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**THE MERCHANT SHIPPING  
(SEAFARERS' CONDITIONS OF  
EMPLOYMENT),  
REGULATIONS, 2015**

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*Dedication*

*To my late Mother, Agatha Mligo whom I cherish*

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# **Explanatory Notes**

## **EXPLANATORY NOTES**

### **PART ONE: AN OVERVIEW OF THE MARITIME LABOUR CONVENTION, 2006**

#### **1.0 Introduction**

**This part is intended to provide a general description of the Maritime Labour Convention 2006, (MLC 2006) reasons for its adoption as well as the advantages which it has brought about to seafarers when compared to previous conventions. The Fundamental Rights and Principles of Seafarers' Employment and Social Rights, the structure and the text of the Convention and how it should be used will also be discussed in this part. Further, the unique features of the MLC 2006 such as the 'No More Favourable Treatment' and 'substantially equivalent' concepts will be explained, as well as the Member States obligations and the compliance and enforcement mechanisms of the Convention.**

#### **1.1 The Maritime Labour Convention In Perspective**

##### **1.1.1 Background to the MLC 2006**

**Seafarers' working conditions have always been a concern for the International Labour Organisation (ILO) from its early days of its establishment in 1919 such that establishment of minimum labour standards that are universally applied irrespective of the nationality of the seafarer, the ship or the shipowner become the agenda of ILO from its early secessions<sup>1</sup>.**

**The ILO felt that seafarers, being not land-based working but working on the sea, they not only moved huge amount of world trade, but were also the**

**most fluid and wide-ranging workforce in the planet.<sup>2</sup> Having that in mind the International Labour Commission (ILC) first meeting began with the discussion on the regulation of working hours, the need for a special approach to living and working conditions the maritime sector. Since then it became the ILO practice to deal exclusively with seafarers living and working condition.<sup>3</sup>**

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<sup>1</sup> McConnell Moira, Delvlin Dominick and Doumbia Cleopatra -Henry, *The Maritime Labour Convention, 2006: A Legal Primer to an Emerging International Regime*, Martinus Nijhoff publishers, (2011), p 38.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*



**Due to the special nature of the living and working conditions of maritime workers the ILC adopted a large number of conventions and recommendations applying specifically to seafarers<sup>4</sup> and as such the first ILO labour conventions were the maritime labour conventions namely; The Minimum Age (Sea) Convention, 1920, Unemployment Indemnity (shipwreck) Convention 2019 and Placing of Seamen Convention 1920<sup>5</sup>. This was followed by a series of maritime labour conventions each one dealing with a specific issue of seafarers. Then came the era when the ILC recognised that despite the big number of maritime labour conventions, seafarers working conditions were not improving as was expected. Among the reasons for this lack of improvement were the ‘low rates of ratification of maritime labour conventions compared to International Maritime Organisation (IMO) conventions and the fragmented nature of these numerous existing maritime labour conventions.<sup>6</sup>**

**In addition, the problem of ‘treaty congestion’ made it difficult for member States to engage in separate ratification process for so many instruments. As a means of addressing these challenges the shipowners and seafarers agreed that the existing ILO maritime instruments needed consolidation and bringing up to date by means of new single framework convention on maritime labour standards.<sup>7</sup> Discussions among shipping industry players began and went through various stages as a result of which the MLC 2006 came about. As such, the MLC 2006 is the conclusion of ILO’s response to the many recommendations which were put forward, including the 2000 Report by the International Commission on shipping, inquiry into ship safety and competition.<sup>8</sup> These recommendations included the mainstreaming and strengthening of the international maritime and labour regime to improve living and working conditions for seafarers which the report described in some cases as inhuman and tantamount to slavery.<sup>9</sup>**

### 1.1.2 The MLC 2006

**The Maritime Labour Convention, 2006 which entered into force on 20 August 2013, often referred to as the fourth pillar of the international maritime regulatory regime, as it will exist alongside the well-known key IMO Conventions of International Convention for the Safety**

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<sup>4</sup> *Ibid.*

<sup>5</sup> Fitzpatrick, M. (ed), *Seafarers Rights*, Oxford University Press (2005) p 22.

<sup>6</sup> McConnell Moira, Delvlin Dominick, Doumbia Cleopatra -Henry Op Cit p 43.

<sup>7</sup> *Ibid* p 48.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

**of Life at Sea, 1974 (SOLAS),<sup>10</sup> International Convention for the Prevention of Pollution of the Sea by Oil 1978 (MARPOL)<sup>11</sup> and International Convention on Standards of Training Certification and Watchkeeping for Seafarers 1978 (STCW)<sup>12</sup> that support quality shipping and help to eliminate substandard shipping. MLC 2006 is also often referred to as the “seafarers’ bill of rights” and an objective benchmark for decent working and living conditions for seafarers<sup>13</sup>.**

**The MLC 2006 not only brings the system of protection contained in existing labour standards closer to the workers concerned in a form consistent with the rapid developing globalized sector but also improve the applicability of the system so that shipowners and government interested in providing decent conditions of work do not have to bear an unequal burden in ensuring protection<sup>14</sup>. MLC 2006 brings together and modernizes in some areas the majority of the ILO’s maritime legal instruments adopted since 1920. The 37 maritime labour Conventions that are consolidated will be gradually phased out as States that are now party to these Conventions ratify the MLC 2006<sup>15</sup>.**

**The Convention sets out minimum requirements for seafarers to work on a ship and conditions of employment, including important matters such as a contract of employment called the seafarers’ employment agreements (SEA), minimum hours of work or rest, wages, leave, repatriation and other matters. The MLC 2006 also consist provisions dealing with standards for accommodation and recreational facilities, food and catering on board ship, as well as medical care on board and ashore, health and safety protection, accident prevention, access to seafarer welfare centres and social security protection<sup>16</sup>. The Convention has also introduced a new phenomenon for State responsibility, under the framework of international**

## law of the sea, the State with labour-supplying responsibilities.<sup>17</sup>

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<sup>10</sup> Adopted on 1 November 1974; Entry into force: 25 May 1980.

<sup>11</sup> This Convention was superseded by the 1978 Protocol to MARPOL '73 as between the State Parties thereto with effect from 2<sup>nd</sup> October, 1983.

<sup>12</sup> Adopted on 2<sup>nd</sup> November, 1973, as amended by the Protocol in London on 1<sup>st</sup> June 1978.

<sup>13</sup> McConnell, M. *supra* p18.

<sup>14</sup> Moira McConnell, *The Maritime Labour Convention, 2006—reflections on challenges for flag State implementation*, Published online on 27 September 2011 by the World Maritime University Journal, Maritime Affairs at <http://www.link.springer.com/article/10.1007/s13437-011-0012-2> accessed on 8<sup>th</sup> December 2014.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

**As an ILO legal instrument, the MLC 2006 recognises the fundamental rights of seafarers as workers found in other ILO labour conventions when it provides in its Article III that:**

*Each Member shall satisfy itself that the provisions of its law and regulations respect, in the context of this convention, the fundamental rights to;*

- (a) freedom of association and the effective recognition of the right to collective bargaining;*
- (b) the elimination of all forms of forced or compulsory labour;*
- (c) the effective abolition of child labour; and*
- (d) the elimination of discrimination in respect of employment and occupation.*

## **1.2 Structure of the MLC 2006**

**The MLC 2006 is organized into three main parts: the Articles, which set out the broad principles and obligations. The Articles are followed by the Regulations and the Code, which relate to the areas of seafarers' working and living conditions covered by the Convention and to inspection and compliance.**

**The Regulations, which are written in very general terms, are complemented by the more detailed Code. The Code has two parts: Part A which contains Standards and Part B Guidelines. The provisions in the Regulations and the Standards, Part A, which are mandatory and Guidelines Part B, non mandatory guidelines in the Code have been arranged and linked together according to their subject matter such that each of the Titles in the MLC 2006 consists of various Regulations covering a particular aspect of the subject and each Regulation being followed first by the Part A Standards and then by the Part B Guidelines which relate to the same aspect.**

### **1.2.1 Objectives of the MLC 2006**

**The objectives of the MLC 2006 have been clearly stated in its preamble. The overall objective of the MLC 2006 has been stated as creating a single, coherent instrument which will embody as far as possible all up to date standards of existing international Maritime labour conventions and recommendations, including the fundamental principles as enshrined in other labour conventions, taking into consideration the global nature of the shipping industry which call for the seafarers' special protection. MLC 2006 brings together, in one place, international minimum standards that ensure decent work for the estimated more than**

**1.5 million seafarers around the world whose work is essential to international trade.<sup>18</sup> It is also stated that the MLC 2006 will help to provide a level playing field for quality shipowners operating under the flag of countries that have ratified the MLC 2006 with the aim of ensuring that decent working conditions go hand in hand with fair competition<sup>19</sup>**

### **1.2.2 Member States' Obligations**

**The Convention obliges Member States which have ratified the convention to cooperate with each other for the purposes of ensuring that the Convention is effectively implemented and enforced.**

### **1.2.3 Scope of Application of the Convention**

**The scope of application of MLC 2006 is clearly stated in Article two of the Convention. The convention applies to seafarers working on board ships that fly the flag of countries that have ratified it. The Convention applies to a wide range of ships operating on international and national or domestic voyages. It covers all ships other than those which navigate exclusively in inland waters or waters within, or closely adjacent to sheltered waters or areas where port regulations apply. The Convention applies to all those ships, whether publicly or privately owned, that are ordinarily engaged in commercial activities, except; ships engaged in fishing or in similar pursuits, ships of traditional build such as dhows and junks warships or naval auxiliaries.<sup>20</sup>**

**Seafarers as defined in the Convention have included all persons who are employed or are engaged or work in any capacity on board a ship to which the Convention applies. This means that, seafarers includes not only the crew involved in navigating or operating the ship but also, persons working**

**in hotel positions that provide a range of services for passengers on the ships<sup>21</sup>.**

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<sup>18</sup> <http://www.ilo.org>. Accessed on 8<sup>th</sup> December, 2014.

<sup>19</sup> McConnell Moira, Delvlin Dominick and Doumbia Cleopatra, Op Cit, p 38.

<sup>20</sup> MLC 2006, Article II.4.

<sup>21</sup> <http://www.ilo.org> . Accessed on 20<sup>th</sup> December, 2014



#### **1.2.4 The Rights and Principles**

**Seafarers' rights in the Convention have been provided for in Article IV. While Articles IV set out the core rights of seafarers, there are Regulations and the Code which provide for the underlying principles in which the seafarers' rights can be realized by Member States. The Regulations and the Code have been organized into five Titles which essentially cover the same subject matter as most of the existing maritime labour instruments.<sup>22</sup> The Titles, put together, set out the Member States and shipowners obligations under the Convention.**

**Further to that, each of these regulations have provided specific standards in which State parties are required to adhere to during implementation and enforcement of the convention. There are Mandatory Standards under each regulation which have been characterized by letter 'A'. There are also under each regulation, Non-Mandatory Guidelines characterized by the letter 'B'. The five titles and their underlying principles are briefly discussed in the paragraphs below.**

##### **(a) Minimum Requirements for Seafarers to Work on a Ship<sup>23</sup>**

**The purpose of the regulations under this title is to ensure no terms under the prescribed minimum age works on-board a ship. In addition, seafarers must be medically fit, well trained and qualified for the duties they will be assigned to carry out.**

##### **(b) Conditions of Employment<sup>24</sup>**

**These regulations ensure that all seafarers shall have fair employment agreements that provide them with adequate leave and**

**entitlements to be repatriated. It requires that their wages are paid monthly and that seafarers shall have regulated hours of work and hours of rest.**

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<sup>22</sup> Lavelle Jennifer (ed.). *Maritime Labour Convention 2006*, Inform Law from Routledge, (2014 ) p 1.

<sup>23</sup> Title 1, the Regulations and the Code.

<sup>24</sup> Title 2 *Ibid.*

**(c) Accommodation, Recreational Facilities, Food and Catering<sup>25</sup>**

**Each seafarer has the right to decent and safe accommodation and recreational facilities. Requirements regarding free access to good food and drinking water on-board are all set out here as well.**

**(d) Health Protection, Medical Care, Welfare and Social Security Protection<sup>26</sup>**

The purpose of these regulations are to protect seafarers' health and to ensure that their working and living environment is safe and hygienic.

**(e) Compliance and Enforcement<sup>27</sup>**

**This title addresses the responsibilities of ratifying Member States regarding implementation and ensuring compliance and enforcement with MLC 2006 requirements. The implementation of an on-board complaint procedure, being in possession of a Maritime Labour certificate for vessels of 500 GT and over, and the rectification of deficiencies raised during inspections are just some of the issues determined within this title.**

**In terms of Regulation 5.1.1, the obligations of each Member States extend to conducting regular inspections, reporting, monitoring and legal proceedings under the laws of flag states. The inspection aims at ensuring that ships that fly its flag carry a Maritime Labour Certificate and a Declaration of Maritime Labour Compliance in accordance with the Convention.<sup>28</sup>**

**The Maritime Labour Certificate complimented by a declaration of maritime compliance will mean that the ship has been dully inspected by member whose flag it flies and those requirements of the Convention relating to the seafarers working and living conditions have been met.<sup>29</sup>**

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<sup>25</sup> Title 3 *Ibid.*

<sup>26</sup> Title 4 *Ibid.*

<sup>27</sup> Title 5 *Ibid.*

<sup>28</sup> The MLC 2006.

<sup>29</sup> MLC 2006, Regulation 5.1.1paragraph 4.

### **1.3 The Unique Nature of the MLC 2006**

**It can rightly be argued that the Convention provides a modern system for improved and enforceable conditions in a highly possible realization of a level playing field for shipowners under the globalized industry. There are specific aspects in the MLC 2006 which can be said will have a positive impact in the Convention being widely ratified and enforced. These include clauses which provide for “no more favourable treatment”, its universality nature in the mechanisms for its implementation and enforcement, consolidative nature of all maritime labour conventions, its tripartite nature and flexibility in its implementation and enforcement.**

#### **1.3.1 The “No More Favourable Treatment” for Ships of Non-Ratifying Countries**

**These words appear in Article V, paragraph 7, of the Convention. The import is that ships must not be placed at a disadvantage because their country has ratified the new Convention.<sup>30</sup> In order to encourage fair competition, the Convention requires Port States to ensure that ships of non-ratifying States receive “no more favourable treatment” during Port State Control than that given to ships of ratifying States. The practical consequence comes out clearly in the port State control provisions of Title 5 of the Convention, under which ships of all countries, irrespective of ratification, will be subject to inspection in any country that has ratified the Convention, and to possible detention if they do not meet the minimum standards of the Convention.**

#### **1.3.2 The Universality Nature**

**The distinguishing nature of the MLC 2006 comes from the need for equality among seafarers around the world and also among shipowners, in**

**a context where the previous maritime labour conventions have been unevenly applied.<sup>31</sup> As it can be observed from the previous maritime labour conventions, the traditional international labour conventions appear in practice to have been packed together between each member ratifying them and ILO rather than real contact between ILO and member state.<sup>32</sup> With the MLC 2006, the required cooperation for an effective implementation and enforcement of each ratifying member by**

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<sup>30</sup> McConnell Moira, Delvlin Dominick and Cleopatra Doumbia, Op Cit p. 81.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

**Article I, paragraph 2 is not restricted to the effective implementation and enforcement in the cooperating countries only, but also covers action to promote implementation and enforcement in other countries.<sup>33</sup>**

### **1.3.3 Consolidatory Nature of The Maritime Labour Conventions**

**The MLC 2006 is exceptionally comprehensive as it consolidates older ILO conventions, some dating back to 1920.<sup>34</sup> The Convention sets out in a single coherent document most of the seafarers' rights to decent conditions of work in nearly all aspect of their working and living conditions including, among others, minimum age, employment agreements, hours of work or rest, payment of wages, paid annual leave, repatriation at the end of contract, onboard medical care, the use of licensed private recruitment and placement services, accommodation, food and catering, health and safety protection and accident prevention and seafarers' complaint handling.<sup>35</sup>**

**The MLC 2006 has consolidated most of the existing 70 maritime labour instruments including Conventions and Recommendations adopted by the ILO since 1920<sup>36</sup>. All other existing maritime labour conventions are expected to gradually phase out as States that were party to those conventions ratify the new 2006 Convention.<sup>37</sup> Once ratification is made by a State to the MLC 2006, she is automatically deemed to have abandoned all the previous labour convention to which she was a party.**

### **1.3.4 The Tripartite Nature of the MLC 2006**

**The Special Tripartite Committee is established under Article XIII of the Maritime Labour Convention, 2006. The Governing Body of the International Labour Office shall keep the working of this Convention**

**under continuous review through this Special Tripartite Committee.<sup>38</sup> This Committee shall consist of two representatives nominated by the Government of each Member that has ratified this Convention, and the representatives of**

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<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> Lavelle Jennifer (ed.), *Maritime Labour Convention 2006*, Inform Law from Routledge, (2014) p 1.

<sup>36</sup> Lavelle Jennifer (ed), '*Seafarers Abandonment Insurance: 'A System Of Financial Security for Seafarers'* By Denis Nifontov Routledge, (2014), P 121.

<sup>37</sup> <http://www.ilo.org>.

<sup>38</sup> MLC 2006 Article XIII (1).



**Shipowners and Seafarers appointed by the Governing Body after consultation with the Joint Maritime Commission (JMC).**

**Further to that, the Government representatives of Members which have not yet ratified this Convention may participate in the Committee but without voting power on any matter dealt with in accordance with this Convention. The votes of each Shipowner and Seafarer representative in the Committee shall be weighted so as to ensure that the Shipowners' group and the Seafarers' group each have half the voting power of the total number of governments which are represented at the meeting concerned and entitled to vote. This kind of unique arrangement, it is envisaged will make implementation and enforcement of the Convention be monitored and its objectives realized at an agreed standard.**

#### **1.3.5 Flexibility in the Implementation and Enforcement of the MLC 2006**

**The Convention provides for flexibilities in its implementation through the concept of 'substantial equivalent' which means that any law, regulation, collective agreement or other measure used by a State to implement the requirements of the MLC, 2006 that is conducive to the full achievement of its goals and purpose will be accepted as full compliance to the Convention<sup>39</sup>.**

**As such although the Convention has set out the basic rights of seafarers to decent work in firm statements, the measures regarding its implementation have been left in the hands of the ratifying States. As such, Article IV, paragraph 5, of the MLC 2006, provides for the implementation of seafarers' employment and social rights under the Convention to be achieved through national laws or regulations, through applicable collective bargaining agreements or through other measures or in practice, unless the Convention specifies otherwise. This means that, each country is**

**free to decide whether a particular MLC 2006 provision should be contained in a law or in a regulation. The country may decide that certain matters be dealt with through other legal measures or as part of a collective bargaining agreement. In some cases therefore, a country might decide that no further legislative measures need to be taken because, for example, a seafarer's rights under the MLC 2006, is already adequately covered by a law already in existence.**

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<sup>39</sup> ILO website at ; [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/publication/wcms\\_177371.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_177371.pdf). Last accesses on 20th December 2014.

### **1.3.6 Accelerated Amendment or Tacit Acceptance Procedure**

**One of the important innovations of the MLC 2006 is on the amendment of certain provisions in the Code through an accelerated amendment or tacit acceptance procedure rather than express ratification. This is provided for in Article 15 of the Convention. Under the procedure, the Code can be amended through a simplified procedure. As such, the Convention has established a special Tripartite Committee with the responsibility of reviewing of the proper functioning of the convention and ensuring that simplified and accelerated amendments are affected. This Committee has already effected some amendments to the Code, specifically implementing Regulations 2.5 and 4.2 and appendices of the Convention which was adopted by the Special Tripartite Committee on 11 April 2014 whereby a new Standard A2.5.2 on Financial security has been added.<sup>40</sup>**

### **1.4 The Maritime Labour Convention Enforcement**

**Majority of the obligations under the MLC 2006 are directed to States in their capacity as flag States. The Convention contains, in Title 5, obligations to establish a compliance and enforcement system based on regular inspections and, in the case of ships 500GT engaged in international voyages or 500GT operating between ports in a country other than the flag State, mandatory certification of labour and social conditions for seafarers, carried out by the competent authority in the flag States or recognized organizations on their behalf.<sup>41</sup>**

**As such, a maritime Labour Certificate and a declaration of Maritime Labour Compliance will have to be issued by flag state. The certificate and Declaration will provide prima facie evidence of compliance with the**

**requirement of the Articles, Regulations and The Code under Part A. In specific situation, a detailed inspection and even the detention of a ship, in a foreign port to correct the conditions on the ship may be warranted.**

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<sup>40</sup> The maritime labour convention, 2006, amendments as approved by the conference during at its one hundred and third session, Geneva, 11 June 2014 accessed at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_248905.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_248905.pdf) on 20th December 2014.

<sup>41</sup> MLC, 2006, Title 5.

## **PART TWO: THE NEED TO INCORPORATE THE MLC 2006 INTO THE LAWS OF TANZANIA**

### **2.0 Introduction**

**This part intends to discuss the rationale behind incorporating the MLC 2006 into the laws of Tanzania. The main focus will be on the analysis of the provisions of the MLC 2006 under the intended legislation in the light of the current maritime labour laws and practice in Tanzania in order to appreciate the need of putting in place a new legislation to deal with the seafarers' rights as pronounced in the MLC 2006.**

### **2.1 Tanzania's Obligations to the ILO Conventions**

**Tanzania, like other members of ILO, has been ratifying ILO labour standards, which are intended to establish good relations between the Government, business community and the labour force. Tanzania accepted commitments to ratifying ILO labour standard in Singapore in 1996 and in Geneva in 1998 during the World Trade Organization (WTO) Ministerial Declaration as well as in the ILO Declaration on Fundamental Principles.<sup>42</sup>As such Tanzania has ratified a total number of 34 ILO labour conventions including all the eight (8) ILO fundamental Conventions<sup>43</sup>.**

**As such, Tanzania is now in its final stages of presenting a bill for the ratification of the MLC 2006 in accordance with the Article 63 of the Constitution of the United Republic of Tanzania.<sup>44</sup> Given the updates which have been brought by the MLC 2006 in previous conventions as discussed above, Tanzania is left with no option but to work hand in hand with the rest of the world, especially given the fact that the industry is so global that no country can work on its own.**

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<sup>42</sup>[http://www.ibrarian.net/.../TANZANIA\\_S\\_RATIFICATION\\_OF\\_CORE\\_ILO\\_LABOUR\\_STANDARD.pdf?](http://www.ibrarian.net/.../TANZANIA_S_RATIFICATION_OF_CORE_ILO_LABOUR_STANDARD.pdf?)  
accessed on 6<sup>th</sup> December 2014.

<sup>43</sup> <http://www.ilo.org>.

<sup>44</sup> Constitution of the 1977.

## **2.2 The Proposed Regulations and The Existing Maritime Labour Laws in Tanzania**

**Under this section Title II and its Regulations and the Code are critically analyzed to explore the requirements of the intended draft regulations and the impact which the MLC 2006 will bring about upon its being incorporated into the laws of Tanzania.**

### **2.2.1 Seafarers Employment Agreement**

**Seafarers' requirements for employment agreement have been provided under Regulation 2.1 whose purpose is to ensure that seafarers have a fair employment agreement. On the other hand, Regulation 2.3 provides for both the process of entering into that agreement and the minimum contents of the agreement with the purposes of achieving fairness<sup>45</sup>. Though the substantive content of the Seafarers agreement is established through compliance with the national laws or regulation or collective bargaining or through other measures implementing the regulations in all titles of the convention, the Regulation requires that seafarers' are enabled to examine and seek advice on their employment agreement and to freely accept before signing.<sup>46</sup>**

**Seafarers' Employment Agreement (SEA) is comprised of both a contract of employment and Articles of agreement in order to accommodate what was already being in the Seamen's Articles of Agreement Convention, 1926.<sup>47</sup> It is important to note that the terms and conditions for employment of a seafarer shall be set out or referred to in a clear written legally enforceable agreement and that Member's national law and practice, seafarers' employment agreements shall be understood to incorporate any applicable collective bargaining agreements. For**

**enforcement purposes seafarers shall be given a document containing a record of their employment on board the ship.<sup>48</sup>**

**The MLC 2006 has introduced an important aspect in that, the parties to the SEA which under the MLC 2006 is between shipowners and any seafarers as opposed to the provisions of the Tanzanian Merchant Shipping Act<sup>49</sup> (MSA). Here, the engagement of seafarers as**

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<sup>45</sup> Moira McConnell, Dominick Delvlin, Cleopatra Doumbia-Henry ,supra, p 279.

<sup>46</sup> Regulation A2.1 paragraph 1(b).

<sup>47</sup> Moira McConnell, Dominick Delvlin, Cleopatra Doumbia-Henry, supra, p280.

<sup>48</sup> Regulation 2.1.3 and Standard A2.1.1 (e).

<sup>49</sup> Tanzanian Merchant Shipping Act, Act, 2003.



provided under section 111 requires seafarers engaged in any Tanzanian ship to enter into crew agreement with a Master.<sup>50</sup> To this end the draft regulations will harmonise standard practice across the member states which obligation has been put into the convention. This means that under the MLC the ship owner becomes responsible for any deficiency which might be noted in the agreement.

### 2.2.2 Wages

In terms of section 128 of the Tanzanian Merchant Shipping Act,<sup>51</sup> seafarers' wages are payable upon demand and consolidated after the arrival of the ship at the port where the seafarer is to be discharged. Unlike in the MLC 2006 where by necessary implication the obligation of paying the seafarers is on the shipowner, the MSA has entrusted this obligation to the shipmaster. The MLC 2006 has provided a standard which seeks to guarantee more the seafarers right to wages and in a more coherent and acceptable manner when it introduced the concept of a basic pay as opposed to the consolidated wages and further regulate the payment of overtime worked by seafarers, setting the normal working hours not to exceed eight hours per day and without prejudice to more favourable collective bargaining agreements.<sup>52</sup>

Thus under the MLC 2006 the basic pay is to be paid in full on a monthly basis, though any additional amounts such as overtime can be paid in the next monthly pay cycle<sup>53</sup>. Moreover, shipowners are required to take measures to provide seafarers with a means to transmit all or part of their earnings to their families or dependants or legal beneficiaries.<sup>54</sup> Where a payment has been made in a different currency or rate than was agreed to in a SEA, the monthly account must also include the rate of exchange and

**currency used.<sup>55</sup> Shipowners are also required to take measures which will provide seafarers' with a means to transmit what they want to their families.<sup>56</sup>**

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<sup>50</sup> MLC 2006; Standard A 2.1 (a) and Article II(1) (f).

<sup>51</sup> Cap. 165.

<sup>52</sup> MLC 2006 Title 2.2 .Standard A2.2. (1) read together with Standards B2.2.1.(b) and B2.2.2.(1) (a).

<sup>53</sup> Ibid Title 2.2 .A2.2. (1).

<sup>54</sup> Ibid Title 2.2.Standard A 2.2. (3).

<sup>55</sup> Ibid Title 2.2.Standard A 2.2 (2).

<sup>56</sup> Ibid Regulation 2.2.Standard A2.2 (3).

### 2.2.3 Hours of Work and Hours of Rest

**Regulation 2.3 consolidates the Seafarers Hours of Work and the Manning of ships Convention, 1996, with the purpose of ensuring that seafarers' hours of work and rest are regulated.<sup>57</sup> The regulation requires members to ensure that hours of work or rest are regulated and also sets the maximum hours of work to eight hours per day with one day of rest per week.<sup>58</sup>**

**The Tanzanian Merchant Shipping is silent on hours of work and hours of rest. As such there is no provision safeguarding the right of the seafarers in terms of hours to be worked and the time for resting. Unfortunately, the Employment and labour relations Act<sup>59</sup> exclude the seafarers from being covered under part VII which regulate among other thing the hours of work and rest. Section 12 of the Employment and labour relations Act reads in the following terms:**

*Subject to the provisions of subsection (2), the provisions of Sub-Parts A to D and F shall not apply to seafarers whose terms and conditions of employment are regulated under the Merchant Shipping Act, 2003.*

**Part B of the Act is what regulates the hours of work.<sup>60</sup> However, even if that part was to be made applicable to seafarers, the hours of work provided is nine hours which is slightly longer than the time set by the MLC 2006.<sup>61</sup> This means that the MLC will introduce this new standard in respect of hours of work and hours of rest which was not in existence in so far as the seafarers are concerned.**

### 2.2.4 Entitlement to Leave

**Regulation 2.4 is intended to address concerns that seafarers often work for**

**extended periods without taking annual leave. Given the nature of seafarers' employment, it is difficult to prohibit workers from taking consecutive employment.<sup>62</sup> This regulation consolidates the**

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<sup>57</sup> McConnell Moira, Delvlin Dominick and Doumbia Cleopatra, Op Cit, p 301.

<sup>58</sup> Regulation 2.3 standard 3.

<sup>59</sup> Tanzanian Employment and Labour Relations Act, 2004.

<sup>60</sup> Section 19 of the Employment and Labour Relations Act, 2004.

<sup>61</sup> In terms of A2.3.3 the working hours standard shall base on eight hours day with one day rest per week.

<sup>62</sup> McConnell Moira, Delvlin Dominick and Doumbia Cleopatra, Op Cit, p 317.

**Seafarers Annual Leave with pay Convention, 1976 which provide for 30 calendar days per year but which is difficult for many countries to adhere to.<sup>63</sup> However, it is notable that this regulation provides for annual paid leave and offshore which should not be counted in the annual leave and requires Member State to adopt laws and regulations determining annual leave for seafarers serving on ship flying its flag. The rationale behind this regulation then, can be argued, that despite of the nature of their work, still seafarers as human beings need some rest for their wellbeing.**

#### **2.2.5 Repatriation**

**The MLC provides that seafarers have the a right to be repatriated at no cost to themselves in circumstances and under the conditions specified in the MLC Code<sup>64</sup> The MLC Standard establishes obligations for flag states to ensure the provision of an expeditious and effective financial security system to assist seafarers in the event of their abandonment. The standard goes further to define circumstances under which a seafarer shall be deemed to have been abandoned to include; where the shipowner fails to cover the cost of the seafarer's repatriation; or has left the seafarer without the necessary maintenance and support; or has otherwise unilaterally severed their ties with the seafarer including failure to pay contractual wages for a period of at least two months. In order to address these challenges, the MLC 2006 obliges Member states to ensure that a financial security system meeting the requirements provided in the Standard is in place for ships flying its flag. Such financial security system may be in the form of a social security scheme or insurance or a national fund or other similar arrangements.<sup>65</sup>**

**The MSA<sup>66</sup> requires the Minister responsible for shipping to put in place regulations which will regulate the shipowners in seafarers' abandonment**

**incidents. The Regulations have not been put in place. The MSA also does not define circumstance under which a seafarer shall be regarded as abandoned. There is also no mechanism provided for the shipowner to ensure that the seafarers are financially secured against such events. MLC 2006 addresses all these lacunae hence the need to incorporate the MLC 2006 into the laws of Tanzania.**

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<sup>63</sup> Ibid.

<sup>64</sup> MLC 2006, Regulation 2.5 as amended by the Special Tripartite Committee on 11 April 2014 as provided at <http://www.ilo.org> accessed on 15<sup>th</sup> December, 2014.

<sup>65</sup> MLC 2006, Regulation 2.5.(2) (3) and (4)

<sup>66</sup> Section 187 of the MSA, 2004.

### **2.2.6 Seafarers' Compensation for The Ship's Loss or Foundering**

**This regulation by its name appears to consolidate the unemployment Indemnity (shipwreck) conventions, 1920. By necessary implication therefore, the term foundering would be described to refer to ship wreck or sinking.<sup>67</sup> This regulation requires seafarers to be compensated for injuries, loss or unemployment arising from the ship loss or wreck. This regulation expands the scope of the previous convention which had provided only for unemployment. This regulation requires flag States to adopt rules ensuring that where a ship is lost or has foundered, shipowners have to pay seafarers an indemnity for the unemployment without prejudice to any other rights the seafarers may have as a result of the event.<sup>68</sup>**

### **2.2.7 Manning Level**

**This regulation with its standard and regulation 2.4 on annual leave consolidate the Seafarers Hours of Work and the Manning of Ships Convention.<sup>69</sup> As have been rightly pointed out by McConnell<sup>70</sup>, this matter has been covered under the International Convention on Standards and Watchkeeping for Seafarers (STCW). In fact, like Tanzania, the manning level is regulated by the Merchant Shipping (Training, Certification and Manning) Regulations of 2005 which were prepared to effect the requirements of STCW'78.**

**However, the MLC 2006 has gone further and made modifications while ensuring that the regulation do not conflict with the IMO instruments. Thus apart from the requirement that each Member shall require that all ships that fly its flag have a sufficient number of seafarers on board to ensure that ships are operated safely, efficiently and with due regard to security and that every ship shall be manned by a crew that is adequate, in**

**terms of size and qualifications, to ensure the safety and security of the ship and its personnel, under all operating conditions, in accordance with the minimum safe manning document or an equivalent issued by the competent authority, and to comply with the standards of this Convention, in paragraph 3 there was an addition that when determining manning level the competent authority shall take into account all the requirements within Regulation 3.2 and standard A3.2 concerning food and catering.**

<sup>67</sup> McConnell Moira, Delvlin Dominick and Doumbia Cleopatra, Op Cit, p 327.

<sup>68</sup> Regulation 2.6 Standard A2.6 (1) and (2).

<sup>69</sup> McConnell Moira, Delvlin Dominick and Doumbia Cleopatra, Op Cit, p 328.

<sup>70</sup> *Ibid* pp 228-330.



## **2.2.8 Career And Skill Development and Opportunities for Seafarers' Employment**

**This regulation requires countries to have national policies that encourage career and skill development and employment opportunities for seafarers, in order to provide the maritime sector with a stable and competent workforce.<sup>71</sup> McConnell observes that this obligation is one of the few that is not a flag state obligation but rather directed to countries that have seafarers domicile in its territory and is essentially a labour-supplying state responsibility.<sup>72</sup>**

**As with the manning level regulation, this one also overlaps with other training under the STCW. However, the concern came to the shortage of qualified seafarers which the IMO and ILO observed will have a significant impact on international trade as it has been estimated that approximately 90 percent of the world's bulk goods are carried by sea.<sup>73</sup> The Convention therefore urges States to have in place national policies that encourage career and skill development and employment opportunities for seafarers. In this respect, the career and skill development and opportunities for seafarers' employment requirements in Tanzania has been in place since in 1978 when the Ministry of Communications and Transport by then, established a Maritime Training Institute to address the needs for well-trained seafarers for Tanzanian shipping companies.<sup>74</sup>**

**Further, in 2012 came the Merchant Shipping (Maritime and Education Training Fund) Regulations, 2012<sup>75</sup> which added to the government's commitment in ensuring that seafarers have access to such training without difficulties as to financial support. To this end, it can be safely concluded that Tanzania has been in compliance with this requirement through the**

**establishment of the Maritime Training institution which work hand in hand with the Maritime Administration Authority in ensuring that seafarers get proper qualification for their certification.**

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<sup>71</sup> MLC 2006 Standard 2.8.1.

<sup>72</sup> McConnell Moira, Delvlin Dominick and Doumbia Cleopatra, Op Cit, p 331.

<sup>73</sup> *Ibid* p 333.

<sup>74</sup> [http://www.facebook.co./DarEsSalaamMaritimeInstitute/info#/DarEsSalaamMaritimeInstitute/info?tab=page\\_info](http://www.facebook.co./DarEsSalaamMaritimeInstitute/info#/DarEsSalaamMaritimeInstitute/info?tab=page_info).

<sup>75</sup> G. N. No 184 published on 18<sup>th</sup> May 2012.

### **2.3 The Maritime Training Institution**

The first group of candidates started training at the Tanzanian Maritime Training Institute namely; The Dar es Salaam Maritime Institute (DMI) on 3rd July 1978 and by 2013, the institute had trained more than 4,000 seafarers<sup>76</sup>. The institute offers both short and long courses ranging from certificate to degree level in the fields of maritime transport, marine engineering and other related sciences.

The fact that Tanzania produces a lot of seafarers, the need to protect their rights in accordance with the MLC 2006 requirements need not be over emphasized.

## **PART THREE: THE MECHANISMS WHICH WILL BE USED TO INCORPORATE THE MLC, 2006 INTO THE LAWS OF TANZANIA**

### **3.0 Introduction**

This part is narrative, as it presents the established legal mechanisms which are used in the domestication processes of maritime conventions. It begins with the enabling law which will bring the MLC into part of the laws of Tanzania for purposes of its implementation and enforcement.

#### **3.1 The Enabling Laws**

In terms of Section 123 which is under the part dealing with engagement and welfare of seafarers in the Merchant Shipping Act, the Minister responsible for shipping is empowered to make regulations on matters relating among others for the implementation of any convention relating to the employment, welfare and certification of seafarers.<sup>77</sup>

There is already in place Regulations dealing with Certification of seafarers

**which were prepared under section 162 of the Merchant Shipping Act<sup>78</sup>  
while implementing the International Convention on Standards of  
Training, Certification and Watchkeeping for**

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<sup>76</sup> Dr. Kasembe, Principal of the DMI Institute conducted on 6<sup>th</sup> December, 2014.

<sup>77</sup> Section 123 (1) (c) (iv) of the Merchant Shipping Act, Act No 21 of 2003.

<sup>78</sup> Section 162 empowers the Minister to make Regulation in respect of Manning, Training and Certification to meet the requirements of STCW Convention.

**Seafarers, (STCW).<sup>79</sup> Regulations for the employment and seafarers welfare employment to meet the requirements of an international convention on seafarers employment has not yet been in place due to the fact that the Tanzania has not ratified the MLC 2006. The ratification process is however under the way as a Draft Bill for the adoption of the Convention is in its final stage<sup>80</sup>.**

**As the MLC 2006 is a Labour Convention, its ratification process is under the Ministry of Labour, but the implementation of the same is with the Ministry of Transport through the Merchant Shipping Act. As such, as discussed earlier, the Employment and Labour relations Act which is under the Ministry of Labour expressly provides that seafarers' employment matters shall be dealt with in accordance with the Merchant Shipping Act<sup>81</sup>.**

**The Merchant Shipping Act has been tailored in such a way that once the Maritime legislation is adopted, its domestication will be carried out through preparation of regulations.<sup>82</sup> As an example of the many provisions of this nature in the Merchant shipping Act, section 161<sup>83</sup> and 376<sup>84</sup> empowers the Minister of shipping to prepare regulations to give effect to the requirements of the mentioned conventions. Therefore the intended regulations have the basis under which they can be prepared, as mentioned earlier, under section 123 of the Merchant Shipping Act.**

### **3.2 Contents of the Draft Regulations**

**As discussed in the Maritime labour regime section and complying with the MLC 2006 requirements as to the uniformity in the implementation and enforcement by member States, the intended draft regulations will cover all the eight items under Titled II in accordance with the standards and where**

## **practicable the guidelines as provided in the MLC 2006 Regulations and Code.**

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<sup>79</sup> The STCW Convention came into force on 28<sup>th</sup> April, 1984 and the Merchant Shipping (Training, certification and Manning) Regulations were prepared in 2012 vide GN No 215 of 2012.

<sup>80</sup> Preparation of the Draft Bill has already been prepared by the Ministry of Labour in collaboration with the Ministry of Transport and is expected to be tabled before the parliament in the near future.

<sup>81</sup> Section 12 (1) of the Employment and Labour Relations Act, 2004.

<sup>82</sup> As such, the practice has been that once the maritime convention is adopted by the parliament in terms of Article 63 of the Constitution.

<sup>83</sup> The preparation of the Merchant Shipping (Training, Certification and Manning) Regulations was prepared under this section to give effect to the requirements of STCW Convention.

<sup>84</sup> One of the examples is the preparation of the Merchant Shipping Regulation (Prevention of oil pollution) of 2012 which was prepared under section 376 of the Act to give effect to the requirements of the Oil Pollution Preparedness, Response and Cooperation (OPRC) 1990.

**The draft model which I will use, with slight modification is the recent draft of Maltese Merchant Shipping (Maritime Labour Convention) Rules, 2013 which have been prepared to give effect to the MLC 2006. As Malta is a civil law country, their draft rules have comprised all of the MLC 2006 titles in one legislation, which it can rightly be argued as convenient and in line with the MLC 2006 notion, of one stop centre for all maritime labour laws. However, for the purpose of this work reference will be made to Part III of the Rules which is relevant to the intended regulations.**

**There is also the United Kingdom legislation which has been recently drafted to implement the Convention.<sup>85</sup> This will also be consulted for purposes of observing the common law practices in legislative drafting to which Tanzania is accustomed. The draft regulations will consist of the following parts:**

#### **3.2.1 The Title of Regulations:**

**The Merchant Shipping (Seafarers' Conditions of Employment), Regulations, 2015**

#### **3.2.2 Arrangement of Regulations:**

**Part one will be preliminary provisions which will cover such matters like; citation, interpretation, application and exemption if any. The next provisions will be for each heading of the relevant MLC 2006 Regulations followed by the standard and chosen guidelines as substantive part of the draft regulations. This will make the draft regulations to comprise the following parts:**

**Part I: Preliminary Provisions.**

**Part II: Seafarers Employment Agreement. Part III: Manning Level.**  
**Part IV: Hours of Work and Rest. Part V: Entitlement to Annual Leave.**

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<sup>85</sup> Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations 2013. Come into force on 15th August 2013. Available from <http://www.legislation.gov.uk/uksi/2013/1785/>.



**Part VI: Right to  
Wages. Part VII:  
Payment of Wages.  
Part VII: Repatriation of  
Seafarers. Part IX:  
Compliance and Enforcement.  
Part X: Offences and Penalties.  
Part XI: Consequential Amendments.**

## **The Draft Regulations**

# **The Merchant Shipping (Seafarers' Conditions of Employment), Regulations, 2015**

# **SHIPPING ACT(Cap 165)**

## **REGULATIONS**

*(Made under Section 123)*

### **THE MERCHANT SHIPPING (SEAFARERS' CONDITIONS OF EMPLOYMENT) REGULATIONS, 2015**

#### **ARRANGEMENT OF REGULATIONS**

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

1. Citation.
2. Interpretation.
3. Application.
4. Exemption.

##### **PART II SEAFARERS EMPLOYMENT AGREEMENT**

5. Seafarers' Employment Agreement.
6. Form, period and conditions of employment agreement.
7. Special Provisions as to employment agreement.
8. Terms not to be contrary to the provisions of these Regulations.
9. Copy of agreement to be accessible to crew.
10. Alterations in employment agreements.
11. Seafarer's record book.
12. Use of English language.

##### **PART III MANNING LEVEL**

13. Interpretation.
14. Responsibility of owners.
15. Shipowner to provide written instruction to master.
16. Safe manning document.

**PART IV**  
**HOURS OF WORK AND REST**

17. Interpretation.
18. Minimum of hours of rest.
19. Posting-up of table.
20. Hours of rest may be suspended during emergence

**PART V**  
**ENTITLEMENT TO**  
**ANNUAL LEAVE**

21. Entitlement to annual leave
22. Calculation of entitlement

**PART VI**  
**RIGHT TO**  
**WAGES**

23. Provision for minimum wage
24. Interpretation
25. Minimum wage
26. Commencement of right to wages
27. Right to recover wages and salvage not to be forfeited
28. Wages not to depend on freight
29. Termination of service by wreck or loss of ship
30. Termination of service by illness
31. Wages not to accrue during refusal to work or imprisonment
32. Forfeiture of wages when illness caused by own fault
33. Compensation to seafarers improperly discharged

**PART VII**  
**PAYMENT OF**  
**WAGES**

34. Time of payment of wages
35. Master to deliver account of wages
36. Mode of payment
37. Seafarer to be provided with means to transmit earnings
38. Deductions from wages and book to be kept for that purpose
39. No deduction from wages for retaining or obtaining employment
40. Rate of exchange

**PART VIII**  
**REPATRIATION OF**  
**SEAFARERS**

41. Shipowner's duty to repatriate
42. Place of return
43. Scope of the Duty to repatriate
44. Duty pending repatriation
45. Prohibition on recovery costs from seafarers

**PART IX**  
**COMPLIANCE AND ENFORCEMENT**

46. Onboard complaint procedure
47. Right to be accompanied
48. Right to seek redress
49. Duty to ensure compliance
50. Inspection, detention and other measures in respect of ships

**PART X**  
**OFFENCES AND**  
**PENALTIES**

51. Forgery etc of employment agreement
52. Failure to deliver account of seafarers
53. False or forgery of seafarers record books
54. Prosecution of offences

**PART XI**  
**CONSEQUENTIAL**

**AMENDMENTS**

55. Amendment of regulation 3 of GN. No 215 2005

**THE MERCHANT  
SHIPPING ACT (CAP  
165)**

**REGULATIONS**

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—————  
*(Made under Section 123)*  
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**THE MERCHANT SHIPPING (SEAFARERS' CONDITIONS  
OF EMPLOYMENT), REGULATIONS,  
2015**

**PART I  
PRELIMINARY  
PROVISIONS**

Citation and  
Commencement

1. These Regulations may be cited as the Merchant Shipping (Seafarers' Conditions of employment) Regulations, 2015 and shall come into operation on the date of publication.

Interpretation	2. In these Regulations , unless the context otherwise requires:
Cap. 165	"Act" means the Merchant Shipping Act;
Cap. 413	<p>"Competent Authority" means, the Surface and Marine Transport Regulatory Authority (SUMATRA) established under section 4 of the Surface and Marine Transport Regulatory Authority Act, 2001;</p> <p>"Convention" means the Maritime Labour Convention, 2006 including any subsequent amendment or Protocol related thereto as may from time to time be ratified, acceded to or accepted by the Government of Tanzania and other instruments, standards and specifications of a mandatory nature related thereto adopted or developed by the International Labour Organization;</p> <p>"inspector" means a person authorised by the competent Authority or the maritime administration of another State to inspect the working and living conditions of seafarers in accordance with the Convention;</p>
G. N. 215 of 2005	<p>"safe manning document" means a document issued in accordance with the Merchant Shipping (Training, Certification and Manning) Regulations 2005;</p> <p>“Seafarers’ Employment Agreement” include both a contract of employment and articles of agreement;</p> <p>"seafarer" means any person, including the master of a ship, who is employed or engaged or works in any capacity on board a ship and whose normal place of work is on board a ship;</p> <p>"shipowner or owner" means the owner of the ship or another organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with these Regulations;</p>



Cap 165	"seafarer's record book" means a seafarer's certificate of discharge issued in accordance with the Act;
Cap 165	"STCW Convention" means the International Convention on Standards of Training, Certification and Watchkeeping, 1978 as defined in the Act.
Application	3. These Regulations shall apply to all Tanzanian seagoing ships wherever they are and to all other ships while they are in Tanzanian ports as determined by the said Convention and to all seafarers serving onboard such ships.
Exemption	4. These Regulations shall not apply to: <ul style="list-style-type: none"> <li>(a) fishing vessels</li> <li>(b) ships of traditional build;</li> </ul>
G.N. 106 of 2006	(c) "small ships" as defined in the Merchant Shipping (Small Ships, Local Cargo Ships Safety, Small Ship Survey and Inspections for Vessels Engaged in Local and Coastal Voyages, Inland waters) Regulations and that navigate exclusively in internal waters or waters closely adjacent to Tanzania <ul style="list-style-type: none"> <li>(d) yachts in non commercial use;</li> <li>(e) warships or naval auxiliaries.</li> </ul>

## PART II SEAFARERS EMPLOYMENT AGREEMENT

Seafarers' Employment Agreement	<p>5.-(1) The shipowner of every Tanzanian ship shall enter into an agreement with every seafarer in accordance with these Regulations stipulating the terms and conditions of his employment.</p> <p>(2) A master may sign a seafarer's employment agreement on behalf of the shipowner, and provide advice upon request on the same, but shall not be answerable for the shipowner for any deficiencies within the agreement, save for his duties to ensure that the agreement is understood and signed by the seafarer.</p>
Form, period and conditions of employment agreements	<p>6.- (1) A seafarer's employment agreement shall be dated at the time of the first signature thereof, and shall be signed by the shipowner before a seafarer signs his name.</p> <p>(2) The seafarer's employment agreement shall show the date and place at which it is made, the surname and other names of the seafarer, his birthplace, and his age or the date of his birth, and shall contain as terms thereof the following particulars:</p> <ul style="list-style-type: none"> <li>(a) the name of the ship on board which the seafarer undertakes to serve;</li> <li>(b) the owner's name and address;</li> <li>(c) the place and date at which each seafarer is to be on board or to begin work;</li> </ul>

- (d) the capacity in which each seafarer is to serve;
- (e) the amount of wages the seafarer is to receive;
- (f) the amount of paid annual leave or formula used for its calculation;
- (g) the health and social security protection benefits to be provided to the seafarer by the owner;
- (h) the seafarer's entitlement to repatriation;
- (i) reference to the collective bargaining agreement, when applicable;
- (j) either the nature and, as far as is practicable, the duration of the intended voyage or engagement, or the maximum period of the voyage or engagement, and the places or parts of the world, if any, to which the voyage or engagement is not to extend;
- (k) any regulations as to the provisions to be provided for seafarers employed on Tanzanian ships;
- (l) the termination of the agreement and the conditions thereof, including:
  - (i) if the agreement has been made for an indefinite period, the conditions entitling either party to terminate it, as well as the required notice period, which shall not be less for the shipowner than for the seafarer;
  - (ii) if the agreement has been made for a definite period, the date fixed for its expiry; and
  - (iii) if the agreement has been made for a voyage, the port of destination and the time which has to expire after arrival before the seafarer should be discharged.

(3) Any termination to the seafarer's employment agreement shall in no circumstances be shorter than seven days if notice of such termination is from the shipowner.

(4) The seafarer may issue a notice of termination with less than seven days or without notice.

(5) Subject to the provisions of these Regulations, a seafarer's employment agreement shall be terminated by –

(a) the mutual consent of the parties thereto; or

(b) the death of the seafarer; or 53

(c) the loss or total unseaworthiness of the ship; or

(d) the sale of the ship; or

(e) the expiration of time.

Special Provisions  
as to employment  
agreement

7. The following provisions shall have effect with respect to a seafarer's employment agreement:-

(a) the agreement shall be signed by the shipowner or his representative and the seafarer;

(b) the shipowner, recruitment agency or master, as the case may be, shall have the agreement read over and explained to the seafarer, or otherwise ascertain that the seafarer understands the same, before he signs it, and shall attest each signature;

(c) the employment agreement shall be signed in duplicate and one part shall be retained by the shipowner and the other by the seafarer.

Terms not to be  
contrary to the  
provisions of these  
Regulations

8. Any term or condition adopted by the parties to a seafarer's employment agreement which is contrary to the provisions of these Regulations shall have no effect and the relevant provisions under these Regulations shall be deemed to apply.

Copy of agreement  
to be accessible to  
crew

9. The master shall, at the commencement of every voyage or engagement, ensure that clear information as to the conditions of employment can be easily obtained on board by each seafarer, and the seafarers' employment agreement to be accessible to inspectors in accordance with these Regulations.

Alterations in  
employment  
agreements

10. Every erasure, interlineation, or alteration in any seafarer's employment agreement shall be wholly inoperative unless proved to have been made with the consent of all the persons interested in the erasure, interlineation or alteration by the written attestation of two witnesses.

Seafarer's record  
book

11. Seafarers shall be given a seafarer's record book of their employment onboard and shall not contain any statement as to the quality of the seafarer's work or his wages.

Use of English  
language

12. Except where otherwise provided in the Act or these Regulations, all correspondence, documents, forms or other writings shall be in the English language if the ship is involved in international voyages, provided that a foreign language version of any document may be appended to the English language version thereof.

### PART III MANNING LEVEL

Interpretation.

13. For the purpose of regulations under the heading Manning levels, "appropriate certificate" means an appropriate certificate issued in accordance with the Merchant Shipping (Training, Certification and Manning) Regulations;

G. N. No 215 of  
2005

Responsibility of owners.

14. (1) Every shipowner of a Tanzanian ship shall ensure that -

(a) every seafarer assigned to his ship holds an appropriate certificate in respect of any function the seafarer is to perform;

(b) documentation and data relevant to all seafarers employed on ships are maintained and readily available for inspection including documentation and data on their experience, training, medical fitness and competency in assigned duties.

(2) Nothing in sub-regulation (1) shall prohibit the allocation of tasks for training under supervision or in case of force majeure.

Shipowner to provide written instructions to master

15.- (1) The shipowner shall provide written instructions to the master setting out the policies and the procedures to be followed to ensure that all seafarers engaged on board the ship are given a reasonable opportunity to become familiar with the shipboard equipment, operating and safety procedures including other arrangements needed for the proper performance of their duties, before being assigned to such duties.

(2) The policies and procedures referred to in sub-regulation (1) shall include -

(a) allocation of a reasonable period of time during which the seafarer will have an opportunity to become acquainted with -

(i) the specific equipment the seafarer will be operating; and

(ii) ship-specific watchkeeping, safety, environmental protection and emergency procedures and arrangements the seafarer should know to perform the assigned duties properly;

(b) designation of a knowledgeable crew member who will be responsible for ensuring that an opportunity is provided to each newly employed seafarer to receive essential information in a language the seafarer understands.

(3) It shall be the duty of any master and any member of a crew designated with an obligation under sub-regulation (2) to carry out that obligation.

Safe manning document

16.- (1) It shall be the duty of the shipowner to ensure that in relation to every ship of 500 gross tonnage or more -

(a) a safe manning document is in force in respect of the ship and the manning of the ship;

(b) the safe manning document is kept on board the ship at all times;

(c) the manning of the ship is maintained at all times to at least the levels specified in the safe manning document.

(2) The master of any ship to which these regulations apply shall ensure that the ship

does not proceed to sea unless there is on board a valid safe manning document issued in respect of the ship and the manning of the ship complies with that document.

(3) It shall be the duty of the shipowner applying for a safe manning document in respect of any Tanzanian ship to submit to the Registrar of ships any information that may be required for the issue of such document.

(4) It shall be the duty of the shipowner after the issue of a safe manning document to inform the Registrar of ships as soon as there is any change of the circumstances which are pertinent to that safe manning document.

(5) Notwithstanding the provisions of these regulations and without prejudice to any other duties and responsibilities of the master and of the owner, it shall be the duty of the master and of the shipowner to ensure that from the point of view of safety of life at sea and pollution prevention, the ship is sufficiently and efficiently manned.

#### PART IV HOURS OF WORK AND REST

##### Interpretation

17. For the purpose of regulations under this Part-

"employment", in relation to a seafarer, means employment under his seafarer's employment agreement, and "employed" shall be construed accordingly;

"hours of rest" means time outside hours of work and does not include short breaks;

"hours of work" means time during which a seafarer is required to do work on account of the ship;

##### Minimum of hours of rest.

18.-(1) Without prejudice to sub regulation (2), it shall be the duty of an employer of a seafarer and a master of a ship to ensure that a seafarer is provided with at least the minimum hours of rest.

(2) The minimum hours of rest shall be not less than -

- (a) 10 hours in any 24-hour period; and
- (b) 77 hours in any seven-day period.

(3) Hours of rest may be divided into no more than two periods, one of which shall be at least six hours in length, and the interval between such consecutive periods shall not exceed 14 hours.

(4) Musters, fire-fighting and lifeboat drills shall be conducted in a manner which minimises the disturbances of rest periods and does not induce fatigue.

(5) A seafarer who is on call shall have adequate compensatory rest period if his normal period of rest is disturbed by call-outs of work.

Posting-up of tables

19.-(1) The master of a ship, or a seafarer authorised by the master, shall ensure that a table with the shipboard working arrangements complying with sub-rules (2) and (3) is posted up in a prominent and accessible place in the ship.

(2) A table under sub-rule (1) shall contain for every position at least:

- (a) the schedule of service at sea and service in port; and
- (b) the minimum hours of rest as required by these rules or any collective agreements in force.

(3) A table under sub-rule (1) shall be in English and in the working language of the ship if that is not English.

Hours of rest may be suspended during emergence

20.- (1) The master of a ship may require a seafarer to work any hours of work necessary for the immediate safety of the ship, persons on board ship or cargo or for the purpose of giving assistance to another ship or to a person in distress at sea.

(2) For the purposes of sub-rule (1), the master may suspend the hours of rest scheduled in the table under rule 42 and require a seafarer to perform any hours of work necessary until the normal situation has been restored.

(3) As soon as practicable after the normal situation has been restored the master shall ensure that any seafarer who has performed work in a rest period scheduled in the table under sub-rule (1) is provided with an adequate rest period.

## PART V ENTITLEMENT TO ANNUAL LEAVE

Entitlement to annual leave

21.-(1) Every seafarer shall be entitled to annual leave with pay to a place with which they consent.

(2) Justified absences from work including absence from work to attend an approved maritime vocational training course shall not be considered as annual leave.

(3) Any agreement to forgo the minimum annual leave with pay prescribed in these regulations, except where the seafarer's employment is terminated, shall be prohibited.

Calculation of entitlements

22.-(1) Subject to sub-regulation (3), the annual paid leave of a seafarer shall be calculated on the basis of a minimum of 2.5 calendar days per month of employment and pro rata for incomplete months.

(2) For the purposes of this regulation, a seafarer's leave year begins -

(a) on such date during the calendar year as may be agreed in writing by the employer and the seafarer; or

(b) in absence of such agreement -

(i) if the seafarer's employment began on or before the coming into force of this regulation, on that date and each subsequent anniversary of that date; or

(ii) if the seafarer's employment begins after the coming into force of this regulation, on the date on which that employment begins and each subsequent anniversary of that date.

(3) Where by virtue of sub-regulation (2) the period of leave to which a seafarer is entitled is or includes a proportion of a week, the proportion shall be determined in days and any fraction of a day shall be treated as a whole day.

## PART VI RIGHT TO WAGES

Provision for  
minimum wages

23. Without prejudice to collective bargaining agreements, it shall be the duty of an employer of a seafarer and a shipowner of a ship to ensure that a seafarer is paid at least a minimum basic wage.

Interpretation

24.-(1) For the purpose of this regulation, the term:

"basic pay" or "wages" means the pay, however composed, for normal hours of work but not including overtime worked, bonuses, allowances, paid leave or any other additional remuneration;

"consolidated wage" means a wage or salary which includes the basic pay and other pay-related benefits including compensation for all overtime hours worked and all other pay-related benefits;

"overtime" means time worked in excess of the normal hours of work.

(2) Seafarers whose remuneration includes separate compensation for overtime worked -

(a) for the purpose of calculating wages, the normal hours of work at sea and in port shall not exceed eight hours per day;

(b) without prejudice to more favourable collective bargaining agreements, for the purpose of calculating overtime, the number of normal hours per week covered by the basic pay or wages shall not exceed 48 hours per week;

(c) the rate or rates of compensation for overtime, should be not less than one and one-quarter times the basic pay or wages per hour;

(d) records of all overtime worked should be maintained by the master, or a person assigned by the master, and endorsed by the seafarer at no greater than monthly intervals.

(3) Seafarers whose wages are fully or partially consolidated are to have specified in the seafarer's employment agreement the number of hours of work expected of the seafarer in return for such remuneration, and any additional allowances which might be due in addition to the consolidated wage, and in which circumstances.

(4) When hourly overtime is payable for hours worked in excess of those covered by the consolidated wage, the hourly rate should be not less than one and one-quarter times the basic rate corresponding to the normal hours of work as defined in sub-regulation (2) (c) hereof.

(5) For seafarers whose wages are partially consolidated, records of all overtime worked should be maintained and endorsed as provided for in sub-regulation (2) (d) hereof.

Minimum wages 25. Without prejudice to the principle of free collective bargaining, seafarers' wages shall not be less than the amount periodically set by the Joint Maritime Commission or another body authorised by the Governing Body of the International Labour Organisation.

When right to wages begins 26. A seafarer's right to wages and provisions shall be taken to begin at the time at which he commences work or at the time specified in the agreement for his commencement of work or presence on board, whichever happens first.

Right to recover and salvage not to be forfeited 27.- (1) A seafarer shall not by any agreement forfeit his rights on the ship, or be deprived of any remedy for the recovery of his wages, to which in the absence of the agreement he would be entitled, and shall not by any agreement abandon his right to wages in case of the loss of the ship, or abandon any right that he may have or obtain in the nature of salvage; and every stipulation in any agreement inconsistent with any provision of these regulations shall be void.

(2) Nothing in this regulation shall apply to a stipulation made by the seafarer belonging to any ship, which according to the terms of the agreement is to be employed on salvage service, with respect to the remuneration to be paid to them for salvage services to be rendered by that ship to any other ship.

Wages not to depend on freight 28. Every seafarer shall be entitled to demand and recover any wages notwithstanding that freight has not been earned; but in all cases of wreck or loss of the ship, proof that the seafarer has not exerted himself to the utmost to save the ship, cargo and stores, shall bar his claim to wages.

Termination of services by wreck or loss of ship 29.- (1) Where by reason of the wreck or loss of the ship on which a seafarer is employed his service terminates before the date contemplated in the agreement, he shall, subject to the provisions of this regulation, be entitled, in respect of each day on which he is in fact unemployed during a period of two months from the date of the termination of the service, to receive wages at the rate to which he was entitled at that date.

(2) A seafarer shall not be entitled to receive wages under this regulation if the owner shows that the unemployment was not due to the wreck or loss of the ship, and shall not be entitled to receive wages under this regulation in respect of any day if the owner shows that the seafarer was able to obtain suitable employment on that day.

Termination of service by illness etc. 30. Where the service of a seafarer terminates before the date contemplated in the seafarer's employment agreement by reason of his being left on shore at any place abroad under a certificate granted as provided by these Regulations of his



unfitness or inability to proceed on the voyage, he shall be entitled to wages up to the time of such termination, but not for any longer period.

Wages not to accrue during refusal to work or imprisonment

31. A seafarer shall not be entitled to wages for any time during which he unlawfully refuses or neglects to work, when required, whether before or after the time fixed by the agreement for his commencement of such work, nor, unless the court hearing the case otherwise directs, for any period during which he is lawfully imprisoned for any offence committed by him.

Forfeiture of wages when illness caused by own fault

32. When a seafarer is by reason of illness incapable of performing his duty and it is proved that the illness has been caused by his own wilful act or default, he shall not be entitled to wages for the time during which he is by reason of the illness incapable of performing his duty.

Compensation to seafarers improperly discharged

33. Any seafarer, who having signed a seafarer's employment agreement, is improperly discharged shall be entitled to receive from the master or owner, due compensation for any damage caused to him by the discharge not exceeding one month's wages, and that compensation shall be treated as if it were wages duly earned.

## PART VII PAYMENT OF WAGES

Time of payment of wages

34. All wages to which a seafarer may be entitled, subject to deductions made in accordance with these regulations, shall be paid at intervals not greater than one month;

Master to deliver account of wages

35.- (1) The master of every Tanzanian ship shall, before paying off or discharging any seafarer deliver on a monthly basis a full and true account of the seafarer's wages and of all deductions to be made therefrom on any account whatsoever.

(2) The said account shall be delivered not less than twenty-four hours before his discharge or payment of wages.

(3) The said account shall indicate the rate of exchange used where payment has been made in a currency or at a rate different from the one agreed to.

Mode of payment

36. Wages shall be paid in legal tender and whenever possible, paid by bank transfer, bank cheque, postal cheque or money order or directly to a seafarer's designated bank account unless the seafarer requests otherwise in writing.

Seafarer to be provided with a means to transmit earnings

37.- (1) Shipowners shall provide seafarers with a means to transmit all or part of their earnings to their families or dependents or legal beneficiaries through, but not limited to -

(a) a system for enabling seafarers, at the time of commencement or during their employment, to allot a proportion of their wages for remittance at regular intervals to their families by bank transfers or similar means; and

(b) a requirement that allotments should be remitted in due time and directly to the person or persons nominated by the seafarers.

(2) Any charges for the services under sub-regulation (1) shall be reasonable in amount and the rate of exchange shall be at the prevailing market rate during the periodical payments or any other agreement not unfavourable to the seafarer.

Deductions from wages and books to be kept for that purpose

38. (1) A deduction from the wages of a seafarer shall not be allowed unless it is included in the account delivered in pursuance of regulation 35, except in respect of a matter happening after the delivery.

(2) The master shall during the voyage enter the various matters in respect of which the deductions are made, with the amounts of the respective deductions, as they occur, in a book to be kept for that purpose, and shall, if required, produce the book at the time of the payment of wages and also upon the hearing before any competent authority of any complaint or question relating to that payment.

No deductions in respect of obtaining employment

39. No deductions shall be made from the seafarer's remuneration as a result of obtaining or retaining employment.

Rate of exchange

40. Where a seafarer has agreed with the owner for payment of his wages in a specific currency, any payment of or on account of his wages if made in any other currency than that stated in the agreement, shall, notwithstanding anything in the agreement, be made at the rate of exchange for the money stated in the agreement for the time being current at the place where the payment is made.

## PART VIII REPATRIATION OF SEAFARERS

Shipowner's duty to repatriate seafarers

41. A shipowner shall make such provision as is necessary for repatriation of a seafarer as soon as is practicable in the following cases-

- (a) where the seafarer employment agreement expires;
- (b) where the seafarer employment agreement is terminated by the shipowner;
- (c) where the seafarer employment agreement is terminated by the seafarer in accordance with the terms of the agreement;
- (d) where the seafarer is no longer able to carry out the seafarer's duties under the seafarer's employment agreement or cannot be expected to carry them out in the specific circumstances, including in the following circumstances:
  - (i) the seafarer has an illness, injury or medical condition which requires their repatriation when found medically fit to travel;
  - (ii) shipwreck;
  - (iii) the shipowner is not able to fulfil its legal or contractual obligations to the seafarer following insolvency, the sale of the ship or a change in the ship's registration; or
  - (iv) the ship is bound for a war zone to which the seafarer does not consent to go;

(e) where the seafarer has completed the maximum period of service on board following which the seafarer is entitled to repatriation in accordance with the seafarer employment agreement; and

(f) where the seafarer employment agreement is terminated pursuant to an order of a court or tribunal.

Place of return

42.- (1) Where there is a duty on a shipowner to provide for the repatriation of a seafarer under regulation 41, a seafarer is entitled to repatriation to the destination provided for in the seafarer employment agreement, or such other place as may subsequently be agreed with the shipowner.

(2) If the seafarer employment agreement does not identify a destination, and there has been no agreement between the seafarer and the shipowner as to the destination, the seafarer is entitled to repatriation to the seafarer's choice of the following destinations-

(a) the place at which the seafarer entered into the seafarer's employment agreement; or

(b) the seafarer's country of residence.

Scope of duty to repatriate

43. Where there is a duty on a shipowner to provide for the repatriation of a seafarer under regulation 41, that duty ends when-

(a) the seafarer is repatriated in accordance with regulation 42 ;

(b) the shipowner makes reasonable arrangements for repatriation which are unsuccessful because of the seafarer's unreasonable conduct;

(c) the shipowner has used reasonable endeavours to contact the seafarer for a period of three months or more, but has been unable to make such contact;

(d) the seafarer confirms in writing to the shipowner that repatriation is not required.

Duty pending repatriation

44.- (1) A shipowner to which a duty in regulation 41 applies must make such provision as is necessary for the seafarer's relief and maintenance pending repatriation.

(2) The shipowner must have regard to the seafarer's personal circumstances and requirements when determining what provision is required under paragraph (1).

(3) Without prejudice to the generality of paragraph (1) the provision for relief and maintenance must include-

(b) accommodation;

(c) food;

(c) pay and allowances until when the seafarer reaches his repatriation destination; and

(e) medical treatment when required.

Prohibition on recovering costs from seafarer

45.- (1) Subject to paragraph (2), a shipowner must not enter into an agreement with a seafarer under which the seafarer must make payment in respect of either-

(a) repatriation costs; or

(b) relief and maintenance costs

(2) A seafarer employment agreement may provide that the seafarer must reimburse repatriation costs where the agreement is terminated because of the seafarer's serious misconduct.

(3) If a seafarer employment agreement contains provision described in paragraph (2) and that obligation arises, a deduction equivalent to those costs may be made from the wages due to the seafarer under that agreement.

(4) If a seafarer employment agreement does not contain provision such as that described in paragraph (2), the shipowner may only recover the costs described in paragraph (1) (or damages in respect of such costs) where the agreement is terminated because of the seafarer's serious misconduct.

## PART IX COMPLIANCE AND ENFORCEMENT

On board complaint procedure

46. (1) All ships shall have on-board procedures for the fair, effective and expeditious handling of seafarer complaints alleging breaches of these Regulations.

(2) Without prejudice to sub regulation (1) seafarers shall have a right to complain directly to the master and, where they consider it necessary, to appropriate external authorities.

Right to be accompanied

47. The on-board complaint procedures shall include the right of the seafarer to be accompanied or represented during the complaint procedure, as well as safeguards against the possibility of victimization of seafarers for filing complaints which are neither manifestly vexatious or maliciously made.

Right to seek redress

48. The provisions in these regulations are without prejudice to a seafarer's right to seek redress through whatever legal means the seafarer considers appropriate.

Duty to ensure compliance

49. It shall be the duty of the shipowner and of the master to ensure that the ship is in compliance with the provisions of these regulations.

Inspection, detention and other measures in respect of ships

50.- (1) The Registrar of Ships, or an appropriate inspector, may inspect any ship to which these regulations apply to the satisfaction that the ship is in compliance with the provisions of these regulations and the applicable requirements of the Convention.

(2) If the Registrar of Ships is satisfied that the ship is not in compliance with any provision of these regulations, he shall take such actions as are considered necessary to ensure that the ship does not sail until it can proceed to sea without presenting an unreasonable threat of harm to the working and living conditions of seafarers.

(3) Any expenses incurred therefore shall be a charge on the ship, but however the ship shall not be unduly detained or delayed.

## PART X OFFENCES AND PENALTIES

Forgery etc of employment agreement

51. If any person fraudulently alters, makes any false entry in, or delivers a false copy of a seafarer's employment agreement, or assists in committing or procures to be committed any such offence, that person shall for each offence be liable on

conviction to imprisonment for a period not exceeding two years or to a fine of not less than the equivalent in Tanzanian shillings of the United States Dollars of ten thousand or to both such fine and imprisonment.

Failure to deliver true accounts seafarers

52. If the owner fails without reasonable cause to comply with regulation 35 he shall for each offence be liable on conviction to a fine of not less than the equivalent in Tanzanian shillings of the United States Dollars of five thousand.

False or forged seafarer's record book

53. Any person who-

(a) makes a false report of character under these regulations, knowing the same to be false; or

(b) forges or fraudulently alters any certificate of discharge or report of character or copy of a report of character; or

(c) assists in committing, or procures to be committed, any of such offences as aforesaid; or

(c) fraudulently uses any certificate of discharge or report of character or copy of a report of character which is false or altered or does not belong to him; or

shall for each offence be liable on conviction to imprisonment for a period not exceeding two years or to a fine of not less than the equivalent in Tanzanian shillings of the United States Dollars of ten thousand or to both such fine and imprisonment.

Prosecution of offences

54. Prosecution in respect of offences under these Regulations shall be conducted in accordance with the provisions of Part XXII of the Merchant Shipping Act

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PART XI  
CONSEQUENTIAL AMENDMENT

Amendments of regulation 3

54. The Merchant Shipping (Training, Certification and Manning) Regulations, 2005 are amended in regulation 3 by substituting the definition of the word "seafarer" with the following "means any person, including the master of a ship, who is employed or engaged or works in any capacity on board a ship and whose normal place of work is on board a ship;".

GN 215 of 2005

**Dar es Salaam**  
.....**2015**

.....  
**Minister for Transport**