirement for a ship security alert system may be complied with by use of a radio installation fitted, for compliance with the Act provided—

(a) the radio system used for a ship security alert system shall comply with relevant international standards;

(b) the activation points of a ship security alert system shall operate the radio system so that transmission of a security alert does not require any adjustment of the radio system, such as the tuning of channels or the setting of modes or menu options;

(c) the operation of a ship security alert system shall not impair the functionality of the Global Maritime Distress and Safety System (GMDSS) installation; and

(d) if the ship security alert system is powered from the vessel's main source of electrical power, it shall also be possible to operate the system from another source of power.

(6) When the **Director General** receives notification of a ship security alert relating to a ship entitled to fly the Kenyan flag he shall immediately notify the State or States in the vicinity of which the ship is presently operating.

(7) When the **Director General** receives notification of a ship security alert from a ship which is not entitled to fly the Kenyan flag he shall immediately notify the relevant Administration and, if appropriate, the State or States in the vicinity of which the ship is presently operating.

(8) any contravention of paragraphs (1) to (4) of this regulation shall be an offence by both the company and the master.

Ship security records.

25. (1) A Kenyan regulated ship shall keep a record of the following information in relation to the ship—

- (a) the approved ship security plan for the ship;
- (b) Whether the ship possesses a valid International Ship Security Certificate (ISSC);
- (c) the period of validity, and the name of the issuing authority of the International Ship Security certificate (ISSC) held by the ship;
- (d) the security level at which the ship is operating;
- (e) the security levels at which the ship operated at ports and specific periods during which the ship operated at those levels while conducting ship or port interfaces;
- (f) any special or additional security measures that were implemented by the ship in any port where it conducted ship or port interfaces;
- (g) whether appropriate ship security procedures were maintained during any ship to ship activity; and
- (h) if ship security procedures mentioned in sub-paragraph (g) were maintained, the procedures and the specific periods during which those procedures were maintained.

(2) Ship security records shall be kept on board the ship and shall be available for inspection at the request of the government of a port state, in the circumstances described in regulations 31 to 37, if the port state is a Convention State.

(3) Ship security records shall be kept for a period of 7 years beginning on—

- (a) in the case of a document, the date of the document or, if the document consists of a series of entries, the date when the latest entry is made on the document; or
- (b) in the case of information, the date when the information was obtained or, if the information is part of a document that consists of a series of entries, the date when the latest entry is made on the document.

International Ship Security Certificates

Verification for ship

26. (1) All Kenyan ships to which this Part applies shall be subject to initial, renewal and intermediate verifications in accordance with this regulation and paragraph 19.1.1 of part A of the ISPS Code.

(2) The verification of ships shall be carried out by an officer authorized by the, **Director General** or, if he entrusts it, by a recognized security organization.

(3) The security system and any associated security equipment of the ship after verification shall be maintained to conform with the provisions of regulations 20 and 21 and of the approved ship security plan and after any verification under paragraph (1), no changes shall be made in the security system and in any associated security equipment or the approved ship security plan without the sanction of the **Director General**.

(4) A Kenyan regulated ship is verified for International Ship Security Certificate (ISSC) if—

(a) an authorized officer has inspected the ship; and

(b) the authorized officer has verified that the ship—

(i) is fitted with a ship security alert system in accordance with regulation 24; and

(ii) otherwise meets the requirements determined in writing by the **Director General**; and

(c) the period, determined in writing by the **Director General**, within which the ship must be next inspected has not ended.

(5) In making a determination under paragraph (1), the **Director General** shall have regard to the obligations set out in these Regulations and Chapter XI-2 of the Safety Convention and the ISPS Code.

(6) Any contravention of paragraph (1) or (3) shall be an offence by both the company and master.

**Issue, endorsement, duration and
validity of certificate.**

27. (1) when an initial or renewal verification is satisfactorily completed pursuant to regulation 26 the **Director General** or a recognized security organization acting on his behalf shall issue or, as the case may be, endorse an International Ship Security Certificate.

(2) The International Ship Security Certificate shall be in the prescribed form set out in the Second Schedule.

(3) The International Ship Security Certificate shall be issued for a period specified by the **Director General** which shall not exceed five years, and shall remain valid until—

(a) the International Ship Security Certificate is cancelled by the **Director General**; or

(b) the ship operator ceases to be the operator for the ship.

(4) When the renewal verification is completed within three months before the expiry date of the existing certificate, the new certificate shall be valid from the date of completion of the renewal verification to a date not exceeding five years from the date of expiry of the existing certificate.

(5) When the renewal verification is completed after the expiry date of the existing certificate, the new certificate shall be valid from the date of completion of the renewal verification to a date not exceeding five years from the date of expiry of the existing certificate.

(6) When the renewal verification is completed more than three months before the expiry date of the existing certificate, the new certificate shall be valid from the date of completion of the renewal verification to a date not exceeding five years from the date of completion of the renewal verification.

(7) If a certificate is issued for a period of less than five years, the

r Director General may extend the validity of the certificate beyond the expiry date to the maximum period specified in paragraph (3) provided that the verifications referred to in regulation 26 applicable when a certificate is issued for a period of five years is carried out as appropriate.

(8) If a renewal verification has been completed and a new certificate cannot be issued or placed on board the ship before the expiry date of the existing certificate, the **Director General**, or recognized security organization acting on behalf of the **Director General** may endorse the existing certificate and such a certificate shall be accepted as valid for a further period which shall not exceed five months from the expiry date.

(9) If a ship, at the time when a certificate expires, is not in a port in which it is to be verified, the **Director General** may extend the period of validity of the certificate provided that the extension shall be granted only for the purpose of allowing the ship to complete its voyage to the port in which it is to be verified.

(10) The certificate granted under paragraph (g) shall not be extended for a period longer than three months, and the ship to which an extension is so granted shall not, on its arrival in the port in which it is to be verified, be entitled by virtue of such extension to leave that port without having a new certificate and when the renewal verification is completed, the new certificate shall be valid to a date not exceeding five years from the expiry date of the existing certificate before the extension was granted.

(11) The **Director General** may extend a certificate issued to a ship engaged on short voyages which has not been extended under paragraph (9) and (10) for a period of one month from the date of expiry and when the renewal verification is completed, the new certificate shall be valid to a date not exceeding five years from the date of expiry of the existing certificate before the extension was granted.

(12) (1) If an intermediate verification is completed before the period specified in regulation 26—

(a) the expiry date shown on the certificate shall be amended by endorsement to a date which shall not be more than three years later than the date on which the intermediate verification was completed; and

(b) the expiry date may remain unchanged provided one or more additional verifications are carried out so that the maximum intervals between the verifications prescribed by regulation 26 are not exceeded.

(2) A certificate so issued shall contain a statement to the effect that it has been issued at the request of the Director General and it shall have the same effect as if it was issued by the Director General.

Certificates issued or endorsed on behalf of another Government.

28. (1) The Director General may at the request of another Contracting Government verify the ship and, if satisfied that the provisions of regulation 26 are complied with, issue or authorize the issue of an International Ship Security Certificate to the ship and, where appropriate, endorse or authorize the endorsement of that Certificate on the ship, in accordance with these Regulations.

(2) A certificate so issued shall contain a statement to the effect that it has been issued at the request of that Government and it shall have the same effect as if the certificate was issued or endorsed by that Government and not by the Director General.

Interim certification.

29. (1) After 1st July 2004, for the purposes of—

(a) a ship without a certificate, on delivery or prior to its entry or re-entry into service; (b) transfer of a ship from the flag of another Government to the Kenyan register;

(c) a company assuming the responsibility for the operation of a ship not previously operated by that company;

until the certificate referred to in regulation 28(1) or 29(1) is issued, the Director General may cause an Interim International Ship Security Certificate to be issued, in the prescribed form set out in the Second Schedule.

(2) any Interim International Ship Security Certificate shall only be issued if the Director General or a recognized security organization on his behalf is satisfied that—

- (a) the ship security assessment has been completed;
- (b) a copy of the ship security plan meeting the requirements of these Regulations is provided on board, has been submitted for review and approval, and is being implemented on the ship;

(c) the ship is provided with a ship security alert system meeting the requirements of regulation 24, if required;

(d) the company security officer has ensured—

(i) the review of the ship security plan for compliance with these Regulations; (ii) that the plan has been submitted for approval;

(iii) that the plan is being implemented on the ship; and

(iv) has established the necessary arrangements, including arrangements for drills, exercises and internal audits, through which the company security officer is satisfied that the ship will successfully complete the required verification in accordance with these Regulations within six months;

(e) arrangements have been made for carrying out the required verifications under regulation 26;

(f) the master, the ship security officer and other ship's personnel with specific security duties as specified in these Regulations and relevant provisions of the ship security plan placed on board have been provided with such information in the working language of the ship's personnel or languages understood by them; and

(g) the ship security officer meets the requirements of these Regulations.

(3) an Interim international Ship Security Certificate shall be valid for 6 months or until the Certificate required by regulation 28(1) or 29(1) is issued. Whichever comes first, and may not be extended.

(4) No subsequent consecutive Interim International Ship security Certificate shall be issued to a ship if, in the judgment of the **Director General** or the recognized security organization, one of the purposes of the ship of a company in requesting such certificate is to avoid full compliance with this Part beyond the period of the initial Interim Certificate as specified in paragraph (2).

(5) For the purposes of regulations 31, 32 and 33 the **Director General** may prior to accepting an Interim International Ship Security Certificate as a valid Certificate ensure that the requirements of this regulation have been complied.

Prohibition on proceeding to sea without an appropriate certificate.

30. (1) Kenyan ship required to be verified under this Part shall proceed or attempt to proceed to Sea, unless there is in force a valid International Ship Security Certificate or an Interim International Ship security Certificate in the prescribed form set out in the Second Schedule.

(2) Where a ship proceeds, or attempts to proceed to sea in contravention of paragraph (1) the company and the master shall both be guilty of an offence.

Control and Compliance Measures

Control of ships in port.

31. (1) For the purpose of these Regulations every ship to which this Part applies is subject to control when in a port in Kenya by officers duly authorized by the **Director General** and such control shall be limited to verify that there is on board a valid Certificate. which, if valid, shall be accepted, unless there are clear grounds for believing that the ship is not in compliance with the requirements of these Regulations.

(2) When there are such clear grounds, or where no valid Certificate is produced when required, the duly authorized officers shall impose any one or more control measures in relation to that ship as provided in paragraph (3).

(3) The control measures referred to in paragraph (1) shall be as follows—

(a) inspection of the ship;

- (b) delaying the ship;
- (c) detention of the ship;
- (d) restriction of operations including movement within the port; or

- (e) expulsion of the ship from port.
- (4) Such control measures may additionally or alternatively include other lesser administrative or corrective measures.

Ships intending to enter a port.

32. (I) The **Director General** may require that any ships intending to enter a port in Kenya shall provide the following information to duly authorized officers to ensure compliance with this Part prior to entry into port with the aim of avoiding the need to impose control! Measures or steps:
- (a) that the ship possesses a valid Certificate and the name of its issuing authority;
 - (b) the security level at which the ship is currently operating;
 - (c) the security level at which the ship operated in any previous port where it has conducted a ship/port interface within the timeframe specified in paragraph (3);
 - (d) any special or additional security measures that were taken by the ship in any previous port where it has conducted a ship/port interface within the timeframe specified in paragraph (3);
 - (e) that the appropriate ship security procedures were maintained during any ship to ship activity within the timeframe specified in paragraph (3); or
 - (f) other practical security related information (but not details of the ship security plan).
- (2) Where requested by the **Director General**, the ship or the company shall provide confirmation, acceptable to it, of the information required under paragraph (1).
- (3) Every Kenyan ship to which this Part applies intending to enter the port of another Contracting Government shall provide the information described in paragraph (1) on the request of the officers duly authorized by that Government and the master may decline to provide such information on the understanding that failure to do so may result in denial of entry into port.
- (4) The ship shall keep records of the information referred to in paragraph (1) for the last 10 calls at port facilities.

(5) Where, after receipt of the information described in paragraph (1), officers duly authorized by the **Director General** have clear grounds for believing that the ship is not in compliance with the requirements of these Regulations such officers shall attempt to establish communication with and between the ship and its Administration in order to rectify the Non-compliance.

(6) Where communication under paragraph (5) does not result in rectification, or if such officers have clear grounds otherwise for believing that the ship is not in compliance with the requirements of these Regulations, such officers may take steps in relation to that ship as provided in paragraph (7).

(7) Such steps are as follows:

- (a) a requirement for the rectification of the noncompliance;
- (b) a requirement that the ship proceed to a location specified in the Kenyan waters;
- (c) Inspection of the ship, if the ship is in the Kenyan waters; or
- (d) Denial of entry into port.

(8) Prior to initiating any such steps prescribed in paragraph (7) the **Director General** shall inform the ship of his intentions and upon receipt of this information the master may withdraw the intention to enter that port, in which case, this regulation shall not apply.

Additional control and compliance provisions.

33. (1) In the event—

- (a) of the imposition of a control measure, other than a lesser administrative or corrective measure, referred to in regulation 31(3) (b); or
- (b) any of the steps referred to in regulation 32(7) are taken, an officer duly authorized by the **Director General** shall forthwith inform the Administration in writing, specifying which control measures have been imposed or steps taken and the reasons thereof and the authorized officer shall also notify the recognized security organization which issued the Certificate relating to the ship concerned, and the Organization when any such control measures have been imposed or steps taken.

(2) When entry into port is denied or the ship is expelled from a port in Kenya, the **Director General** shall communicate the appropriate facts to the authorities of the State of the next appropriate ports of call, when known, and any other appropriate coastal States, taking into account any guidelines developed by the Organization and confidentiality and security of such notification shall be ensured.

(3) Denial of entry into port, pursuant to regulation 32(3) and (6), or expulsion from port, pursuant to regulation 31(1) to (3), shall only be imposed where the duly authorized officers have clear grounds to believe that the ship poses an immediate threat to the security or safety of persons, or of ships or other property and there are no other appropriate means for removing that threat.

(4) The control measures referred to in regulation 31(1) and the steps referred to in regulation 32 (7) shall only be imposed, pursuant to regulations 31 and 32, until the Non-compliance giving rise to the control measures or steps has been corrected to the satisfaction of **Director General**, taking into account actions proposed by the ship or the Administration or the **Director General**, if any.

(5) When control is exercised under regulation 31 or steps taken under regulation 32—

(a) all possible efforts shall be made to avoid a ship being unduly detained or delayed and if a ship is thereby unduly detained. or delayed it shall be entitled to compensation for any loss or damage suffered: and

(b) necessary access to the ship shall not be prevented for emergency or humanitarian reasons and for security purposes.

Port Facilities

Port facility security assessment.

34.—(1) A Port Security Authority must complete a port security assessment in respect of each port for which it has been designated.

(2) The port security assessment must be carried out taking into account—

(a) the port facility security assessments carried out for the port facilities situated within the port;

(b) specificities of different sections of—

(i) the port; and

(ii) any areas adjacent to the port referred to in a notice under paragraph (3).

(3) The Director General may by notice in writing require a Port Security Authority to include in its port security assessment any area adjacent to the port that the Director General considers could have an impact on the security of the port.

(4) Where international maritime transport services operate from a port, the Port Security Authority must, when conducting the port security assessment, co-operate with the authorities of the other Member States to which those services operate.

(5) The Port Security Authority may appoint a recognised security organisation to carry out the port security assessment on its behalf.

(6) A Port Security Authority must request approval from the Director General for the port security assessment within 9 months of the designation of that Port Security Authority coming into force.

(7) A request for approval under paragraph (6) must be made in writing and be accompanied by information demonstrating that the assessment has been carried out in accordance with paragraph (2).

(8) After receiving a request for approval under paragraph (6) the Director General may—

(a) approve,

(b) refuse to approve, or

(c) approve subject to amendment, the port¹³ security assessment.

(9) If the Director General fails to give or refuse approval within 30 days of receipt of a request under paragraph (6), the Director General shall be deemed to have refused to approve the port security assessment.

(10) If the Director General has, or is deemed to have, refused to approve the port security assessment, the Port Security Authority must revise that assessment and submit a further request for approval within 30 days of that refusal or deemed refusal.

(11) Paragraphs (7), (8), (9) and (10) apply to a further request made under paragraph (10) as they do to a request made under paragraph (6).

Port facilities: duties of port facility operator.

35. (1) The port facility operator shall ensure that port facilities shall comply with the relevant requirements of these Regulations.

(2) In Particular the port facility operator shall designate in writing, by name or title, a suitably qualified port facility security officer, and ensure that he receives appropriate training, as specified in the First Schedule.

(3) The port facility operator shall provide the port facility security officer with the resources, assistance and support necessary to enable him to carry out his duties.

(4) The port facility operator shall ensure that port facility personnel having specific security duties have appropriate knowledge and receive appropriate training as specified in the First Schedule.

(5) The port facility operator shall designate and instruct the port facility security officer on the measures required to be addressed in a port facility security plan for the various security levels, including when the submission of a declaration of security will be required.

(6) Any port facility operator who fails to comply with this regulation shall be guilty of an offence.

Port security plan

36.—(1) A Port Security Authority must develop, maintain and update the port security plan for each port for which it has been designated.

(2) The Port Security Authority must

ensure that the port security plan—

(a) addresses the specificities of different sections of the port;

(b) has integrated into it—

(i) the approved port facility security plans for every port facility situated in that port;

(ii) the port related area security plans created for all port related areas (if any) designated in relation to the port; and

(c) where and to the extent appropriate, sets out the security measures to be applied to passengers and vehicles set for embarkation on seagoing vessels;

(d) identifies for each of the security levels-

(i) the procedures to be followed,

(ii) the measures to be put in place, and

(iii) the actions to be taken, for the port, or where appropriate, for each part of the port, and

(f) identifies the person or persons responsible for each of the measures contained in that plan.

(3) Nothing in this regulation requires the Port Security Authority to carry out work that has been carried out in the course of developing a port facility security plan, a port related area security plan.

(4) The Port Security Authority may appoint a recognised security organisation to develop the port security plan on its behalf.

(5) The Port Security Authority must ensure that, if a recognised security organisation has carried out a port security assessment or review of a port security assessment for a port, that recognised security organisation does not develop or review the port security plan for that port.

36 A.—(1) A Port Security Authority must request approval from the Director General for the port security plan within 12 months of the designation of that Port Security Authority.

(2) The Director General may, in respect of a request under paragraph (1)—

(a) approve,

(b) refuse to approve, or

(c) approve subject to amendment, the port security plan.

(3) When, Director General or at any time after, approving a port security plan (whether or not subject to amendment), the Director General may notify the Port Security Authority of types of amendments to the port security plan that must be submitted to the Director General for approval before those amendments are implemented.

(4) Where a Port Security Authority has received a notification under paragraph (3), that Port Security Authority must request an approval from the Director General before implementing an amendment to the port security plan of any type specified in that notification and must not implement that amendment until an approval has been obtained.

(5) The Director General may in respect of a request under paragraph (4)—

(a) approve,

(b) refuse to approve, or

(c) approve subject to further amendment, an amendment to a port security plan.

(6) Any request under this regulation must be in writing, and a

request for approval under—

(a) paragraph (1) must be accompanied by a copy of the port security plan;

(b) paragraph (4) must be accompanied by a copy of the port security plan and an explanation of the proposed amendments.

(7) Director General may request additional information in support of a request for approval under paragraph (1) or paragraph (4).

(8) If the Director General fails to give or refuse approval within 30 days of the date of receipt of a request under paragraph (1) or (4), or of the date on which the Director General requested additional information under paragraph (7), whichever is later, the Director General shall be deemed to have refused to give approval for the plan or amendment in question.

(9) If the Director General has, or is deemed to have, refused to approve a request made under paragraph (1) the Port Security Authority must, within 30 days of that refusal or deemed refusal, revise the port security plan and submit a further request for approval.

(10) Paragraphs (2), (6), (7), (8) and (9) apply to a further request made under paragraph (9) as they do to a request made under paragraph (1).

Implementation of the port security plan

36 B.—(1) A Port Security Authority must satisfy itself that the port security plan is implemented.

(2) Any person who is identified as being responsible for a measure contained in a port security plan, as required by regulation 36(2)(f), must implement that measure.

Review of the port security assessment and port security plan

36 C.—(1) A Port Security Authority must complete a review of the port security assessment and the port security plan—

(a) at each meeting of the Port Security Authority;

(b) within 30 days of a major operational change in the port;

(c) within 30 days of a major structural change in the port;

(d) within 30 days of a major security incident at the port;

(e) within 30 days of any written request of the Director General; and

(f) not more than 5 years after that assessment was last approved or that plan was last approved.

(2) A review of a port security assessment under paragraph (1)(a) must consist of a review of the security risks highlighted in the port security assessment, the likelihood of the security risks occurring, the impact such an occurrence would have and the actions to be taken to address those security risks.

(3) A review of a port security assessment under paragraph (1) (b), (c), (d), (e) or (f) must consist of a review of the matters that the Port Security Authority is required to take into account by regulation 34(2).

(4) A review of a port security plan under paragraph (1) must consist of a review of the matters that the Port Security Authority is required to comply with under regulation 36(2).

(5) Following a review under paragraph (1) the Port Security Authority must amend the port security assessment and port security plan as appropriate.

(6) Where a port security plan or a port security assessment has been reviewed under paragraph (1) (b), (c), (d), (e) or (f), the Port Security Authority must request approval from the Director General for the port security plan or port security assessment (as amended if appropriate under paragraph (5)) no later than 30 days after the deadline for undertaking the review specified in that provision.

(7) The provisions of regulation 34(7),(8),(9) and (10) apply to a request for approval from the Director General of a port security assessment following a review of that port security assessment under paragraph (1)(b), (c), (d), (e) or (f) as they apply to a request for approval under regulation 34(6).

(8) The provisions of regulation 36 A (2),(6),(7),(8) and (9) apply to a request for approval from the Director General of a port security plan following a review of that port security plan under paragraph (1)(b),(c),(d), (e) or (f) as they apply to a request for approval under regulation 36 A (1).

(9) The Port Security Authority may appoint a recognised security organisation to carry out a review of the port security assessment or port security plan on its behalf.

(10) In this regulation—

(a) “major operational change” means a major change to a commercial maritime transport operator or its operations that will have an impact on the security of the port; and

(b) “major structural change” means a major change to any physical structures in the port that will have an impact on the security of the port.

Security clearance and protective marking of documents

36 D.—(1) A person who carries out security inspections of a port, or handles confidential information relating to the security of a port, must be approved for such work by the Director General.

(2) A person who creates pursuant to these Regulations any document that relates to the security of a port must ensure that the document is clearly marked so as to indicate the degree of sensitivity with which that document is to be treated.

(3) In determining whether paragraph (2) has been complied with, account shall be taken of any Guidance issued by the Director General on the protective marking of documents.

Offence.

37. (1) A *port* facility operator or service provider commits an offence if—

(a) The operator is required by regulation 36 to have a security plan;

(b) there is a security plan for the operator in force; and

(c) the operator fails, without reasonable excuse, to comply with the plan.

(2) An offence in terms of paragraph (2) shall be punishable upon

conviction by a fine of six thousand for every day the offence occurs or by imprisonment for a period not exceeding 3 months.

Offences in relation to prohibited articles

37 A.—(1) It is an offence for a person, without lawful authority or reasonable excuse, to have with them when attempting to enter or when in a controlled building or restricted area, any prohibited article.

(2) A person guilty of an offence under this regulation is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months; or

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years.

Port facility operator- further duties.

38 The port facility operator shall further to the duties referred to in regulation 36:

- (a) establish an administrative and organizational structure for security in the port facility;
- (b) provide every officer who has security responsibilities in the port facility with the support needed to fulfill those responsibilities and identify how those officers can be contacted;
- (c) ensure that the port facility operates in compliance with its approved port facility security plan;
- (d) provide to the **Director General** the information necessary for the conduct of a security assessment of the port facility in accordance with regulation 34;
- (e) ensure that a procedure for the coordination of security issues between the port facility and ships and offshore facilities, including the signature of a declaration of security, is established;
- (f) report any significant security threat, breach of security or security incident to the **Director General**; and
- (g) ensure that the port facility security officer develops the port facility security plan in cooperation with the port security officers.

Port security officer

39. (1) A Port Security Authority must appoint a person to be the port security officer for the port.

(2) The Port Security Authority must notify the Director General of any appointment made under paragraph (1) within 30 days of that appointment and request approval for the appointment.

(3) If the Director General fails to give or refuse approval within 30 days of receipt of a request under paragraph (2), the Director General shall be deemed to have approved that appointment.

(4) If, within 30 days of receipt of a request made under paragraph (2) the Director General gives the Port Security Authority notice of refusal to approve the appointment, the appointment of the port security officer terminates and the Port Security Authority must appoint under paragraph (1) a new person to be the port security officer for the port within 30 days of receiving that notice.

(5) A person may be appointed and approved as a port security officer under this regulation for more than one port.

Functions of the port security officer

40. (1) A port security officer for a port—

(a) is the point of contact for port security related issues; and

(b) must co-operate with—

(i) port facility security officers of port facilities situated in the port;

and

(ii) security managers of port related¹⁴ areas (if any) for the port.

(2) A port security officer for a port may require a port facility security officer of a port facility situated in the port or a security manager of a port related area for the port, to furnish him with such information as he may consider necessary to carry out his functions.

Security Drills and Exercises

Security drill and exercise requirements.

41. Security drills and exercises shall be undertaken in order to test the proficiency of port facility personnel in their security responsibilities at all maritime security levels and the effective implementation of the port facility security plan and shall enable the port facility security officer to identify any related security deficiencies that need to be corrected.

Security drills.

42. (1) The port facility security officer shall ensure that a security drill is conducted—

(a) at least once every three months; and

(b) within one month after operations resume at a port facility that has been out of service or inactive for more than three months.

(2) Security drills shall test individual elements of the port facility security plan—including response to security threats, breaches of security and security incidents—and shall take into account, in respect of the port facility, the types of operations, personnel changes the types of vessels and offshore facilities interfacing with it and other relevant circumstances.

(3) If, at any given time, more than twenty-five per centum of the permanent personnel, the port facility have not participated in a security drill within the previous three months, a security drill shall be conducted within one week.

(4) If a port facility is involved in the implementation of maritime security level 2 or maritime security level 3 following a security incident, the implementation of the maritime security level shall be equivalent to a drill.

Security exercises.

43. (1) Security exercises—

- (a) shall fully test the port facility security plan and include the substantial and active participation of personnel who have security responsibilities;
 - (b) may include the participation of security personnel from ships, other port facilities, offshore facilities or competent authorities depending on the scope and the nature of the exercises;
 - (c) may be performed with respect to only the port facility or as part of a cooperative programme to test another port facility security plan or a ship or offshore facility security plan; and
 - (d) shall test communication and notification procedures and elements of coordination, resource availability and response.
- (2) The exercises shall be conducted at least once every calendar year with no more than 18 months between them.
- (3) Exercises may be—
- (a) full-scale or live;
 - (b) tabletop simulation or seminar;
 - (c) combined with other appropriate exercises; or
 - (d) a combination of the elements set out in sub-paragraphs (a) to (c)

Record keeping.

- 44.** (a) The port facility security officer shall keep records of—
- (a) security training, including the date, duration and description and the names of the participants;
 - (b) security drills and exercises, including the date and description, the names of the participants and any best practices or lessons learned that might improve the port facility security plan;
 - (c) security threats, breaches of security and security incidents including the date, time, location, description and response and the identity of the person to whom it was reported;

- (d) changes in the maritime security level, including the date, the time that notification was received and the time of compliance with the security requirements of the new level;
 - (e) maintenance, calibration and testing of equipment used in security, including the date and time of the activity and the specific equipment involved;
 - (f) declarations of security signed in respect of the port facility;
 - (g) internal audits and reviews of security activities;
 - (h) each periodic review of the port facility security assessment, including the date on which it was conducted and the findings of the review;
 - (i) each periodic review of the port facility security plan, including the date on which it was conducted, the findings of the review and any amendments to the port facility plan that are recommended;
 - (j) each amendment to the port facility security plan including the date of approval and implementation; and
 - (k) a list of the names of the persons who have security responsibilities.
- (2) Records in respect of equipment that is not used exclusively for security may be kept separately from the records respecting equipment that is used exclusively for security if—
- (a) the port facility security officer documents, in written or electronic form, their existence and the location and name of the person responsible for their maintenance; and
 - (b) they are accessible by the port facility security officer.
- (3) The port facility security officer shall ensure that the records are kept for at least two years after they are made and make them available to the **Director General** on request.
- (4) The records shall be protected from unauthorized access or disclosure.
- (5) The records may be kept in electronic form if they are protected from deletion, destruction and revision.

Communications.

45. (1) The port facility security officer shall have the means to notify the port facility personnel of changes in security conditions at the port facility.

(2) The port facility shall have communication systems and procedures that allow effective communications—

(a) between the port facility security personnel, ships and offshore facilities interfacing with the port facility; and

(b) with the **Director General** and local law enforcement authorities.

(3) The communication systems shall have a backup to ensure internal and external communications.

Coordination of security procedures during interfacing

46. The port facility operator shall ensure that the implementation of the port facility security procedures is coordinated with ships and offshore facilities interfacing with the port facility.

Declarations of security

Declarations of Security.

47. (1) Any declaration of security signed in respect of a port facility shall address the security requirements that are shared between port facility and a ship or an offshore facility interfacing with it, state the responsibilities of each and be completed and signed before the interface starts.

(2) A declaration of security shall—

(a) be in English;

(b) contain the information set out in the Second Schedule, with the terms "ship", "port facility" and "security measures" substituted by "vessel", "offshore facility" and "security procedures" respectively;

(c) be completed and signed by—

(i) the port facility operator or the port facility security officer; or

(ii) any person who has security responsibilities and appropriate training and has been designated in writing by either person set out in this sub paragraph to complete a declaration of security on their behalf;

(d) be completed if there is an interface with a vessel or offshore facility that—

(i) is operating at a lower maritime security level than the port facility;

(ii) is not required to have a security plan; or

(iii) has experienced a security threat, security breach or security incident.

(3) A new declaration of security shall be completed if there is a change in maritime security level.

(4) At maritime security level 1, if the port facility interfaces with a ship or offshore facility that is carrying certain dangerous cargo in bulk or is to be loaded with certain dangerous cargo in bulk. The port facility security officer shall complete and sign a declaration of security.

(5) The port facility security officer shall complete and sign a declaration of security if he identifies an interface that is of special concern.

(6) At maritime security level 1 and maritime security level 2. The port facility security officer may implement a continuing declaration of security for a ship or offshore facility with which the port facility frequently interfaces if the effective period of the declaration does not exceed—

(a) 90 days for maritime security level 1, and

(b) 30 days for maritime security level 2.

Enforcement

Requirement to provide information.

48. (1) Without prejudice to regulation 33, but subject to section 9.8 and 9.8.1 of part A of the ISPS Code (providing— that ship security plans will not be subject to inspection

except in limited circumstances) the **Director General** may, by notice in writing served on any of the following persons:

(a) the owner, charterer, manager or master of any ship which is in, or appears to the

Director General to be likely to enter, a port facility;

(b) a port facility operator;

(c) any person who carries on operations in a port facility; and

(d) any person who is permitted to have access to a restricted **area** of a port facility for the purposes of the activities of a business carried on by him, require that person to provide the **Director General** with such information specified in the notice as the **Director General** may require in connection with the exercise by the Director General of his functions under this Part.

(2) A notice under paragraph (1) shall specify a date before which the information required by the notice is to be furnished to the **Director General**.

(3) Any such notice may also require the person on whom it is served, after he has furnished to the Minister the information required by the notice, to inform the **Director General** if at any time the information previously furnished to the **Director General** (including any information furnished in pursuance of a requirement imposed by virtue of this regulation) is rendered inaccurate by any change of circumstances (including the taking of any further measures for purposes of this Part or the alteration or discontinuance of any measures already being taken)

(4) In so far as such a notice requires further information to be— 6 furnished to the **Director General** in accordance with paragraph (3), he shall require that information to be furnished to him before the end of such period as is specified in the notice for the purposes of this regulation.

(5) A notice served on any person under paragraph (1) may at any time—

(a) be revoked by a notice in writing served on him by the **Director General**; or

(b) be varied by a further notice under paragraph (1).

(6) The port facility security officer may in like manner require the owner, charterer, manager or master of any Kenyan ship to provide him with information, and paragraphs (1) to (5) shall apply as if references to the port facility security officer were references to the **Director General**.

(7) Any person who—

(a) without reasonable excuse, fails to comply with a requirement imposed on him by a notice under this regulation; or

(b) in furnishing any information so required, makes a statement which he knows to be false in a material particular, or recklessly makes a statement which is false in a material particular, shall be guilty of an offence.

Powers of inspection.

49. (1) An authorized person shall have power, (on production of his credentials if required) to inspect—

(a) any Kenyan ship;

(b) any other ship while in a port facility;

(c) any part of any port facility; or

(d) any land outside a port facility which is occupied for the purposes of a business by any person who—

(i) carries on (or appears to the authorized person to be about to carry on) harbor operations in a port facility for the purposes of that business; or

(ii) is permitted (or appears to the authorized person to be about to be permitted) to

have access to a restricted zone of a port facility for the purposes of the activities of that business.

(2) An authorized person inspecting a ship or any part of a port facility or any land outside a port facility under paragraph (1) above shall have power to—

(a) subject any property he finds on the ship or on the port facility, or on the land as the case may be, to such tests; or

(b) take such steps to—

(i) ascertain what practices or procedures are being followed in relation to security; or

(ii) test the effectiveness of any practice or procedure relating to security; or

(c) require the owner, charterer, manager or master of the ship, the port facility operator or the occupier of the land to furnish to him such information; as the authorized person may consider necessary for the purpose for which the inspection is carried out.

(3) Subject to paragraph (4), an authorized person, for the purpose of exercising any power conferred on him by paragraphs (1) or (2) in relation to a ship, a port facility or to any land outside a port facility, shall have power-

(a) for the purpose of inspecting a ship, to go on board it and to take all such steps as are necessary to ensure that it is not moved; or

(b) for the purpose of inspecting any part of a port facility, to enter any building or works in the port facility or enter upon any land in the port facility; or

(c) for the purpose of inspecting any land outside a port facility, to enter upon the land and to enter any building or works on the land.

(4) The powers conferred by paragraph (3) shall not include power for an authorized person to use force for the purpose of going on board any ship, entering any building or works or entering upon any land.

(5) Any person who—

(a) without reasonable excuse, fails to comply with a requirement imposed on him under paragraph (2) (c); or

(b) in furnishing any information so required, makes a statement which he knows to be false in a material particular, or

recklessly makes a statement which is false in a material particular, shall be guilty of an offence.

False statements relating to baggage, cargo, etc.

50. (1) any person shall be guilty of an offence if, in answer to a question which—

(a) Relates to any baggage, cargo or stores (whether belonging to him or to another)

that is or are intended for carriage by sea—

(i) by a Kenyan ship; or

(ii) by any other ship to or from Kenya; and

(b) is put to him for purposes of this Part

(i) by any of the persons mentioned in paragraph (2), or

(ii) by any employee or agent of any such person in his capacity as employee or agent; or

(iii) by a police officer;

he makes a statement which he knows to be false in a material particular, or recklessly makes a statement which 'is false in a material particular.

(2) The persons referred to in paragraph (1) (b) are—

(a) a port facility operator;

(b) a port facility service;

(c) the owner, charterer or manager of any ship; and

(d) any person who is permitted to have access to a restricted zone of a port facility for the purposes of the activities of a business carried on by him; and

(e) Has control in that restricted zone over the baggage, cargo or stores to which the question relates.

(3) In this regulation—

"cargo" includes mail;

"ship" does not include a ship used in naval, customs or police service; and

“stores” means any goods intended for sale or use in a ship, including fuel and spareparts and other articles of equipment, whether or not for immediate fitting.

False statements in connection with identity documents.

51. (1) Any person shall be guilty of an offence if—

- (a) for the purpose of, or in connection with, an application made by him or another for the issue of an identity document to which this paragraph applies; or
- (b) In connection with the continued holding by him or another of any such document which has already been issued,

he makes to any of the persons specified in paragraph (3), to any employee or agent of such any person or to a police officer, a statement which he knows to be false in a material particular, or recklessly makes to any of those persons, to any such employee or agent or to a police officer, a statement which is false in a material particular.

(2) Paragraph (1) applies to any identity document which is to be or has been issued by any of the persons specified in paragraph (3) for the purposes of a ship security plan or a port facility security plan.

(3) The persons referred to in paragraph (1) are—

- (a) a port facility operator;
- (b) a port service provider;
- (c) the owner, charterer or manager of any ship; and
- (d) Any person who is permitted to have access to a restricted zone of a port facility for the purposes of the activities of a business carried on by him.

Unauthorized presence in restricted areas.

52. (1) No person shall—

- (a) go, with or without a vehicle or ship, onto or into any part of a restricted area of a port facility except with the permission of the port facility operator or any person acting on behalf

of the port facility operator and in accordance with any conditions subject to which that permission is for the time being granted; or

(b) remain in any part of such a restricted zone after being requested to leave by the port facility operator or any person acting on behalf of the port facility operator.

(2) Paragraph (1) (a) shall not apply unless it is proved that, at the material time, notices stating that the area concerned was a restricted **area** was posted so as to be readily seen and read by persons entering the restricted **area**.

(3) For the purposes of this Part any person is permitted to have access to a restricted **area** of a port facility if he is permitted to enter that **area**, or if arrangements exist for permitting any of his employees or agents to enter the **area**.

(4) Any person who contravenes paragraph (1) shall be guilty of an offence.

Offences relating to authorized persons.

53. Any person who

(a) International obstructs an authorized person acting in the exercise of a power conferred on him by or under these Regulations; or

(b) Falsely pretends to be an authorized person shall be guilty of an offence.

Offences and penalties.

54. Any person who commits an offence under these Regulations for which no specific penalty is provided, or in respect of which a specific penalty is provided shall in addition to the prescribed penalty be liable to a fine not exceeding six thousand shillings for every day the contravention occurs, or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

Supplementary

Bilateral or multilateral agreements.

55. (1) The **Director General** may, when implementing these Regulations, conclude in writing bilateral or multilateral agreements with other Contracting Governments on alternative security arrangements covering short international voyages on fixed routes between port facilities located within their territories.

(2) Any such agreement shall not compromise the level of security of other ships or of port facilities not covered by the agreement.

(3) No ship covered by such an agreement shall conduct any ship to-ship activities with any ship not covered by the agreement.

(4) Such agreements shall be reviewed periodically, taking into account the experience gained as well as any changes in the particular circumstances or the assessed threats to the security of the ships, the port facilities or the routes covered by the agreement.

Equivalent security arrangements.

56. (1) The **Director General** may allow a particular ship or a group of Kenyan ships to implement other security measures equivalent to those prescribed in these Regulations, provided such security measures are at least as effective as those prescribed in these Regulations and the **Director General**, where he allows such security measures, shall communicate to the Organization particulars thereof.

(2) When implementing these Regulations, the **Director General** may allow a particular port facility or a group of port facilities located within Kenya, other than those covered by an agreement concluded under regulation 56, to implement security measures equivalent to those prescribed in these Regulations, provided such security measures are at least as effective as those prescribed in these Regulations as read together with part A of the ISPS code.

(3) Where the Minister allows the security measures under paragraph (2), the

Director General shall communicate to the Organization particulars thereof.

Communication of information.

57. (1) The **Director General** shall, not later than the 1st July 2004, communicate to the Organization and shall make available for the information of Companies and ships:

(a) the names and contact details of their national authority or authorities responsible for ship and port facility security;

- (b) The locations within their territory covered by the approved port facility security plans;
- (c) the names and contact details of those who have been designated to be available at all times to receive and act upon the ship-to-shore security alerts, referred to in regulation 24(2)(a);
- (d) the names and contact details of those who have been designated to be available at all times to receive and act upon any communications from Contracting Governments exercising control and compliance measures; and
- (e) the names and contact details of those who have been designated to be available at all times to provide advice or assistance to ships and to whom ships can report any security concerns, referred to in regulation 5(2), and thereafter update such information as and when changes relating thereto occur.

(2) The **Director General** shall, not later than the date referred to in paragraph (1), communicate to the Organization the names and contact details of any recognized security organizations authorized to act on his behalf together with details of the specific responsibility and conditions of authority delegated to such organizations and such information shall be updated as and when changes relating thereto occur.

(3) The **Director General** shall, not later than the date referred to in paragraph (1), communicate to the Organization a list showing the approved port facility security plans for the port facilities located within their territory together with the location or locations covered by each approved port facility security plan and the corresponding date of approval and thereafter shall further communicate when any of the following changes take place:

- (a) changes in the location or locations covered by an approved port facility security plan are to be introduced or have been introduced and in such cases the information to be communicated shall indicate the changes in the location or locations covered by the plan and the date as of which such changes are to be introduced or were implemented;
- (b) an approved port facility security plan, previously included in the list submitted to the Organization, is to be withdrawn or has been withdrawn and in such cases, the information to

be communicated shall indicate the date on which the withdrawal will take effect or was implemented and in these cases, the communication shall be made to the Organization as soon as is practically possible: and

(c) Additions are to be made to the list of approved port facility security plans and in such cases, the information to be communicated shall indicate the location or locations covered by the plan and the date of approval.

(4) The **Director General** shall, at five year intervals after 1st July 2004, communicate to the Organization a revised and updated list showing all the approved port facility security plans for the port facilities located within their territory together with the location or locations covered by each approved port facility security plan and the corresponding date of approval (and the date of approval of any amendments thereto) which will supersede and replace all information communicated to the Organization, pursuant to paragraph (3), during the preceding five years.

(5) The **Director General** shall communicate to the Organisation information that an agreement under regulation 55 has been concluded and the information communicated shall include—

- (a) the names of the Governments which have concluded the agreement;
- (b) the port facilities and the fixed routes covered by the agreement;
- (c) the periodicity of review of the agreement;
- (d) the date of entry into force of the agreement; and
- (e) information on any consultations which have taken place with other Governments;

and thereafter shall communicate, as soon as practically possible, to the organization information when the agreement has been amended or has ended.

(6) Where the **Director General** allows, under the provisions of regulation 56, any equivalent security arrangements with respect to a ship entitled to fly the Kenyan flag or with respect to a port facility located within Kenyan territory, he shall communicate to the Organization particulars thereof.

Continuous Synopsis Record.

58. (I) This Part of these Regulations applies to all ships engaged on international voyages, except

- (a) ships of war and troop ships;
- (b) cargo ships of less than 500 tons;
- (c) ships not propelled by mechanical means;
- (d) wooden ships of primitive build; and
- (e) pleasure vessels not engaged in trade.

(2) All ships shall be provided with a Continuous Synopsis Record for the purpose of providing an on-board record of the history of the ship with respect to the information recorded therein.

(3) For ships constructed before 1st July 2004, the Continuous Synopsis Record shall, **.at least, provide the history of the ship as from 1st July, 2004.**

(4) The Continuous Synopsis Record shall be issued by the Minister to each Kenyan ship and shall contain at least, the following information:

- (a) the name Kenya;
- (b) the date on which the ship was registered in Kenya;
- (c) the ship's identification number;
- (d) the name of the ship;
- (e) the port at which the ship is registered;
- (f) the name of the registered owner(s) and their registered address (es);
- (g) the name of the registered bareboat charterer(s) and their registered address (es), if applicable;

(h) the name of the Company, its registered address and the address (es) from where it carries out the safety management activities;

(i) the name of all classification society (ies) with which the ship is classed;

(j) the name of the Administration or the Contracting Government or of the recognized organization which has issued the Document of Compliance (or the Interim Document of Compliance), specified in the ISM Code to the company operating the ship and the name of the body which carried out the audit on the basis of which the Document was issued, if other than that issuing the document;

(k) the name of the Contracting Government or of the recognized organization that has issued the Safety Management Certificate (or the Interim Safety Management Certificate), specified in the ISM Code, to the ship and the name of the body which has carried out the audit on the basis of which the certificate was issued, if other than that issuing the certificate;

(l) the name of the Administration or of the Contracting Government or of the recognized security organization that has issued the International Ship Security Certificate or an Interim International Ship Security Certificate, specified in regulations 29 and 30, to the ship and the name of the body which has carried out the verification on the basis of which the certificate was issued, if other than that issuing the certificate; and

(m) the date on which the ship ceased to be registered in Kenya

(5) The Continuous Synopsis Record shall be kept on board the ship and shall be available for inspection at all times.

(6) Any changes relating to the entries referred to in subparagraphs (d) to (m) of paragraph **(4) shall be recorded in the Continuous Synopsis Record so as to provide updated and current information together with the history of the changes.**

(7) In case of any changes relating to the entries referred to in sub-paragraph (a) of paragraph (4) the **Director General** shall issue, as soon as is practically possible but not later than three months from the date of the change, to the ships entitled to fly the Kenyan flag either a revised and updated version of the Continuous Synopsis Record or appropriate amendments thereto.

(8) In case of any changes relating to the entries referred to in sub-paragraph (a) of paragraph (4) the **Director General**, pending the issue of a revised and updated version of the Continuous Synopsis Record, shall authorize and require either the Company or the master of the ship to amend the Continuous Synopsis Record to reflect the changes.

(9) In such cases referred to in paragraph (6), after the Continuous Synopsis Record has been amended the Company shall, without delay, inform the **Director General** accordingly.

(10) The Continuous Synopsis Record shall be in the format developed by the Organization and shall be maintained in accordance with guidelines developed by the Organization and any previous entries in the Continuous Synopsis Record shall not be modified, deleted or, in any way, erased or defaced.

Transfer of flag by ship.

59. (1) Whenever a ship is transferred to the flag of another State flag by Transfer of ship or the ship is sold to another owner (or is taken over by another bareboat charterer) or another Company assumes the responsibility for the operation of the ship, the Continuous Synopsis Record shall be left on board.

(2) When a ship is to be transferred to the flag of another State, the Company shall notify the Administration of the name of the State under whose flag the ship is to be transferred so as to enable the **Director General** to forward to that State a copy of the Continuous Synopsis Record covering the period during which the ship was under their jurisdiction.

(3) When a ship is transferred to the flag of another State the Government of which is a Contracting Government, the **Director General** shall transmit to the Administration as soon as possible after the transfer takes place a copy of the relevant Continuous Synopsis Record covering the period during which the ship was under Kenyan jurisdiction together with any Continuous Synopsis Records previously issued to the ship by other States.

(4) When a ship is transferred to the flag of another State, the **Director General** shall append the previous Continuous Synopsis Records to the Continuous Synopsis Records to the Continuous Synopsis Record the **Director General** will issue to the ship so to provide the continuous history record intended by this regulation.

Offences by the company.

60. Any Company which fails, in relation to each *of* its ships—

- (a) To provide to the **Director General** the information required by regulation 58(4) if requested by the **Director General**;
- (b) to inform the **Director General** *of* the changes referred to in regulation 58(6);
- (c) to make the changes in the Continuous Synopsis Record as he is required to make under regulation 58(6);
- (d) to inform the **Director General** as is required by regulation 58 (9); or (e) to ensure the Continuous Synopsis Record is left on the ship and is available for inspection as required by regulation 58(5), commits an offence.

Offences by the master.

61. Any master who fails to—

- (a) Make any changes in the Continuous Synopsis Record as he is required to make under regulation 58(6);
- (b) To ensure the Continuous Synopsis Record is left on the ship and is available for inspection as required by regulation 58(4), commits an offence.

FIRST SCHEDULE

(Regulations 19, 22, 35, 40, 41)

SECURITY PLANS, AUDITS AND TRAINING PART 1— PRELIMINARY

Definitions.

1. (1) In this Schedule, unless the context indicates otherwise requires—

"CSO" means a Company security officer;

"Maritime security incident" means any unlawful interference, or threatened unlawful interference, with maritime transport;

"PFSO" means a port facility security officer and "PSPSO" means a port service provider security officer;

"security plan audit" means an examination of security measures or procedures to determine if a port facility security plan port service provider security plan or a ship security plan has been implemented correctly;

"security plan review" means an evaluation of security measures or procedures to determine if a port facility security plan port service provider security plan or a ship security plan is effective and adequate; and

"Shore-based personnel' to relation to a Kenyan regulated ship, means persons (other than the crew) employed by the ship operator for the ship; and

SSO" means a Ship Security Officer; ¹⁶

Port facility security officers.

2. (1) Before requesting the port security authority to approve a port security plan, a port facility operator shall designate, in writing, a person as security officer (port facility security officer or PFSO) for the port facility.

(2) A PFSO may be designated by name or by reference to a position.

- (3) The duties and responsibilities of the PFSO shall include—
- (a) ensuring the development, submission, implementation, revision and maintenance of the security plan for the port facility operator;
 - (b) liaising with ship, company, port, port service providers and other port security officers;
 - (c) Performing—
 - (i) the duties and responsibilities prescribed in these Regulations;
 - (ii) any additional duties and responsibilities set out in the port security plan.
- (4) A port facility operator shall ensure that a PFSO-
- (a) has the knowledge and ability to perform the duties of a PFSO;
 - (b) is given the training set out in the port facility security plan for the port facility operator;
 - (c) is a suitable person to access and handle security information; and
 - (d) has the authority to act on instructions received from the **Director General**.

Port service provider security officers.

3. (1) Before requesting the **Director General** to approve a security plan, a port service provider shall designate, in writing, a person as security officer (port service provider security officer or PSPSO).
- (2) A PSPSO may be designated by a name or by reference to a position.
- (3) The duties and responsibilities of a PSPSO shall include—
- (a) Conducting an initial security survey of the activities of the port service provider and facilitating the completion of the security assessment for the provider's security plan;
 - (b) ensuring the development and maintenance of the security plan for the port service provider;
 - (c) Implementing the security plan;

- (d) Undertaking regular security inspections of the area under the control of the port service provider to ensure the effectiveness and adequacy of security measures;
- (e) Recommending and incorporating modifications to the security plan in order to—
- (i) Correct deficiencies in the plan; or
- (ii) Update the plan to take into account changes to the port service provider;
- (h) enhancing security awareness and vigilance of the port service provider's personnel;
- (i) ensuring standards for personnel with, or who have been assigned, security duties and responsibilities of the port service provider;

(h) liaising with ship, port, port facility and other port service provider security officers;

- (4) A port service provider shall ensure that a PSPSO—
- (a) has the knowledge and ability to perform the duties of a PSPSO;
- (b) Is given the training set out in the security plan for the port service provider;
- (c) is a suitable person to access and handle security plan for the port service provider; and
- (d) has the authority to act on instructions received from the **Director General**.

Company security officers.

- 4. (1) Before requesting the Minister to approve a ship security plan, the ship operator for a Kenyan regulated ship shall designate, in writing, a person within the ship operator's organization as a company security officer (CSO) for the ship.
- (2) A CSO may be designated by name or by reference to a position.
- (3) The duties and responsibilities of a CSO shall include—
- (a) answering any questions about the ship security plan, and acting as contact officer, during the approval process;
- (b) implementing and maintaining the ship security plan for the ship;

- (c) liaising with the ship security officer (SSO) for the ship and with the port facility security and port service providers; and
- (d) Performing—
 - (i) the duties and responsibilities in regulation 20; and
 - (ii) any additional duties and responsibilities set out in the ship security plan.
- (4) The ship operator shall ensure that a CSO—
 - (a) has the knowledge and ability to perform the duties of a CSO;
 - (b) is given the training set out in the ship security plan;
 - (c) is a suitable person to access and handle security information; and
 - (d) has the authority to act on instructions received from the **Director General**.

Ships security officers.

- 5. (1) The ship operator for a Kenyan regulated ship shall designate, in writing the master, or another crew member of the ship, as security officer (ship security officer or SSO).
- (2) An SSO may be designated by name or by reference to a position.
- (3) The duties and responsibilities of an SSO include—
 - (a) Maintaining the ship security plan for the ship;
 - (b) Liaising with the CSO for the ship and with the ship, port facility and port service provider security officers; and
 - (c) Performing—
 - (i) The duties and responsibilities in regulation 20; and
 - (ii) any additional duties and responsibilities set out in the ship security plan.
- (4) The ship operator shall ensure that an SSO—
 - (a) has the knowledge and ability to perform the duties of an SSO;

- (b) is given the training set out in the ship security plan;
 - (c) is a suitable person to access and handle security information; and
 - (d) has the authority to act on instructions received from the **Director General** or ship operator.
- (5) An SSO who is not the master of the ship shall be accountable to the master of the ship.

Delegation by security officers.

6. (1) A PFSO, PSPSO, CSO or SSO may delegate, in writing, some or all of his or her powers (except this power of delegation), functions and duties.

(2) A delegation under this paragraph—

- (a) May only be made to a person who has the knowledge and ability to exercise or perform the powers, functions or duties to be delegated; and
- (b) shall specify the delegate by name.

(2) The PFSO, PSPSO, CSO or SSO shall remain responsible for the performance of the tasks he or she delegates.

Shore-based personnel and crew.

7. The ship operator for a Kenyan regulated ship shall ensure that shore-based personnel and crew identified in the ship security duties and responsibilities—

- (a) Have the knowledge and ability to perform their security related duties and responsibilities; and
- (b) are given the training set out in the plan.

Declarations of security.

8. (I) A declaration of security shall be signed and dated by the master of, or SSO for, the ship and—

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

PFSO; or

(c) if the other party to the agreement is a port service provider, the service provider or the PSPSO.

(2) A declaration of security shall set out—

(a) Contact details for the parties and signatories to the agreement;

(b) The period for which the declaration is valid; and

(c) The maritime security level in force for each party.

(3) A copy of the declaration of security shall be kept by each party to the agreement for a period of 7 years beginning on the day after the declaration ceases to be valid.

Security plan Audits and Reviews.

9. (1) Every security plan shall set out a schedule, requirement and procedure for the conduct of an audit or review of the plan.

(2) A security plan review shall be conducted as soon as practicable after a maritime security incident.

(3) The records of each security plan audit or review shall be kept for a period of 7 years beginning on the day after the audit or review is concluded.

PART II—SECURITY PLANS

General

Common requirements for security assessments.

10. A security assessment for a security plan shall include the following matters—

(a) The date when the assessment was completed or reviewed;

(b) the scope of the assessment, including assets, infrastructure and operations assessed;

- (c) a summary of how the assessment was conducted, including details of the risk management process adopted; and
- (d) the skills and expertise of the key persons who completed or participated in the assessment.

Port Facility Operator

**Common requirements for security
plan audits and reviews.**

11. A port facility security plan or port service providers security plan shall set out—
- (a) A schedule of security plan audits by internal and external auditors;
 - (b) the circumstances, in addition to the occurrence of a maritime security incident, following which a security plan review shall be conducted;
 - (c) the procedures for conducting a security plan audit, including a process for selecting auditors who are independent of the matters being audited; and
 - (d) the procedures for conducting a security review plan including a process for consultation during the review.

**Port facility operator to give
information.**

12. A port facility operator required to have a security plan shall give the port service provider conducting operations within the port—
- (a) the information set out in paragraph 14 (including contact details for the PFSO);
 - (b) the measures to be used by the port facility operator to inform persons of the location of any security zones established within the boundaries of the port facility; and
 - (c) the measures to confirm the identity of persons who are authorized to have access to the port facility, to ships moored at the facility and to any security zones established within the boundaries of the port facility.

**Port service provider to give
information.**

13. A port service provider required to have a security plan shall give to the port facility of the port facility in which the provider conducts operations and to each port service provider conducting operations within the port facility—

- (a) the information set out in paragraph 15 (including contact details for the PSPSO);
- (b) the boundaries of the area under the control of the service provider;
- (c) Details of the ships operated by the provider (including the name, identification number, type, date, port of registry, and construction year of each vessel);
- (d) the measures to be used by the port service provider to inform persons of the location of any security zones established within the boundaries of the land under the control of the port service provider; and
- (e) the measures to confirm the identity of the persons who are authorized to have access to the land under the control of the service provider, to any security zones established within the boundaries of that land and to ships operated by the service provider.

Matters to be dealt with in the Plan

Port facility operator details.

14. A port facility security plan shall be accompanied by a document setting out the following information:

- (a) Name of the port facility operator;
- (b) Contact details for the port facility operator;
- (c) Name of the Chief Executive Officer of the port facility operator;
- (e) Name of the port in which the facility is located;**
- (d) Name and location of the port facility;**
- (f) Name or position of the person who is to be the PFSO for the facility; and
- (g) A single 24- hours fixed- line or mobile telephone number for the PFSO.

Details of other port service providers.

15. A port facility security plan shall be accompanied by a document setting out the name, of and contact details for—

- (a) The PSO of the port in which the facility is located; and
- (b) Each port service provider conducting operations within the facility.

Security assessments.

16. (1) In addition to the matters required by paragraph 10, a security assessment for a port facility operator's operation shall include the following matters—

- (a) A statement outlining the risk context or threat situation for the port facility;
- (b) Identification and evaluation of important assets, infrastructure and operations that need to be protected;
- (c) Identification of possible risks or threats to assets, infrastructure and operations, and the likelihood and consequences of their occurrence;
- (d) Identification of existing security measures, procedures and operations;
- (e) Identification of weaknesses (including human factors) in the infrastructure, policies and procedures;
- (f) Identification, selection and prioritization of possible risk treatments (for example, counter-measures and procedural changes that need to be implemented) and their effectiveness in reducing risk levels and vulnerabilities.

(2) A security assessment for a port facility operator's operation shall consider—

- (a) The types of ships, and the types of cargoes transported by ship, served by the port facility; and
- (b) Any special risks or threats associated with such ships and cargoes.

PFSO qualifications and responsibilities.

17. A port facility security plan shall set out— 17f

- (a) the knowledge, skills and other requirements for the PFSO;
- (b) The training or qualifications that satisfy the requirements mentioned in sub-paragraph (a); and
- (c) The training and qualifications that shall be given to the PFSO.

Other personnel with security duties.

18. (1) a port facility security plan shall identify, by reference to their positions, port facility personnel with, or who have been assigned, security duties and responsibilities in addition to those of the PFSO.

(2) The security duties and responsibilities of personnel so identified shall be set out in the plan, together with—

- (a) The knowledge, skills and other requirements for the security related aspects of their positions;
- (b) The training or qualifications that satisfy the requirements mentioned in sub-paragraph (a); and
- (c) The training that must be given to such personnel.

Maritime security level coordination and implementation.

19. (1) the port facility security plan shall contain procedures for ensuring that the port facility operates in compliance with the requirements of these Regulations for the maritime security level in effect for the port facility.

(2) The port security facility plan shall contain procedures for ensuring that, when the operator of the port facility is notified of an increase in the maritime security level-

- (a) The port facility complies with the required additional security procedures within 12 hours;
- (b) A report indicating compliance or Non-compliance with the maritime security level is made to the **Director General**; and

(c) vessels and offshore facilities interfacing with the port facility and those scheduled to arrive at the port facility within 96 hours after the maritime security level is increased are notified of the new maritime security level and the declaration of security is revised accordingly.

(3) The port facility security plan shall contain procedures for ensuring that, when the port facility operator is notified of an increase in the maritime security level, the port facility security officer informs all port facility personnel about identified security threats, emphasizing reporting procedures and stressing the need for increased vigilance.

(4) For maritime security level 3, the port facility security plan shall contain procedures for ensuring that the port facility operator evaluates the need for additional security procedures, including:

(a) Using of waterborne security patrols;

(b) Using local law enforcement agencies to control access to the port facility and to deter, to the maximum extent practicable, a security incident; and

(c) Examining piers, wharves and similar structures at the port facility for the presence of underwater weapons, explosives and incendiaries and other dangerous substances or devices or other threats.

Security Procedures

Security procedures for access control.

20. (1) a port facility security plan shall include security procedures for access control to—

(a) deter the unauthorized entry of weapons, explosives, incendiaries and other dangerous substances and devices, including any device that could be used to damage or destroy property, persons, port facilities, ship or offshore facilities;

(b) secure any weapons, explosives, incendiaries and other dangerous substances and devices that are authorized by the operator to be at the port facility; and

(c) control access to the port facility.

(2) The port facility operator shall ensure that—

- (a) the locations where restrictions or prohibitions that prevent unauthorized access are to be applied for each maritime security level are identified, each location allowing access to the port facility being addressed;
 - (b) The types of restrictions and prohibitions to be applied and the means of enforcing them are identified;
 - (c) the means of identification required to allow persons and vehicles to remain in the port facility without challenge are established; and
 - (d) the locations where the screening of persons and goods, including vehicles, is to be conducted are identified, these locations being covered to enable continuous screenings regardless of weather conditions.
- (3) The port facility operator shall ensure that an identification system is established for checking the identification of port facility personnel and other persons seeking access to the port facility.
- (4) The identification system shall—
- (a) Allow identification of authorized and unauthorized persons at all maritime security levels;
 - (b) Be coordinated, when practicable, with identification systems of vessels and offshore facilities that interface with the port facility;
 - (c) Be updated regularly; and
 - (d) Allow temporary or continuing access for port facility personnel and persons, including seafarers' chaplains and union representatives, through the use of a badge or other means to verify their identity.
- (5) The port facility operator shall establish in the port facility security plan the frequency of application of access controls, particularly if they are to be applied on a random or occasional basis.

Security procedures for restricted areas.

21. (1) A port facility security plan shall designate restricted areas in the port facility in order to—

- (a) prevent or deter unauthorized access;
- (b) protect persons authorized to be at the port facility;
- (c) protect the port facility;
- (d) protect ships and offshore facilities interfacing with the port facility;
- (e) protect sensitive security areas within the port facility;
- (f) protect security and surveillance equipment and systems; and
- (g) protect stores from tampering.

(2) The plan shall provide that all restricted areas—

- (a) are clearly marked; and
- (b) have signs that indicate that—
 - (i) Access to the area is restricted; and
 - (ii) Unauthorized presence in the area constitutes a breach of security.

(3) Restricted areas shall include—

- (a) shore areas immediately adjacent to ships or offshore facilities interfacing with the port facility;
- (b) areas containing sensitive security information, including cargo documentation;
- (c) areas containing security and surveillance equipment and systems and their controls and lighting system controls;
- (d) areas containing critical port facility infrastructure, such as—
 - (i) water supplies;

- (ii) telecommunications;
- (iii) electrical systems; and
- (iv) access points for ventilation and air-conditioning systems.
- (e) manufacturing or processing areas and control rooms;
- (f) locations in the port facility where it is reasonable to restrict access by vehicles and persons;
- (g) areas designated for loading, unloading or storage of cargo and ship stores; and
- (h) areas containing cargo consisting of dangerous goods, including certain dangerous cargoes.

Security procedures for handling cargo.

22. A port facility security plan shall contain security procedures for cargo handling for—

- (a) Deterring tampering;
- (b) Preventing cargo that is not meant for carriage from being accepted or stored at the port facility;
- (c) Identifying cargo that is accepted for loading onto vessels or offshore facilities interfacing with the port facility;
- (d) Controlling cargo at access points to the port facility;
- (e) Identifying cargo that is accepted for temporary storage in a restricted area while awaiting loading or pick up;
- (f) Ensuring the release of cargo only to the carrier specified in the cargo documentation;
- (g) Ensuring coordination with shippers and other persons responsible for cargo;
- (h) Creating, updating, and maintaining a continuous inventory of dangerous goods, from receipt to delivery in the port facility, that sets out the location of the dangerous goods; and

- (i) Enabling the checking of the documentation of cargo entering the port facility.

Security procedures for delivery of ships' stores and bunkers.

23. A port facility security plan shall contain security procedures for the delivery of ships' stores and bunkers to—

(b) Prevent ships' stores and industrial supplies from being accepted

without inspection; and

- (a) Check the ships' stores and industrial supplies for package integrity;
- (b) Deter tampering.

Security procedures for Monitoring.

24. (1) A port facility security plan shall contain security procedures to continuously monitor—

- (a) The port facility and its approaches by air, land and water;
- (b) Restricted areas in the port facility; and
- (c) Ships and offshore facilities interfacing with the port facility.

(2) The plan may provide that the monitoring may be effected by any combination of the following—

- (a) Lighting;
- (b) Security guards, including foot, vehicle and waterborne patrols; and
- (c) Automatic intrusion-detection devices and surveillance equipment.

(3) The plan shall provide that monitoring equipment shall—

- (a) If it is an automatic intrusion-detection device, activate an audible or visual alarm, or both, and it is at a location that is continuously attended or monitored;

- (b) be able to function continuously, including during periods of adverse weather or power disruption;
- (c) Monitor access and movement adjacent to ship and offshore facilities interfacing with the port facility; and
- (d) Limit lighting effects, such as glare, and their impact on safety, navigation and other security activities.

Consultation.

25. A port facility security plan shall set out, for the purpose of coordinating security-related activities, a mechanism for consultation—

- (a) Between the port security authorities and the Director General;
- (b) between the port facility operator and each port service provider conducting operations within the port, and any other stakeholder, who may be affected by the implementation of the plan; and
- (c) Between the port facility operator and its employees (or their representatives) regarding security measures and procedures to be implemented.

Maritime security level 1.

26. A port facility security plan shall set out, in relation to security level—

- (a) The security measures, identified in the security assessment for the operation, for implementation at that level;
- (b) The measures that have been implemented;
- (c) A schedule for implementing the measures that have not been implemented; and
- (d) Any interim measures that will be implemented until the measures mentioned in subparagraph (c) are fully implemented.

Maritime security levels 2 and 3.

27. A port facility security plan shall set out, in relation to maritime security levels 2

and 3, the additional security measures That the operator will implement if the DirectorGeneral declares that Maritime security level 2 or 3 is in force for the port facility.

Declarations of security.

28. A port facility security plan shall provide for—

- (a) The circumstances in which the operator will request a declaration of security with a ship;
- (b) The procedures for agreeing to the security measures and responsibilities of the operator and of the ship in those circumstances; and
- (c) How security measures identified in a declaration will be implemented to ensure compliance by the operator and the ship with their security plans and with the declaration.

Form of Plan — Port Facility

Map of port facility.

29. Every port facility security plan shall be accompanied by a map of a size and scale that clearly shows—

- (a) The boundaries of the port facility; and
- (b) The location of any security zones established, or that the operator wishes to establish or change within the area covered by the plan.

Protection of plan.

30. A port facility operator shall ensure that the security plan for the operator is protected against unauthorized access, amendment and disclosure.

Port Service Providers

Matters to be dealt with in the plan

Port service provider details.

31. A port service provider security plans shall be accompanied by a document setting out the following information:

(a) Name of the port service provider;

- (b) Contact details for the port service provider;
- (c) Name of the chief executive officer of the port service provider;
- (d) Name of each port facility in which the port service provider is located or operates;
- (e) Name or position of the person who is to be the PSPSO for the port service provider;
- (f) A single 24-hours fixed-line or mobile telephone number for the PSPSO

Details of other port service providers

32. A port service provider security plan shall be accompanied by a document setting out the name of, and contact details for—

- (a) Each PFSO of the port facility in which the port Service provider is located or operates; and
- (b) Each facility, and port facility operator and port service provider conducting operations within, the port facility in which the port service provider is located or operates.

Security Assessments.

33. In addition to the matters required by paragraph 10, a security assessment for the operation of a port service provider shall include the following matters:

- (a) A statement outlining the risk context or threat situation for the port service provider;
- (b) Identification and evaluation of important assets, infrastructure and operations that need to be protected;
- (c) Identification of. Possible risks or threats to assets, infrastructure and operations, and the likelihood and consequences of the occurrence;

- (d) Identification of existing measures, procedures and operations;
- (e) Identification of weaknesses (including human factors) in the infrastructure, policies and procedures;
- (f) Identification, selection and prioritization of possible risk treatments (for example, counter-measures and procedural changes that need to be implemented) and their effectiveness in reducing risk levels and vulnerabilities.

***PSPSO* qualifications and responsibilities.**

34. (1) A port service provider security plan shall set out
- (a) The knowledge, skills and other requirements for the PSPSO;
 - (b) The training or qualification that satisfy the requirements mentioned in paragraph (a);
- and
- (c) The training that must be given to the PSPSO;

Other personnel with security duties.

35. (1) a port service provider security plan shall identify, by reference to their positions, port service personnel with, or who have been assigned, security duties and responsibilities in addition to those of the PSPSO.
- (2) The security duties and responsibilities of personnel so identified shall be set out in the plan, together with
- (a) The knowledge, skills and other requirements for the security related aspects of their positions;
 - (b) The training or qualifications that satisfy the requirements mentioned in paragraph (a); and
 - (c) The training that must be given to such personnel.

Matters that must be in plan.

36. A port service provider security plan shall address, in addition to The matters required by paragraph 13, the following matters—

- (a) measures to prevent the introduction of unauthorized weapons or prohibited items into each port facility in which the port service provider is located or operates or on board ships being served by the provider;
- (b) measures to prevent unauthorized access to the land under the control of the port service provider, to security zones established within the boundaries of that land and to vessels operated by the provider;
- (c) Procedures for responding to security threats or breaches of security, including procedures for maintaining critical operations of the port service provider;
- (d) Procedures for responding to any security directions given by the Minister;
- (e) Procedures for evacuation in case of security threats or breaches of security;
- (f) procedures for drills and exercise associated with the plan;
- (g) procedures for interfacing with ship security activities;
- (h) Procedures for modifying the plan to correct deficiencies or update the plan to take into account changes to the port service provider;
- (i) Procedures for reporting occurrences that threaten the security of the port service provider;
- (j) Measures to ensure the security of the information contained in the plan;
- (k) Measures to ensure security of passengers, cargo and cargo handling equipment under the control of the port service provider; and
- (l) Procedures in case the ship security alert system of a ship is activated while in the port facility.

Consultation.

37. A port service provider security plan shall set out, for the purpose of coordinating security—related activities, a mechanism for consultation-

- (a) between the provider and the port facility operator for the port facility in which the port service provider is located or operates;
- (b) between the provider and the port facility operator and each port service provider conducting operations within the port facility in which the port service provider is located or operates;
- (c) between the provider and any other stakeholder who may be affected by the implementation of the plan; and
- (d) between the provider and its employees (or their representatives) regarding security measures and procedures to be implemented.

Maritime security level 1.

38. A port service provider security plan shall set out, in relation to maritime security level 1

- (a) The security measures identified in the security assessment for the operation, for implementation at that level;
- (b) The measures that have been implemented;
- (c) A schedule for implementing the measures that have not been implemented; and
- (d) Any interim measures that will be implemented until the measures mentioned in paragraph (c) are fully implemented.

Maritime security levels 2 and 3.

39. (1) A port service provider security plan shall set out, in relation to maritime security level 2;

- (a) The security measures identified in the security assessment for the operation, for implementation at those levels; and
- (b) The additional security measures that the provider will implement if the Minister declares that maritime security level 2 is in force for the port facility or operators which may include-

- (i) increasing the coverage and intensity of lighting and surveillance equipment, including the provision of additional lighting and surveillance coverage;
 - (ii) Increasing the frequency of foot, vehicle or waterborne patrols; and
 - (iii) Assigning additional security personnel to monitor and patrol.
- (2) A port service provider security plan shall set out, in relation to maritime security levels.
- (3), the security measures which shall be taken by the port facility in close co-operation with those responding to the threat at the port facility and the ships at the port facility, which may include—
- (a) Switching on all lighting within, or illuminating the vicinity of the port facility;
 - (b) Switching on all surveillance equipment capable of recording activities within, or adjacent to, the port facility; and
 - (c) Maximizing the length of time such surveillance equipment can continue to record.

Declarations of security.

40. A port service provider security plan shall provide for—
- (a) The circumstances in which the provider will request a declaration of security with a ship;
 - (b) The procedures for agreeing the security measures and responsibilities of the provider and of the ship in those circumstances; and
 - (c) How security measures identified in a declaration will be implemented to ensure compliance by the provider and the ship with their security plans and with the declaration.

Form of Plan—Port Service Provider

Map of port service provider.

41. Every port service provider facility plan shall be accompanied by a map which shall be of a size and scale that clearly shows—
- (a) The boundaries of the area under the control of the port service provider; and

(b) The location of any security zones established, or that the provider wishes to establish or change, within the area covered by the plan.

Protection of plan.

42. A port service provider shall ensure that the security plan for the provider is protected against unauthorized access, amendment and disclosure.

SHIP SECURITY PLANS AND ISSC's

Matters to be dealt within security plan

Identification of ship.

43. A ship security plan shall accompanied by a document setting out the following information about the ship—

- (a) name of the ship;
- (b) the ship's official number;
- (c) the ship's IMO ship identification number;
- (d) any other distinctive numbers or letters that identify the ship;
- (e) type of ship;
- (f) radio call sign;
- (g) date and port of registry;
- (h) year built;
- (i) deadweight tonnage;
- (j) gross registered tonnage;
- (k) length and breadth of ship;
- (l) draft forward and aft (full load);**
- (m) number of crew and their nationalities;

(n) number of passenger berths; and

(o) whether the ship is a foreign-going or coasting ship;

44. A ship security assessment for a Kenyan regulated ship shall Security includes the following matters-assessments.

(a) the date when the assessment was completed or reviewed;

(b) the scope of the assessment, including assets, infrastructure and operations assessed;

(c) a summary of how the assessment was conducted, including details of the risk management process adopted;

(d) the skills and experience of the key persons who completed or participated in the assessment;

(e) the results of the examination and evaluation of the existing shipboard protective measures, procedures and operations;

(f) a statement outlining the risk context or threat situation for the ship, including consideration of trading routes;

(g) identification and evaluation of key shipboard operations that need to be protected;

(h) identification of possible risks or threats to the key shipboard operations and the likelihood and consequences of their occurrence;

(i) Identification of existing security measures, procedures and operations;

(j) identification of weaknesses (including human factors) in the infrastructure, policies and procedures; and

(k) identification, selection and prioritization of possible risk treatments (for example, counter-measures and procedural changes that need to be implemented) and their effectiveness in reducing risk levels and vulnerabilities.

Ship operator, CSO and SSO.

45. (1) A security plan accompanied by ship security shall be accompanied by a document setting out the following information—

- (a) the name of the operator;
- (b) the name of the chief executive officer of the ship operator;
- (c) the name or position of the person who is to be the CSO for the ship;
- (d) A single 24-hours fixed-line or mobile telephone number for the CSO;
- (e) the name or position of the person who is to be the SSO for the ship.

(2) A ship security plan may set out duties and responsibilities of the CSO or SSO that are in addition to the duties and responsibilities for a CSO and SSO in regulation 20, 21 and 22, respectively.

(3) A ship security plan shall set out how the CSO will communicate with the master of the ship or the **Director General** or a port facility or service provider acting on behalf of the **Director General**;

- (a) gives notice that a maritime security level is in force for the ship; or
- (b) gives a security direction to the ship.

Shore-based personnel and crew with security.

46. (1) a ship security plan shall identify, by reference to their positions, shore-based personnel and crew with, or who have been assigned, security duties and responsibilities.

(2) The security duties and responsibilities of personnel and crew so identified shall be set out in the plan, together with—

- (a) the knowledge, skills and other requirements for the security—related aspects of their positions; and
- (b) the training or qualifications that satisfy the requirements mentioned in paragraph

(a);

Training.

47. A ship security plan shall set out the training that a CSO, SSO, and shore-based personnel and crew mentioned in paragraph 46 must receive.

Matters that must be in plan.

48. A ship security plan shall address the following matters

- (a) measures to prevent unauthorized carriage or possession of weapons or prohibited items on Board the ships;
- (b) identification of on-board security zones.
- (c) measures to prevent unauthorized access to the ship and any on-board security zones;
- (d) procedures for responding to security threats or breaches of security, including procedures for maintaining critical operations of ship/port, ship/ship interface;
- (e) procedures for responding to any security directions given by the Minister or to directions given by a port state;
- (f) procedures for evacuation of the ship in case of security threats or breaches of security;
- (g) procedures for drills and exercises associated with the plan;
- (h) procedures for interfacing with port service provider and port facility security activities;
- (i) procedures for modifying the plan to correct deficiencies or to update to take into account changes to the ship;
- (j) procedures for reporting occurrences that threaten the security of the ship; and
- (k) measures to ensure the security of the information contained in the plan.

Maritime security level 1.

49. A ship security plan shall set out, in relation to security level 1—

- (a) the security measures identified in the ship security assessment for implementation at that level;
- (b) the measures that have been implemented;
- (c) a schedule for implementing the measures that have not been implemented; and
- (d) any interim measures that will be implemented until the measures mentioned in subparagraph (c) are fully implemented.

Maritime security levels 2 and 3.

50. A ship security plan shall set out, in relation to maritime security levels 2 and 3

- (a) the security measures identified in the ship security assessment for implementation at those levels; and
- (b) the additional security measures that the ship will implement if the **Director General** declares that maritime security level 2 or 3 is in force for the ship.

Declaration of security.

51. A ship security plan shall provide for—

- (a) the circumstances in which the ship will request a declaration of security with another ship or port facility;
- (b) the procedures for agreeing to the security measures and responsibilities of the ship and of the other port facility in those circumstances; and
- (c) how security measures identified in a declaration of security will be implemented to ensure compliance by the parties with their security plans and with the declaration.

Security of ship in Non-ISPS Code compliant ports.

52. (1) This provision applies if it is envisaged by the ship operator that a Kenyan regulated ship may call at ports or locations that are not port facilities or are port facilities the operators of which are not required to have, or do not have, security plans.

(2) A ship security plan shall outline specific measures that will be implemented if the ship calls at ports or locations described in sub paragraph (1) so that any risks associated with those ports or locations are not transferred to the ship.

Security of ship in exceptional circumstances.

53. A ship security plan shall give sufficient guidance on how the security of the ship will be maintained in exceptional circumstances such as search and rescue operations, humanitarian crises, extreme weather conditions and other emergencies.

Pre-entry information.

54. (I) A ship security plan for a Kenyan regulated ship that is foreign-going shall set out the procedures for giving pre-entry information in accordance with sub-paragraphs (2) and (3).

(2) A Kenyan regulated ship that is foreign-going shall be ready to give the following information (pre-entry information) not later than 48 hours before the ship enters Kenyan waters in the course of a voyage—

(a) the security levels at which the ship operated at ports, and specific periods during which the ship operated at those levels, while conducting ship/port interface;

(b) any special or additional security measures that were implemented by the ship in any port where it conducted ship/port interface;

(c) whether appropriate ship security procedures were maintained during any ship to ship activity;

(d) if ship security procedures mentioned in sub-paragraph (2) (c) were maintained, the procedures and the specific periods during which those procedures were maintained.

(3) The information described in sub-paragraph (2) shall be given in relation to the last 10 ports of call by the ship.

Maritime security incidents.

55. A ship security plan shall set out procedures for—

(a) reporting maritime security incidents to the Minister; and

(b) responding to security threats and breaches of security, including provisions for maintaining critical operations of the ship or ship/port interface.

Security equipment.

56. A ship security plan shall—

- (a) include a list of the security equipment on board the ship;
- (b) describe the measures to ensure the inspection, testing, calibration and maintenance of security equipment;
- (c) set out the frequency for testing and calibration of security equipment; and
- (d) set out procedures to ensure that only correctly calibrated security equipment is used on board the ship.

On-board Systems.

57. (1) a ship security plan shall include information about the Following on board the ships.

- (a) external and internal communications systems;
- (b) surveillance, identification, monitoring and Reporting systems; and
- (c) tracking and positional systems.

(2) If a ship is provided with a ship security alert system, the ship security plan shall—

- (a) describe the operational characteristics of the system;
- (b) describe the ship security alert that will be transmitted from the system;
- (c) describe the performance standards to which the system shall conform, being standards not inferior to those adopted by the Organization; and
- (d) set out the procedures, instructions and guidance for using, testing, activating, de-activating and resetting the system, and for preventing false alarms.

Ship security records

58. A ship security plan shall set out—

- (a) the ship security records that are required to be kept on, by and for the ship in accordance with regulation 25;
- (b) a plan for keeping and preserving ship security records; and
- (c) the procedures for making those records available for inspection by a port state in accordance with regulations 25 and 33.

Security plan audits and reviews.

59. A ship security plan shall set out—

- (a) a schedule of security plan audits by internal and external auditors;
- (b) the circumstances, in addition to the occurrence of a maritime security incident, following which a security plan review shall be conducted;
- (c) the procedures for conducting a security plan audit, including a process for selecting auditors who are independent of the matters being audited; and
- (d) the procedures for conducting a security plan review, including a process for consultation during the review.

Form of Plan — Ship Security Plan

Statement about authority of master.

60. A ship security plan shall include a statement to the following effect—

"The master of the ship has the overriding authority and responsibility to make decisions with respect to the safety and security of the ship and to request the assistance of the ship operator or any Contracting Government to the SOLAS Convention, as may be necessary"

Protection of plan.

61. The ship operator for a Kenyan regulated ship shall ensure that the ship security plan for the ship is protected against unauthorized access, amendment and disclosure.

PART III—AUDIT, REVIEW AND AMENDMENT

Audits and review.

62 (1) The company security officer shall ensure that an audit of the ship security plan is performed annually.

(2) If the plan meets the requirements of regulation 22 and this Schedule, the company security officer shall attach a letter to it certifying that it meets the requirements of those provisions.

(3) The company security officer shall ensure that an audit of the ship security plan is performed if there is a new operator, or if there have been modifications to the ship, including to its physical structure, emergency response procedures, security procedures, or operations and an audit of the plan as a result of modifications to the ship may be limited to those provisions of the plan affected by the modifications.

(4) Persons who perform audits of the security procedures specified in the ship security plan shall—

(a) have knowledge of methods of conducting audits and inspections, and control and monitoring techniques;

(b) not have regularly assigned security duties; and

(c) be independent of the security procedures being audited unless impracticable due to the size and nature of the ship.

Amendments.

63. (1) If the results of an audit require amendments to the ship security plan, the ship security officer shall ensure that the proposed amendments are submitted to the company security officer within 30 days after the date of completion of the audit.

(2) The operator of a ship may submit to the Minister proposed amendments to a ship security plan approved under regulation 22 and this Schedule and the proposed amendments shall be

submitted 30 days, or any shorter period that the Minister allows, before they are to take effect.

(3) The operator of a ship shall submit proposed amendments to the Minister within 60 days after the Minister informs the operator in writing that the ship security plan approved under regulation 22 no longer meets the requirements of this Schedule and the Regulations.

(4) The Minister shall approve the amended plan if it meets the requirements of regulation

22 and this Schedule, unless approving the plan is not in the public interest and is likely to adversely affect maritime security.

(5) If proposed amendments are submitted under sub paragraph (1) or (3) and the amended plan is not approved, the plan will no longer be valid.

Port facility plan audits and review.

64. (1) An audit of a port facility security plan shall take into account the most recent port facility security assessment and determine whether there are any deficiencies or changes, such as in security threats, procedures or responsibilities or in personnel, operations or operator, that require amendments to be made to the plan.

(2) The port facility security officer shall ensure that an audit is conducted—

(a) annually, and no later than one year after the date of approval of the plan, over the entire plan; and

(b) whenever there is a new port facility operator, a change in operations or location or modifications to port facility that would affect its security.

(3) Persons conducting an audit shall, unless impracticable due to the size and nature of the port facility, be independent of the activities being audited and have knowledge of the methods of conducting audits and inspections and of control and monitoring techniques.

(4) If the results of an audit require an amendment to be made to the facility security assessment or plan, the port facility security officer shall prepare an amendment for approval.

(5) The port facility security officer shall submit any required amendments to the Minister for approval within 30 days after completion of the audit.

(6) The port facility operator may submit to the Minister other proposed amendments to the approved port facility security plan and the proposed amendments shall be submitted

30 days before they are to take effect.

(7) The port facility operator shall, within 60 days after the Minister informs the operator in writing that the port facility security plan no longer meets the requirements to remain approved, ensure that proposed amendments are submitted for approval.

(8) If proposed amendments are submitted under subparagraph (4) or (7) and the amended plan is not approved, the plan will cease to be valid on the day on which the port facility operator receives notification that the plan is not approved.

(9) The port facility security officer shall attach to the approved port facility security plan a letter from the Minister that certifies that the plan meets the requirements of this Schedule and the Regulations.

PART IV— TRAINING

Port facility security officer.

65. The port facility security officer should have knowledge and receive training, in some or all of the following, as appropriate:

- (a) security administration;
- (b) relevant international conventions, codes and recommendations;
- (c) relevant Government legislation and regulations;
- (d) responsibilities and functions of other security organizations;
- (e) methodology of port facility security assessment;
- (f) methods of ship and port facility security surveys and inspections;

- (g) ship and port operations and conditions;
- (h) ship and port facility security measures;
- (j) emergency preparedness and response and contingency planning;
- (k) instruction techniques for security training and education, including security measures and procedures;
- (l) handling sensitive security—related information and security—related communications;
- (m) knowledge of current security threats and patterns;
- (n) recognition and detection of weapons, dangerous substances and devices;
- (o) recognition, on a Non-discriminatory basis, of characteristics and behavioral patterns of persons who are likely to threaten the security;
- (p) techniques used to circumvent security measures;
- (q) security equipment and systems, and their operational limitations;
- (r) methods of conducting audits, inspection, control and monitoring;
- (s) methods of physical searches and Non-intrusive inspections;
- (t) security drills and exercises, including drills and exercises with ships; and
- (u) assessment of security drills and exercises.

Port facility personnel.

66. Port facility personnel having specific security duties should have knowledge and receive training in some or all of the following, as appropriate:

- (a) knowledge of current security threats and patterns;
- (b) recognition and detection of weapons, dangerous substances and devices;
- (c) recognition of characteristics and behavioral patterns of persons who are likely to threaten security;

- (d) techniques used to circumvent security measures;
- (e) crowd management and control techniques;
- (f) security-related communications;
- (g) operations of security equipment and systems;
- (h) testing, calibration and maintenance of security equipment and systems;
- (i) inspection, control, and monitoring techniques; and
- (j) methods of physical searches of persons, personal effects, baggage, cargo, and ship's stores.

Other port facility personnel.

67. All other port facility personnel should have knowledge of and be familiar with relevant provisions of the PFSP In some or all of the following, as appropriate:

- (a) the meaning and the consequential requirements of the different security levels;
- (b) recognition and detection of weapons, dangerous substances and devices;
- (c) recognition of characteristics and behavioral patterns of persons who are likely to threaten the security; and
- (d) techniques used to circumvent security measures.

SECOND SCHEDULE

REPUBLIC OF KENYA

THE MERCHANT SHIPPING (MARITIME SECURITY)

REGULATIONS, 2016

SECURITY CERTIFICATE

r.27

(Official Seal)

(KENYA)

A) CERTIFICATE NO

.....

Issued Under the Provisions of:

**THE MERCHANT SHIPPING (MARITIME SECURITY) REGULATIONS,
2016**

Under the authority of:

THE GOVERNMENT OF KENYA

By:

THE CABINET SECRETARY FOR TRANSPORT

Name of Ship:

.....

Distinctive number or

letters.....

Port of registry

.....

Port of Registry

.....

Type of ship

.....

Gross

tonnage.....

IMO

number.....

Name and address of the Company

.....

THIS IS TO CERTIFY:

1. That the security system and any associated security equipment of the ship has been verified in accordance with regulation 26 read together with section 19.1 of part A of the ISPS Code.

2. That the verification showed that the security system and any associated security equipment of the ship is in all respects satisfactory and that the ship complies with the applicable requirements of the First Schedule read together with chapter XI—2 of the Safety Convention and part A of the ISPS Code.
3. That the ship is provided with an approved ship security plan.

Date of initial/renewal verification on which this Certificate is based
.....

**This Certificate is valid until subject to verifications in
accordance with regulation 26.**

Issued at
(Place of issue of certificate)

Date of issue.....
(Signature of the duly authorized official issuing

the certificate)(Seal of stamp of issuing authority,

as appropriate)

Endorsement for intermediate verification

**THIS IS TO CERTIFY that an intermediate verification required by
Regulation 27 the ship was found to comply with the relevant provisions of the
First Schedule read together with the relevant provisions of chapter XI—2 of
the Convention and Part A of the ISPS Code.**

Intermediate

...

Verification

Signed:.....

(Signature of Authorized official)

Place:.....

Date:.....

Date:.....
.....

(Sale or Stamp of the authority as appropriate)

Additional verifications under Regulation 26

Additional verification

Signed

(Signature of authorized

official)

Place:.....

.....

Date:.....

(Seal or Stamp or Stamp of the authority as appropriate)

Additional Verification

Signed:

.....

(Signature of authorized Official)

Additional verification

Signed:.....

(Signature of authorized

official)Place

.....

Date

(Seal or stamp of the authority as appropriate)

Sectional A/ 19.3.7.2 of the ISSPS Code

THIS IS TO CERTIFY that an additional verification required by regulation 26 read together with section 19.3.7.2 of part a of the ISPS code the ship was found to comply with the relevant provision of chapter xi-2 the convention and part a of the ISPS Code

**Signed:.....
(Signature of authorized Official)**

Place

Date

(Seal or stamp of the authority as appropriate)

Endorsement to extend the certificate if valid for less than 5 years

Where regulation 27 read together with sections A19.3.3 of the ISPS Code applies

The ship complies with the relevant provision of part a of the ISPS code, and the Certificate shall, in accordance with section 19.3.3 of part A of the ISPS Code, be accepted as valid until.....

Signed:.....
(Signature of authorized official)

Place

Date

(Seal or stamp of the authority as appropriate)

**Endorsement where the renewal verification has been
completed and regulation 27 read together with section
A/19.3.4 of the ISPS CODE APPLIES**

**The ship complies with relevant regulation 27 read together with part A of the ISPS, and
the certificate shall, in accordance with section 19.3.4 of part A of the ISPS Code, be
accepted as valid until**

.....

Signed:.....

(Signature of authorized official)

Place

Date

(Seal or stamp of the authority as appropriate)

ISPS Code

Endorsement to extend the validity of the certificate until reaching the port of verification where regulation 27 read together with sections all 9.3.5 of the ISPS Code applies

This certificate shall, in accordance with regulation 27 read together with section 19.3.5/19.3.6 of part A of the ISPS Code, be accepted as valid until.....

Signed:.....

.....

(Signature of authorized official)

Place

Date

(Seal or stamp of the authority as appropriate)

**Endorsement for advancement of expiry date where regulation
27 read together with section A/19.3.7.1 of the ISPS Code Applies**

**In accordance with regulation 27 together with section 19.3.7.1 of part a of
the ISPS Code, the new expiry date**

Is

Signed:.....

...

(Signature of authorized official)

Place

Date

(Seal or stamp of the authority as

appropriate) Interim International

ship Security Certificate

MERCHANT SHIPPING (MARITIME SECURITY) REGULATION, 2016

Official seal (State)

Certificate number

.....

Issued under the provision of the
21st

MERCHANT SHIPPING (MARITIME SECURITY)

REGULATION, 2016

Under the authority of the Government

(KENYA)

by

(Person(s) or organization authorized)

Name of ship:

.....

Distinctive Number or letters

.....

Port of registry

.....

Type of ship

.....

Gross Tonnage

.....

IMO Number

.....

Name and Address of the Company

.....

Is this a subsequent, consecutive Interim Certificate? Yes / No

Is yes, date of issue and initial interim

Certificate.....

**This is to certify that the requirement of section A/19.4.2 of the ISPS have
been complied with This Certificate is valid**

until.....

Issued at

(Place of issue of

certificate) Date of issue

.....

.....

.....(Signature of the dully authorized official)
issuing the certificate)

(Seal stamp of issuing authority, as appropriate)

A Declaration of

Security Between a ship

and a port facility

Declaration of

securityName of

ship

Port of

registry

IMO

Number

Name of

Port

Facility

This Declaration of security is valid from.....until

.....

for the following activities

.....(List the activities
relevant details)

Under the following security

levelsSecurity level (s) for

the ship

Security level (s) for the Port Facility

The port facility and ship agree to the following security responsibilities to ensure compliance with the requirement of international Code for the Security of ships and of Port Facilities.

**This form of Declaration of Security is use between a ship and a port facility.
If the Declaration of Security is to cover two ships, this form should be appropriately modified**

The affixing of the initial SSSO or PFSO under these columns Indicates that the activities will be done, in accordance with the relevant approved plan by		
Activity	The port Facility	The ship
Ensuring the performance of security duties		
Monitoring restricted areas to ensure that only authorized personnel have access		
Controlling access to the port facility		
Controlling access to the ship		
Monitoring the port facility, including brething areas and areas surrounding the ship.		

Monitoring the ship including berthing areas and areas surrounding the ship		
--	--	--

Handling cargo		
Delivering of ship's stores		
Handling unaccompanied baggage controlling the embarkation of persons that security communication is readily available between the ship and the port facility		

The Signatories to this agreement certify that security measures and arrangements for both the port facility and the ship during the specified activities meet the provisions of chapter X1 -2 and part A of the Code that will be implemented in accordance with the provision already stipulated in their approved plan or the specified arrangements agreed to and set out in the attached annex.

Date at on the.....

Signed for and on behalf of	
Port Facility	The ship

**Signature of port
of master Security
Officer)**

**(Signature
ship security Officer)**

Name and Title of the person who signed

Name:	Name:
Title	Title
<p style="text-align: center;">Contact Details</p> <p style="text-align: center;">(to be completed as appropriate (indicate the telephone numbers or the radio channels or frequencies to be used)</p>	
For the port facility	For the ship

Port Facility

Master

Port facility security officer

Ship Security

Officer Company

Company security officer

Maritime Security 4 (Statement of compliance of a Port Facility)

Regulation 36

STATEMENT OF COMPLIANCE OF A PORT FACILITY

(Official Seal

(State)

Certificate Number

.....

Issued under the provision of Part B of the

**INTERNATIONAL CODE FOR THE SECURITY OF SHIPS AND PORT
FACILITIES**

(ISPS CODE)

The

Government of

(Kenya)

Place:

Date:

2nd VERIFICATION Signed:

(Signature of authorized official)

Place:

Date:

3rd VERIFICATION Signed:

(Signature of authorized official)

Place:

Date:

4th VERIFICATION Signed:

(Signature of authorized official)

Place:

.....

...

Date:

.....

**MARITIME SECURITY 5 (INTERNATIONAL SHIP SECURITY
CERTIFICATE) r 28INTERNATIONAL SHIP SECURITY CERTIFICATE**

(Official seal (State)

Certificate Number:

**Issued under the provisions of the
INTERNATIONAL CODE FOR THE SECURITY OF SHIPS AND
PORT FACILITIES
(ISPS CODE)**

**UNDER THE AUTHORITY OF THE
GOVERNMENT OF KENYA**

(Name the state)

by

(Person (s) organization authorized)

Name of the ship

.....

Distinctive numbers or letters

.....

.....Port of registry

.....

.....**Type of ship**

.....

.....**Gross tonnage**

.....

.....**IMO number**

.....

.....**Name and address of the Company**

.....

THIS IS TO CERTIFY:

1. That the security system and any associated security equipment of the ship has been verified in accordance with section 19.1 of part A of the ISPS Code.
2. That the verification showed that the security system and any associated security equipment of the ship is in all respects satisfactory and that the ship complies with the applicable requirements of chapter XI-2 of the Convention and part A of the ISPS Code.
3. That the ship is provided with an approved ship security plan.

Date of initial / renewal verification on which this Certificate is based

This Certificate is valid untilsubject to verifications in accordance with section 19.1.1 of part A of the ISPS Code.

Issued at.....

(Place of issue of certificate)

Date of issue.....

(Signature of the duly authorized official) issuing the

certificate)(Seal or stamp of issuing authority, as

appropriate)

REPUBLIC OF KENYA
THE MERCHANT SHIPPING (MARITIME SECURITY)
REGULATIONS, 2016
THE INTERIM INTERNATIONAL SHIP
SECURITY CERTIFICATE
(Official Seal) (KENYA)

r30

CERTIFICATE NO:.....

Issued under the provision of:

The Merchant Shipping (Maritime Security)

Regulation. 2016
Under the authority of:

THE GOVERNMENT OF KENYA

By

CABINET SECRETARY FOR TRANSPORT

Name of the ship

.....

.....Distinctive number of letter

.....

.....Port of registry

.....

.....Type of Ship

.....

Gross tonnage

.....

IMO

number

.....

Name and address of the Company

.....

.....**Is this a subsequent consecutive interim**

Certificate? Yes / No

If yes, date of issue and initial interim certificate

.....

**THIS IS TO CERTIFY THAT the requirement of r 30 read together with
section A/19.4.2 of theISPS Code have been complied with**

**This Certificate is issued pursuant to regulation 30 reads together with
section A/19.4 of theISPS Code**

This Certificate is valid until

.....

.....Issued at Nairobi

Date of issue:.....

**MINISTRY FOR

TRANSPORT THE

GOVERNMENT OF

KENYA**

**By:
THE MINISTRY FOR TRANSPORT**

**DECLARATION OF SECURITY BETWEEN A SHIP AND A
PORT FACILITYDECLARATION OF SECURITY**

Name of ship

Port Registry

IMO number

Name of the

PortFacility

This Declaration of security is valid from..... Until
.....

For the following activities

.....
.....(List the activities with
relevant details)

Under the following security levels

Security level(s) for the ship

Security levels(s) for the port Facility

The port facility and ship agree to the following security measures and responsibilities to ensure compliance with the requirement of regulation 48 read together with part A of the International Code for the security of Ships and of Port Facilities

The affixing of the
initials of the SSO or
PFSO under these
columns indicates that
the activity will be
done, in accordance

Activity	The port Facility	The ship
Ensuring the performance of security duties		
Monitoring restricted areas to ensure that only authorized personnel have access		
Controlling access to the port facility		
Controlling access to the ship		
Monitoring the port facility, including berthing areas and areas surrounding the ship.		
Monitoring the ship including berthing areas and areas surrounding the ship		
Handling cargo		
Delivering of ship's stores		
Handling unaccompanied baggage		
Controlling the embarkation of persons and their effects		
Ensuring that security communication is readily available between the ship and the port facility		

The

The Signatories to this agreement certify that security measures and arrangements for both the port facility and the ship during the specified activities meet the provisions of regulation 47 together with X1 -2 and part A of the Code that will be implemented in accordance with the already stipulated in their approved plan or the specified arrangements agreed to and set out in the attached annex.

Date at on the.....

Signed for and on behalf of

Port Facility	The ship
---------------	----------

*(Signature of Port
Officer)*

*Signature of Master security
ship security Officer)*

Name and Title of the person who signed	
Name:	Name:
Title	Title
<p style="text-align: center;">Contact Details</p> <p style="text-align: center;">(to be completed as appropriate (indicate the telephone numbers or the radio channels or frequencies to be used)</p>	
For the port facility	For the ship

Port Facility

Master

Port facility security officer

Ship Security Officer

Company

Company security officer

REPUBLIC OF KENYA
THE MERCHANT SHIPPING (MARITIME SECURITY) REGULATIONS,
2016

(Official Seal)

(KENYA)

CERTIFICATE NO.....

Issued Under the Provision of:

THE MERCHANT SHIPPING (MARITIME SECURITY) REGULATIONS,
2016

Under the authority of:

THE GOVERNMENT OF KENYA

By:

THE CABINET SECRETARY FOR TRANSPORT

Statement of Compliance of a Port

Facility (Official Seal

(Stat

e)

Certificate Number

Issued under the provision of R.36 and Part B of the

**INTERNATIONAL CODE FOR THE SECURITY OF SHIPS AND PORT
FACILITIES**

(ISPS)

The

Government of

(Kenya)

**Name of the Port
facility:.....**

Address of the port facility

THIS is to certify that the compliance of this port facility with the provisions of regulation 36 read together with chapter XI-2 and part A of the International Code for the Security of Ships and of Port Facilities (ISPS Code) has been verified and that this port facility operates in accordance with the approved port facility security plan. This plan has been approved for the following types of operations, types of ship or activities or other relevant information:

Passenger ship

Passenger high-speed

craft Cargo-high

speed craft Bulk

carrier

Oil tanker

Chemical

tanker Gas

carrier

Mobile offshore drilling units

Cargo ships other than those referred to above

**This statement of Compliance is valid
until.....**

Subject to

Verifications (as indicated overleaf)

Issue at

.....

**Date of
issue**

CABINET SECRETARY FOR TRANSPORT

Endorsement for verifications

**The Government of Kenya has established that the validity of this Statement of Compliance
is subject to biannual verifications**

**THIS IS TO CERTIFY that, during a verification carried out in accordance with the First
schedule read together with paragraph 13/16.62.4 of the ISPS Code, the port facility was
found to comply with the relevant provisions of chapter XI-2 of the Convention and Part A of
the ISPS Code.**

1ST VERIFICATION Signed:.....

(Signature of authorized official)

Place:

Date:

2nd VERIFICATION Signed:

(Signature of authorized official)

Place.....

Date:

3rd VERIFICATION Signed:

(Signature of authorized official)

Place:

Date:

4th VERIFICATION Signed:24.....

(Signature of authorized official)

Place:

Date.....