

REPUBLIC OF SOUTH AFRICA

MERCHANT SHIPPING AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
the Bill published in Government Gazette No. 38025 of 25 September 2014)
(The English text is the official text of the Bill)*

(MINISTER OF TRANSPORT)

[B 12—2015]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Merchant Shipping Act, 1951, so as to give effect to the Maritime Labour Convention, 2006 and the Work in Fishing Convention, 2007; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 2 of Act 57 of 1951, as amended by section 3 of Act 30 of 1959, section 31 of Act 69 of 1962, section 1 of Act 40 of 1963, section 1 of Act 13 of 1965, section 1 of Act 42 of 1969, section 1 of Act 24 of 1974, section 1 of Act 5 of 1976, section 1 of Act 3 of 1981, section 1 of Act 3 of 1982, section 1 of Act 25 of 1985, section 1 of Act 18 of 1992, section 1 of Act 16 of 1995, section 1 of Act 49 of 1996, section 1 of Act 23 of 1997, section 2 of Act 5 of 1998, section 1 of Act 57 of 1998 and section 60 of Act 58 of 1998 5

1. Section 2 of the Merchant Shipping Act, 1951 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the deletion in subsection (1) of the definition of “apprentice-officer”;
- (b) by the insertion in subsection (1) of the following definition after the definition of “fishing boat”:
 - “**‘fishing vessel’** means a fishing vessel as defined in the Marine Living Resources Act, 1998 (Act No. 18 of 1998);” 15
- (c) by insertion in subsection (1) after the definition of “marine notice” of the following definition:
 - “**‘Maritime Labour Convention’** means the Maritime Labour Convention, 2006, done at Geneva on 7 February 2006, as set forth in the Seventh Schedule, and as modified by any amendment made under Article XIV of that Convention that has entered into force in the Republic;” 20
- (d) by the insertion in subsection (1) after the definition of “savings bank” of the following definition:
 - “**‘seafarer’** means any person (except a master, pilot or cadet) employed or engaged in any capacity as a member of the crew of a ship;” 25
- (e) by the deletion in subsection (1) of the definition of “seaman”;

- (f) by the substitution in subsection (1) for the definition of “South African ship” of the following definition:
 “**‘South African ship’** means a ship that is registered or licenced in the Republic;” and
- (g) by insertion in subsection (1) after the definition of “whaling boat” of the following definition:
 “**‘Work in Fishing Convention’** means the Work in Fishing Convention, 2007, done at Geneva on 30 May 2007, as set forth in the Eighth Schedule, and as modified by any amendment made under article 45 of that Convention that has entered into force in the Republic;”.

Substitution of heading to Chapter IV of Act 57 of 1951

2. The following heading is hereby substituted for the heading to Chapter IV of the principal Act:

“ENGAGEMENT, DISCHARGE, REPATRIATION, PAYMENT, DISCIPLINE AND GENERAL TREATMENT OF [SEAMEN,] SEAFARERS AND CADETS [AND APPRENTICE-OFFICERS]”.

Substitution of section 91 of Act 57 of 1951

3. The following section is hereby substituted for section 91 of the principal Act:

“Excessive number of cadets [or apprentice-officers] not to be employed

91. No person shall engage or permit cadets [or apprentice-officers] to serve on board a South African ship in excess of the number of cadets [or such officers] permitted by the regulations.”.

Substitution of section 92 of Act 57 of 1951

4. The following section is hereby substituted for section 92 of the principal Act:

“Medical examination of cadets [and apprentice-officers]

92. No person shall be employed as a cadet on board any South African ship [or indentured as an apprentice-officer to the owner of a South African ship] until [he] that person has passed the colour and form vision tests prescribed and has been certified by a medical practitioner approved by the proper officer as physically fit for the sea service.”.

Repeal of sections 93, 94, 95, 96, 97, 98, 99 and 100 of Act 57 of 1951

5. Sections 93, 94, 95, 96, 97, 98, 99 and 100 of the principal Act are hereby repealed.

Amendment of section 101 of Act 57 of 1951, as amended by section 17 of Act 30 of 1959, section 4 of Act 18 of 1992 and section 20 of Act 57 of 1998

6. Section 101 of the principal Act is hereby amended by the substitution for subsection (7) of the following subsection:

“(7) The provisions of this section shall apply, [*mutatis mutandis*] with the changes required by the context, to the engagement of a master [and an apprentice-officer].”.

Amendment of section 102 of Act 57 of 1951, as amended by section 9 of Act 42 of 1969

7. Section 102 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the proviso of the following words:

“The master of every South African ship [of more than one hundred gross register tons] shall [, and the master of every other South

African ship may,] enter into an agreement on behalf of the employer (in this Act called the agreement with the crew) with every **[seaman]** seafarer whom **[he]** the master engages to serve in that ship: Provided that the proper officer may refuse to allow the engagement of a **[seaman]** seafarer—”;

(b) by the substitution in subsection (3) for paragraph (f) of the following paragraph:

“(f) the wages which each **[seaman]** seafarer is to receive, and which must include particulars of the basic wages to be paid, payments to be made for overtime, bonuses, allowances paid, paid leave or any other additional payments, or in the case of a fishing vessel, the basic daily rate and commission scales;”;

(c) by the addition to subsection (3) of the following paragraphs:

“(i) the amount of a seafarer’s entitlement to annual leave or, where applicable, the formula used for calculating the annual leave and the remuneration payable during that period of leave;

(j) the health and social security protection benefits to be provided to the seafarer by the owner of a ship;

(k) the seafarer’s entitlement to repatriation;

(l) reference to any collective bargaining agreement, where applicable;

(m) the minimum notice period that may be given by the seafarer or the owner of a ship, which shall not be less than seven calendar days.”;

and

(d) by the addition of the following subsection:

“(5) (a) For the purposes of this section, in respect of all ships, excluding fishing vessels—

‘**basic wages**’ means remuneration for normal working hours, eight hours in a day, but does not include payments made for overtime, bonuses, allowances paid, paid leave or any other additional payments; ‘**overtime**’ means time worked in excess of the normal working hours, and includes work undertaken on Saturdays and Sundays, and public holidays as defined in section 1 of the Public Holidays Act, 1994 (Act No. 36 of 1994).

(b) If there is an agreement in place onboard a fishing vessel with the employer covering wages and conditions of employment agreed to under a registered bargaining council or statutory council in terms of the Labour Relations Act, 1995 (Act No. 66 of 1995), then the terms of that agreement apply to the employment of the seafarer concerned.”.

Substitution of section 110 of Act 57 of 1951, as amended by section 22 of Act 40 of 1963

8. The following section is hereby substituted for section 110 of the principal Act:

“Employment of children on ships prohibited

110. The owner or master of a South African ship **[which is registered in the Republic]**, or of a ship which is not registered in the Republic and is wholly engaged in plying between ports in the Republic, shall not knowingly take into employment or keep in employment or permit the employment of any person under the age of **[fifteen]** sixteen years in any capacity on board the ship.”.

Amendment of section 111 of Act 57 of 1951, as amended by section 2 of Act 5 of 1998

9. Section 111 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

“Employment of young persons [as trimmers or firemen]”;

(b) by the substitution in subsection (1) for the words preceding the proviso of the following words:

“Subject to the provisions of this section the owner or master of a South African ship shall not **[knowingly take into employment, or keep in**

- employment, or] permit [the employment of,] a young person [as a trimmer or fireman in that ship] to work at night”;**
- (c) by the substitution in subsection (1) for paragraph (a) of the proviso of the following paragraph:
 “(a) this subsection shall not apply—
 (i) to the employment of a young person on such work as aforesaid in a school-ship or training-ship, if the work is of a kind approved by the Authority and is carried on subject to supervision by officers approved or appointed by it; **[or]**
 (ii) **[to the employment of a young person on such work as aforesaid in a ship which is mainly propelled otherwise than by means of steam; and] if the effective training of the young person concerned would be impaired; or**
 (iii) if the specific nature of the training requires that the young person must perform duties at night.”;
- (d) by the deletion in subsection (1) of paragraph (b) of the proviso;
- (e) by the substitution for subsection (2) of the following subsection:
 “(2) There shall be included in every agreement with the crew of a South African ship a list of the young persons who are members of the crew **[, together with particulars of the dates of birth, and, in the case of a ship in which there is no such agreement, the master of the ship shall, if young persons are employed therein, keep a register of those persons with particulars of the dates of their birth and of the dates on which they become or cease to be members of the crew].**”;
- (f) by the deletion of subsections (4) and (5); and
- (g) by the insertion in subsection (8) before the definition of “young person” of the following definition:
“ ‘night’ means a period of at least nine hours, starting no later than midnight ship’s time and ending not earlier than 05:00 ship’s time.”.

Insertion of section 111A in Act 57 of 1951

10. The following section is hereby inserted in the principal Act after section 111:

“Entitlement to leave

- 111A. (1) (a)** Every seafarer employed or engaged on a South African ship is entitled to leave accrued at the rate of at least 2.5 days per month of employment, except in the case of a seafarer employed onboard a fishing vessel.
- (b) A seafarer employed on board a fishing vessel is entitled to leave as stipulated in an agreement concluded with a registered bargaining or statutory Council.
- (2) Leave commences when the seafarer arrives at his or her proper return port.
- (3) In this section ‘month’ means a period of 30 days, and includes Saturdays, Sundays and public holidays, as defined in section 1 of the Public Holidays Act, 1994 (Act No. 36 of 1994).”.

Amendment of section 114 of Act 57 of 1951, as amended by section 45 of Act 69 of 1962

11. Section 114 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) When the service of a **[seaman or apprentice-officer]** seafarer belonging to a South African ship terminates without the consent of the said **[seaman or apprentice-officer]** seafarer at a place other than a proper return port, and before the expiration of the period for which the **[seaman]** seafarer was engaged **[or the apprentice-officer was indentured]**, the master or owner of the ship shall, in addition to any other relative obligation imposed on **[either of them]** the seafarer by this Act, make adequate provision for the maintenance of the **[seaman or apprentice-officer]** seafarer according to his or her rank or rating, and for the return of that **[seaman or apprentice-officer]** seafarer to a proper return port.”.

Substitution of section 116 of Act 57 of 1951

12. The following section is hereby substituted for section 116 of the principal Act:

“Discharge of [seamen] seafarer on change of ownership

116. (1) If a South African ship is transferred or disposed of while she is at or on a voyage to any port outside the Republic every **[seaman or apprentice-officer]** seafarer belonging to that ship shall be discharged at that port, unless he or she consents in writing in the presence of a proper officer to complete the voyage in the ship if continued. 5

(2) If a **[seaman or apprentice-officer]** seafarer is discharged from a South African ship in terms of subsection (1), the provisions of section **[one hundred and fourteen]** 114 shall apply as if the service of the **[seaman or apprentice-officer]** seafarer had terminated without his or her consent and before the expiration of the period for which the **[seaman]** seafarer was engaged **[or the apprentice-officer was indentured,]** and **[, in the case of a seaman,]** the provisions of the said section shall, notwithstanding subsection (3) thereof, be applicable whatever may be his or her nationality and wherever may be situated the port where he or she was engaged. 10 15

(3) Every **[seaman or apprentice-officer]** seafarer discharged in terms of subsection (1) shall, if the voyage for which he or she was engaged is not continued, be entitled to the wages to which he or she would have been entitled if his or her service had been wrongfully terminated by the owner before the expiration of the period for which the **[seaman]** seafarer was engaged **[or the apprentice-officer was indentured].”**. 20

Amendment of section 117 of Act 57 of 1951

13. Section 117 of the principal Act is hereby amended by the substitution in subsection (1) for the words following paragraph (b) of the following words: 25

“without the authority of the proper officer, who shall certify on the agreement with the crew that he or she has granted such authority, and also the reason for the **[seaman’s]** seafarer’s being discharged or **[the seaman or apprentice-officer’s]** being left behind.” . 30

Amendment of section 121 of Act 57 of 1951, as amended by section 19 of Act 30 of 1959 and by section 13 of Act 42 of 1969

14. Section 121 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) **[When a seaman of a South African ship is discharged, the]** The master or the owner of **[such]** a South African ship shall cause to be delivered to **[such]** a **[seaman]** seafarer a full and true account of his or her wages in a form approved by the Authority, on a monthly basis or in the case of a seafarer employed on board a fishing vessel, on the day of arrival in port after month end where the total period between delivery of accounts and the preceding account shall not exceed 45 days.”. 35 40

Amendment of section 130 of Act 57 of 1951, as amended by section 16 of Act 3 of 1982 and section 5 of Act 18 of 1992

15. Section 130 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) Subject to the provisions of subsection (2), a **[seaman]** seafarer engaged on a South African ship may before the commencement of a voyage make stipulations for the payment during his or her absence by means of an allotment note to a near relative or a savings bank or a body engaged in the promotion of the welfare of **[seamen]** seafarers and registered under the **[National Welfare Act, 1978 (Act No. 100 of 1978)]** **[Advisory Board on Social Development Act, 2001 (Act No. 3 of 2001)]**, of any portion of the wages which he or she may earn during the voyage.”; 45 50

(b) by the substitution for subsection (2) of the following subsection:

“(2) Allotment notes may provide for any portion or all of a seafarer’s wages to any person designated by him or her to be the recipient of such wages or part thereof.”; and

(c) by the addition of the following subsection: 5

“(6) The master, owner or authorised agent of the owner shall bear the costs incurred in effecting payment of the allotment of all or part of a seafarer’s wages.”.

Amendment of section 131 of Act 57 of 195

16. Section 131 of the principal Act is hereby amended by the substitution in 10
subsection (2) for paragraph (a) of the following paragraph:

“(a) in the case of a [seaman] seafarer serving on a foreign-going ship, by the
official statement of the change in the crew caused by the [seamen’s]
seafarer’s absence, made and signed by the master in terms of section [one
hundred and four] 104; or”.

15

Substitution of section 145 of Act 57 of 1951

17. The following section is hereby substituted for section 145 of the principal Act:

**“Power of court to rescind contract between owner or master and
[seaman or apprentice-officer] seafarer**

145. When any proceedings are instituted in any court of competent 20
jurisdiction in relation to any dispute between an owner or master of a
South African ship and a [seaman or apprentice-officer] seafarer, arising
out of or incidental to their relation as such, the court may in its discretion
rescind any contract between the owner or master and the [seaman or
apprentice-officer, or any contract of apprenticeship,] seafarer upon 25
such terms as the court may think just, and this power shall be in addition
to any other jurisdiction which the court may have.”.

Insertion of section 158A in Act 57 of 1951

18. The following section is hereby inserted in the principal Act after section 158:

“Provision of complaints procedure on board ship 30

158A. (1) A master or owner of a South African ship shall draw up and
keep on board a complaints procedure, not in conflict with the provisions of
this Act, and shall make such complaints procedure available to all
seafarers.

(2) If a seafarer of a South African ship considers that his or her rights in 35
terms of the Maritime Labour Convention have been breached, he or she
may lodge a complaint with the master.

(3) Upon receiving a complaint from a seafarer made in terms of
subsection (2), the master shall—

(a) record the complaint in the official log-book; 40

(b) investigate the complaint or cause it to be investigated;

(c) attempt to resolve the complaint within 24 hours; and

(d) record his or her findings and any action taken in the official log-book.

(4) If the situation remains unresolved or if the breach of the seafarer’s
rights is still considered to exist, he or she may lodge a complaint with the 45
Authority, who will adjudicate the complaint.”.

Amendment of section 162 of Act 57 of 1951

19. Section 162 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) If [three or more seamen or apprentice officers] a seafarer of a 50
South African ship [consider] considers—

- (a) that the provisions or water for the use of the **[seamen or apprentice-officers]** seafarer are at any time of bad quality or deficient in quantity; or
- (b) that the crew accommodation is unsanitary or is not in accordance with the regulations; or
- (c) that in any other respect the conditions under which the **[seaman or apprentice-officers are]** seafarer is living on board ship are not of a reasonably good standard,
[they] he or she may complain thereof to the proper officer, who shall investigate the complaint or cause it to be investigated.”;
- (b) by the substitution in subsection (2) for the words following paragraph (c) of the following words:
 “as the case may be, he or she shall communicate that finding in writing to the master.”;
- (c) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:
 “Upon the finding being communicated to him or her, the master shall forthwith—”;
- (d) by the substitution in subsection (3) for paragraph (c) of the following paragraph:
 “(c) if the finding is in terms of paragraph (c) of subsection (2), take steps to the satisfaction of the proper officer to ensure that the living conditions of the **[seamen and apprentice-officers]** seafarer are of a reasonably good standard;”;
- (e) by the substitution for subsection (5) of the following subsection:
 “(5) If the said officer certifies in that statement that there was no reasonable ground for the complaint, **[each of]** the **[complainants]** complainant shall, if so directed by the officer in the certificate, forfeit to the owner out of his or her wages a sum to be determined by the proper officer, but not exceeding one week’s wages.”.

Amendment of section 169 of Act 57 of 1951

20. Section 169 of the principal Act is hereby amended by the substitution for subsections (1), (2), (3) and (4) or the following subsections, respectively:

“(1) If the master or a **[seaman or apprentice-officer]** seafarer of a South African ship receives any hurt or injury or suffers from any illness (not being a hurt, injury or illness due to his or her own willful act or default or to his or her own misbehaviour), resulting in his or her being discharged or left behind at a place other than his or her proper return port, the expense of providing the necessary medical advice, attendance and treatment and medicine, and also the expenses of the maintenance of the said master[, **seaman or apprentice-officer]** or seafarer in a manner appropriate to his or her rank or rating, until he or she is cured or dies or is returned to and arrives at a proper return port, and of his or her conveyance to that port, and in case of death the expense of his or her burial, shall be defrayed by the owner of the ship, without any relative deduction from the wages of the master[, **seaman or apprentice-officer]** or seafarer concerned.

(2) If the master or **[seaman or apprentice-officer]** seafarer is on account of any illness or injury temporarily removed from his or her ship, at a port other than his or her proper return port, for the purpose of preventing infection, or otherwise for the convenience of the ship, and subsequently returns to **[his]** duty, the expenses of removal, medical attendance and treatment, and of maintenance while the master[, **seaman or apprentice-officer]** or seafarer is away from the ship, shall be defrayed in like manner.

(3) The expenses of all medical attendance and treatment given to a master[, **seaman or apprentice-officer]** or seafarer whilst on board his or her ship shall be defrayed in like manner.

(4) In all other cases any reasonable expenses duly incurred by the owner for any master[, **seaman, or apprentice-officer]** or seafarer in respect of illness, and also any reasonable expenses duly incurred by the owner in respect of the burial of any master[, **seaman or apprentice-officer]** or seafarer who dies whilst on service, shall, if proved to the satisfaction of the proper officer, be deducted from the salary or wages of the master[, **seaman or apprentice-officer]** or seafarer.”.

Amendment of section 172 of Act 57 of 1951

21. Section 172 of the principal Act is hereby amended by the substitution for the heading of the following heading:

“[**Seamen’s**] Seafarers’ property not to be detained”.

Amendment of section 188 of Act 57 of 1951, as amended by section 25 of Act 30 of 1959 5

22. Section 188 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (iii) of the following paragraph:

“(iii) the names, ages, and places of birth of all the crew, including the master [**and apprentice-officers**]; their ratings on board, their last ships or other 10 employments and the dates and places of their joining the ship; and”.

Amendment of section 341 of Act 57 of 1951, as amended by section 57 of Act 69 of 1962

23. Section 341 of the principal Act is hereby amended by the substitution for subsection (1) the following subsection: 15

“(1) Whenever any complaint is made to any consular representative of the Republic or of any other treaty country—

(a) that any offence against property or person has been committed at any place, either ashore or afloat, outside any treaty country by any master[, **seaman, or apprentice-officer**] or seafarer who at the time when the offence was committed, or within three months before that time, was employed in any South African ship; or 20

(b) that any offence on the high seas has been committed by any master[, **seaman, or apprentice-officer**] or seafarer belonging to any South African ship, that consular representative may inquire into the case and may, if in his or her opinion reasonable grounds of suspicion exist against the alleged offender, take any steps in his or her power for the purpose of placing [**him**] the master or seafarer under the necessary restraint and of sending him or her as soon as practicable in safe custody to the Republic.”. 25

Substitution of section 352 of Act 57 of 1951, as substituted by section 58 of Act 69 of 1962 30

24. The following section is hereby substituted for section 352 of the principal Act:

“Acts done by courts and functionaries of the Republic in relation to treaty ships other than South African ships

352. Whenever any law enacted before or after the coming into operation 35 of this section and in force in any treaty country (other than the Republic) provides that any court or functionary of the Republic may or shall exercise any authority or perform any act in relation to ships registered or entitled to be registered in that treaty country, their owners, masters, [**seamen, or apprentice-officers**] seafarers, such court or functionary may exercise any 40 such authority or perform any such act, and all things done by such court or functionary under this section shall have the same effect as if that law had been enacted in the Republic.”.

Amendment of section 353 of Act 57 of 1951, as substituted by section 59 of Act 69 of 1962 45

25. Section 353 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Every provision of this Act which purports to require any court or functionary of any treaty country (other than the Republic) or any person other than a South African citizen to exercise any authority or perform any act outside the Republic in relation to South African ships, their owners, masters[, **seamen or apprentice-officers**] or seafarers shall be construed as being permissive only and 50

to mean that any such court or functionary or person is thereby empowered so to exercise such authority or perform such act.”.

Amendment of section 355 of Act 57 of 1951, as substituted by section 30 of Act 18 of 1992

26. Section 355 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection: 5

“(3) Any agreement or award under the Labour Relations Act, [1956] 1995 (Act No. 66 of 1995), or any determination under the [Wage Act, 1957] Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997), which is binding in respect of any [seamen] seafarers employed on board any South African ship [which is registered in the Republic] or on board any ship which is not registered in the Republic and is wholly engaged in plying between ports in the Republic, while the ship is in the Republic, shall be binding in respect of such [seamen] seafarers while the ship is outside the Republic.”. 10

Amendment of section 356 of Act 57 of 1951, as amended by section 42 of Act 30 of 1959, section 59 of Act 40 of 1963, section 6 of Act 24 of 1974, section 11 of Act 5 of 1976, section 19 of Act 3 of 1982, section 9 of Act 25 of 1985, section 32 of Act 18 of 1992, section 7 of Act 16 of 1995, section 15 of Act 23 of 1997, section 27 of Act 57 of 1998 and section 60 of Act 58 of 1998 15

27. Section 356 of the principal Act is hereby amended— 20

(a) by the substitution in subsection (1) for paragraph (xv) of the following paragraph:

“(xv) prescribing the classes of South African ships on which cadets [or apprentice-officers] may be employed as such, the maximum number of cadets [or apprentice-officers] which may be employed as such on different classes of South African ships, the terms of indentures of apprentice-officers, the minimum wages which such apprentice-officers shall be paid and the manner of payment thereof;”;

(b) by the substitution in subsection (1) for paragraph (xxii) of the following paragraph: 30

“(xxii) providing for the care and treatment of sick [seamen] seafarers (including masters [and apprentice-officers]) in hospitals, and for the recovery of expenses in connection therewith;”;

(c) by the substitution in subsection (1) for paragraph (xxiv) of the following paragraph: 35

“(xxiv) providing for the vaccination against smallpox and the inoculation against yellow fever and typhoid fever of [seamen] seafarers (including masters [and apprentice-officers]) at the expense of the owner of the ship on which they serve;”;

(d) by the substitution in subsection (1) for paragraph (xxxvii) of the following paragraph: 40

“(xxxvii) prescribing the period of pre-sea training required of [seamen, and apprentice-officers] seafarers;”;

(e) by the deletion in subsection (2) of the expression “and” at the end of paragraph (d), the substitution in that subsection for the full stop at the end of paragraph (e) of a semi colon and the addition to that subsection of the following paragraphs: 45

“(f) the Maritime Labour Convention; and

(g) the Work in Fishing Convention.”. 50

Amendment of section 356bis of Act 57 of 1951, as substituted by section 16 of Act 23 of 1997 and amended by section 28 of Act 57 of 1998

28. Section 356bis of the principal Act is hereby amended—

(a) by the insertion after subsection (1) of the following subsection:

“(1A) The Maritime Labour Convention and the Work in Fishing Convention shall, subject to the provisions of this Act and from the date on

which the Merchant Shipping Amendment Act, 2015, takes effect, have the force of law in the Republic.”; and

- (b) by the substitution for subsection (2) of the following subsection: 5
 “(2) The Minister shall, as soon as practicable after the entry into force for the Republic of any amendment to the Safety Convention, Maritime Labour Convention or Work in Fishing Convention by notice in the *Gazette* amend the Second, Seventh or Eighth Schedule, as the case may be, to reflect such amendment.”.

Substitution of certain words and expressions in Act 57 of 1951

29. The principal Act is hereby amended— 10
- (a) by the substitution for the expression “master, seaman or apprentice-officer”, wherever it occurs in the principal Act, of the expression “master or seafarer”;
- (b) by the substitution for the expression “master, seamen or apprentice-officers”, wherever it occurs in the principal Act, of the expression “master or seafarers”;
- (c) by the substitution for the expression “masters, seamen and apprentice-officers”, wherever it occurs in the principal Act, of the expression “masters and seafarers”;
- (d) by the substitution for the expression “seaman or apprentice-officer”, wherever it occurs in the principal Act, of the word “seafarer”;
- (e) by the substitution for the expression “seaman and apprentice-officer”, wherever it occurs in the principal Act, of the word “seafarer”;
- (f) by the substitution for the expression “seamen or apprentice-officers”, wherever it occurs in the principal Act, of the word “seafarers”;
- (g) by the substitution for the expression “seamen and apprentice-officers”, wherever it occurs in the principal Act, of the word “seafarers”;
- (h) by the substitution for the expression “seamen, apprentice-officers”, wherever it occurs in the principal Act, of the word “seafarers”;
- (i) by the substitution for the word “seaman”, wherever it occurs in the principal Act, of the word “seafarer”;
- (j) by the substitution for the word “seaman’s”, wherever it occurs in the principal Act, of the word “seafarer’s”; and
- (k) by the substitution for the word “seamen”, wherever it occurs in the principal Act, of the word “seafarers”. 35

Addition of Schedules Seven and Eight to Act 57 of 1951

30. The Schedules set out in the Schedule to this Act are hereby added to the principal Act as the Seventh Schedule and the Eighth Schedule, respectively.

Short title and commencement

31. This Act is called the Merchant Shipping Amendment Act, 2015, and takes effect on a date fixed by the President by proclamation in the *Gazette*. 40

SCHEDULE*(Section 30)***“Seventh Schedule****MARITIME LABOUR CONVENTION, 2006****PREAMBLE**

5

The General Conference of the International Labour Organization,
 Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Ninety-fourth Session on 7 February 2006, and
 Desiring to create a single, coherent instrument embodying as far as possible all up-to-date standards of existing international maritime labour Conventions and Recommendations, as well as the fundamental principles to be found in other international labour Conventions, in particular: 10

- the Forced Labour Convention, 1930 (No. 29);
- the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); 15
- the Right to Organise and Collective Bargaining Convention, 1949 (No. 98);
- the Equal Remuneration Convention, 1951 (No. 100);
- the Abolition of Forced Labour Convention, 1957 (No. 105);
- the Discrimination (Employment and Occupation) Convention, 1958 (No. 111);
- the Minimum Age Convention, 1973 (No. 138); 20
- the Worst Forms of Child Labour Convention, 1999 (No. 182); and

Mindful of the core mandate of the Organization, which is to promote decent conditions of work, and
 Recalling the ILO Declaration on Fundamental Principles and Rights at Work, 1998, and 25

Mindful also that seafarers are covered by the provisions of other ILO instruments and have other rights which are established as fundamental rights and freedoms applicable to all persons, and
 Considering that, given the global nature of the shipping industry, seafarers need special protection, and 30

Mindful also of the international standards on ship safety, human security and quality ship management in the International Convention for the Safety of Life at Sea, 1974, as amended, the Convention on the International Regulations for Preventing Collisions at Sea, 1972, as amended, and the seafarer training and competency requirements in the International Convention on Standards of Training, Certification and Watch keeping for Seafarers, 1978, as amended, and 35

Recalling that the United Nations Convention on the Law of the Sea, 1982, sets out a general legal framework within which all activities in the oceans and seas must be carried out and is of strategic importance as the basis for national, regional and global action and cooperation in the marine sector, and that its integrity needs to be maintained, 40

and
 Recalling that Article 94 of the United Nations Convention on the Law of the Sea, 1982, establishes the duties and obligations of a flag State with regard to, inter alia, labour conditions, crewing and social matters on ships that fly its flag, and
 Recalling paragraph 8 of article 19 of the Constitution of the International Labour Organisation which provides that in no case shall the adoption of any Convention or Recommendation by the Conference or the ratification of any Convention by any Member be deemed to affect any law, award, custom or agreement which ensures more favourable conditions to the workers concerned than those provided for in the Convention or Recommendation, and 50

Determined that this new instrument should be designed to secure the widest possible acceptability among governments, shipowners and seafarers committed to the principles of decent work, that it should be readily updateable and that it should lend itself to effective implementation and enforcement, and
 Having decided upon the adoption of certain proposals for the realization of such an instrument, which is the only item on the agenda of the session, and 55

Having determined that these proposals shall take the form of an international Convention;

adopts this twenty-third day of February of the year two thousand and six the following Convention, which may be cited as the Maritime Labour Convention, 2006.

GENERAL OBLIGATIONS

Article I

1. Each Member which ratifies this Convention undertakes to give complete effect to its provisions in the manner set out in Article VI in order to secure the right of all seafarers to decent employment. 5
2. Members shall cooperate with each other for the purpose of ensuring the effective implementation and enforcement of this Convention.

DEFINITIONS AND SCOPE OF APPLICATION 10

Article II

1. For the purpose of this Convention and unless provided otherwise in particular provisions, the term:
 - (a) competent authority means the minister, government department or other authority having power to issue and enforce regulations, orders or other instructions having the force of law in respect of the subject matter of the provision concerned; 15
 - (b) declaration of maritime labour compliance means the declaration referred to in Regulation 5.1.3;
 - (c) gross tonnage means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I to the International Convention on Tonnage Measurement of Ships, 1969, or any successor Convention; for ships covered by the tonnage measurement interim scheme adopted by the International Maritime Organization, the gross tonnage is that which is included in the REMARKS column of the International Tonnage Certificate (1969); 20
 - (d) maritime labour certificate means the certificate referred to in Regulation 5.1.3;
 - (e) requirements of this Convention refers to the requirements in these Articles and in the Regulations and Part A of the Code of this Convention; 30
 - (f) seafarer means any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies;
 - (g) seafarers' employment agreement includes both a contract of employment and articles of agreement;
 - (h) seafarer recruitment and placement service means any person, company, institution, agency or other organization, in the public or the private sector, which is engaged in recruiting seafarers on behalf of shipowners or placing seafarers with shipowners; 35
 - (i) ship means a ship other than one which navigates exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply; 40
 - (j) shipowner means the owner of the ship or another organization or person, such as the manager, agent or 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 this Convention, regardless of whether any other organization or persons fulfil certain of the duties or responsibilities on behalf of the shipowner. 45
2. Except as expressly provided otherwise, this Convention applies to all seafarers.
3. In the event of doubt as to whether any categories of persons are to be regarded as seafarers for the purpose of this Convention, the question shall be determined by the competent authority in each Member after consultation with the shipowners' and seafarers' organizations concerned with this question. 50
4. Except as expressly provided otherwise, this Convention applies to all ships, whether publicly or privately owned, ordinarily engaged in commercial activities, other than ships engaged in fishing or in similar pursuits and ships of traditional build such as dhows and junks. This Convention does not apply to warships or naval auxiliaries. 55

5. In the event of doubt as to whether this Convention applies to a ship or particular category of ships, the question shall be determined by the competent authority in each Member after consultation with the shipowners' and seafarers' organizations concerned.

6. Where the competent authority determines that it would not be reasonable or practicable at the present time to apply certain details of the Code referred to in Article VI, paragraph 1, to a ship or particular categories of ships flying the flag of the Member, the relevant provisions of the Code shall not apply to the extent that the subject matter is dealt with differently by national laws or regulations or collective bargaining agreements or other measures. Such a determination may only be made in consultation with the shipowners' and seafarers' organizations concerned and may only be made with respect to ships of less than 200 gross tonnage not engaged in international voyages.

7. Any determinations made by a Member under paragraph 3 or 5 or 6 of this Article shall be communicated to the Director-General of the International Labour Office, who shall notify the Members of the Organization.

8. Unless expressly provided otherwise, a reference to this Convention constitutes at the same time a reference to the Regulations and the Code.

FUNDAMENTAL RIGHTS AND PRINCIPLES

Article III

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.

SEAFARERS' EMPLOYMENT AND SOCIAL RIGHTS

Article IV

1. Every seafarer has the right to a safe and secure workplace that complies with safety standards.

2. Every seafarer has a right to fair terms of employment.

3. Every seafarer has a right to decent working and living conditions on board ship.

4. Every seafarer has a right to health protection, medical care, welfare measures and other forms of social protection.

5. Each Member shall ensure, within the limits of its jurisdiction, that the seafarers' employment and social rights set out in the preceding paragraphs of this Article are fully implemented in accordance with the requirements of this Convention. Unless specified otherwise in the Convention, such implementation may be achieved through national laws or regulations, through applicable collective bargaining agreements or through other measures or in practice.

IMPLEMENTATION AND ENFORCEMENT RESPONSIBILITIES

Article V

1. Each Member shall implement and enforce laws or regulations or other measures that it has adopted to fulfil its commitments under this Convention with respect to ships and seafarers under its jurisdiction.

2. Each Member shall effectively exercise its jurisdiction and control over ships that fly its flag by establishing a system for ensuring compliance with the requirements of this Convention, including regular inspections, reporting, monitoring and legal proceedings under the applicable laws.

3. Each Member shall ensure that ships that fly its flag carry a maritime labour certificate and a declaration of maritime labour compliance as required by this Convention.

4. A ship to which this Convention applies may, in accordance with international law, be inspected by a Member other than the flag State, when the ship is in one of its ports,

to determine whether the ship is in compliance with the requirements of this Convention.

5. Each Member shall effectively exercise its jurisdiction and control over seafarer recruitment and placement services, if these are established in its territory.

6. Each Member shall prohibit violations of the requirements of this Convention and shall, in accordance with international law, establish sanctions or require the adoption of corrective measures under its laws which are adequate to discourage such violations. 5

7. Each Member shall implement its responsibilities under this Convention in such a way as to ensure that the ships that fly the flag of any State that has not ratified this Convention do not receive more favourable treatment than the ships that fly the flag of any State that has ratified it. 10

REGULATIONS AND PARTS A AND B OF THE CODE

Article VI

1. The Regulations and the provisions of Part A of the Code are mandatory. The provisions of Part B of the Code are not mandatory. 15

2. Each Member undertakes to respect the rights and principles set out in the Regulations and to implement each Regulation in the manner set out in the corresponding provisions of Part A of the Code. In addition, the Member shall give due consideration to implementing its responsibilities in the manner provided for in Part B of the Code. 20

3. A Member which is not in a position to implement the rights and principles in the manner set out in Part A of the Code may, unless expressly provided otherwise in this Convention, implement Part A through provisions in its laws and regulations or other measures which are substantially equivalent to the provisions of Part A.

4. For the sole purpose of paragraph 3 of this Article, any law, regulation, collective agreement or other implementing measure shall be considered to be substantially equivalent, in the context of this Convention, if the Member satisfies itself that: 25

- (a) it is conducive to the full achievement of the general object and purpose of the provision or provisions of Part A of the Code concerned; and
- (b) it gives effect to the provision or provisions of Part A of the Code concerned. 30

CONSULTATION WITH SHIPOWNERS' AND SEAFARERS' ORGANIZATIONS

Article VII

Any derogation, exemption or other flexible application of this Convention for which the Convention requires consultation with shipowners' and seafarers' organizations may, in cases where representative organizations of shipowners or of seafarers do not exist within a Member, only be decided by that Member through consultation with the Committee referred to in Article XIII. 35

ENTRY INTO FORCE

Article VIII

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1. The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

2. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered by the Director-General.

3. This Convention shall come into force 12 months after the date on which there have been registered ratifications by at least 30 Members with a total share in the world gross tonnage of ships of at least 33 per cent. 45

4. Thereafter, this Convention shall come into force for any Member 12 months after the date on which its ratification has been registered.

DENUNCIATION

Article IX

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered. 5

2. Each Member which does not, within the year following the expiration of the period of ten years mentioned in paragraph 1 of this Article, exercise the right of denunciation provided for in this Article, shall be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each new period of ten years under the terms provided for in this Article. 10

EFFECT OF ENTRY INTO FORCE

Article X

This Convention revises the following Conventions: 15

Minimum Age (Sea) Convention, 1920 (No. 7)

Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8)

Placing of Seamen Convention, 1920 (No. 9)

Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16)

Seamen's Articles of Agreement Convention, 1926 (No. 22) 20

Repatriation of Seamen Convention, 1926 (No. 23)

Officers' Competency Certificates Convention, 1936 (No. 53)

Holidays with Pay (Sea) Convention, 1936 (No. 54)

Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55)

Sickness Insurance (Sea) Convention, 1936 (No. 56) 25

Hours of Work and Manning (Sea) Convention, 1936 (No. 57)

Minimum Age (Sea) Convention (Revised), 1936 (No. 58)

Food and Catering (Ships' Crews) Convention, 1946 (No. 68)

Certification of Ships' Cooks Convention, 1946 (No. 69)

Social Security (Seafarers) Convention, 1946 (No. 70) 30

Paid Vacations (Seafarers) Convention, 1946 (No. 72)

Medical Examination (Seafarers) Convention, 1946 (No. 73)

Certification of Able Seamen Convention, 1946 (No. 74)

Accommodation of Crews Convention, 1946 (No. 75)

Wages, Hours of Work and Manning (Sea) Convention, 1946 (No. 76) 35

Paid Vacations (Seafarers) Convention (Revised), 1949 (No. 91)

Accommodation of Crews Convention (Revised), 1949 (No. 92)

Wages, Hours of Work and Manning (Sea) Convention (Revised), 1949 (No. 93)

Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109)

Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133) 40

Prevention of Accidents (Seafarers) Convention, 1970 (No. 134)

Continuity of Employment (Seafarers) Convention, 1976 (No. 145)

Seafarers' Annual Leave with Pay Convention, 1976 (No. 146)

Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)

Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976 45
(No. 147)

Seafarers' Welfare Convention, 1987 (No. 163)

Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164)

Social Security (Seafarers) Convention (Revised), 1987 (No. 165)

Repatriation of Seafarers Convention (Revised), 1987 (No. 166) 50

Labour Inspection (Seafarers) Convention, 1996 (No. 178)

Recruitment and Placement of Seafarers Convention, 1996 (No. 179)

Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180).

DEPOSITARY FUNCTIONS

Article XI

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications, acceptances and denunciations under this Convention. 5

2. When the conditions provided for in paragraph 3 of Article VIII have been fulfilled, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention will come into force.

Article XII

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, acceptances and denunciations registered under this Convention. 10

SPECIAL TRIPARTITE COMMITTEE

Article XIII

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1. The Governing Body of the International Labour Office shall keep the working of this Convention under continuous review through a committee established by it with special competence in the area of maritime labour standards.

2. For matters dealt with in accordance with this Convention, the Committee shall consist of two representatives nominated by the Government of each Member which has ratified this Convention, and the representatives of Shipowners and Seafarers appointed by the Governing Body after consultation with the Joint Maritime Commission. 20

3. The Government representatives of Members which have not yet ratified this Convention may participate in the Committee but shall have no right to vote on any matter dealt with in accordance with this Convention. The Governing Body may invite other organizations or entities to be represented on the Committee by observers. 25

4. 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. 30

AMENDMENT OF THIS CONVENTION

Article XIV

1. Amendments to any of the provisions of this Convention may be adopted by the General Conference of the International Labour Organization in the framework of article 19 of the Constitution of the International Labour Organisation and the rules and procedures of the Organization for the adoption of Conventions. Amendments to the Code may also be adopted following the procedures in Article XV. 35

2. In the case of Members whose ratifications of this Convention were registered before the adoption of the amendment, the text of the amendment shall be communicated to them for ratification. 40

3. In the case of other Members of the Organization, the text of the Convention as amended shall be communicated to them for ratification in accordance with article 19 of the Constitution.

4. An amendment shall be deemed to have been accepted on the date when there have been registered ratifications, of the amendment or of the Convention as amended, as the case may be, by at least 30 Members with a total share in the world gross tonnage of ships of at least 33 per cent. 45

5. An amendment adopted in the framework of article 19 of the Constitution shall be binding only upon those Members of the Organization whose ratifications have been registered by the Director-General of the International Labour Office. 50

6. For any Member referred to in paragraph 2 of this Article, an amendment shall come into force 12 months after the date of acceptance referred to in paragraph 4 of this

Article or 12 months after the date on which its ratification of the amendment has been registered, whichever date is later.

7. Subject to paragraph 9 of this Article, for Members referred to in paragraph 3 of this Article, the Convention as amended shall come into force 12 months after the date of acceptance referred to in paragraph 4 of this Article or 12 months after the date on which their ratifications of the Convention have been registered, whichever date is later. 5

8. For those Members whose ratification of this Convention was registered before the adoption of an amendment but which have not ratified the amendment, this Convention shall remain in force without the amendment concerned.

9. Any Member whose ratification of this Convention is registered after the adoption of the amendment but before the date referred to in paragraph 4 of this Article may, in a declaration accompanying the instrument of ratification, specify that its ratification relates to the Convention without the amendment concerned. In the case of a ratification with such a declaration, the Convention shall come into force for the Member concerned 12 months after the date on which the ratification was registered. Where an instrument of ratification is not accompanied by such a declaration, or where the ratification is registered on or after the date referred to in paragraph 4, the Convention shall come into force for the Member concerned 12 months after the date on which the ratification was registered and, upon its entry into force in accordance with paragraph 7 of this Article, the amendment shall be binding on the Member concerned unless the amendment provides otherwise. 10 15 20

AMENDMENTS TO THE CODE

Article XV

1. The Code may be amended either by the procedure set out in Article XIV or, unless expressly provided otherwise, in accordance with the procedure set out in the present Article. 25

2. An amendment to the Code may be proposed to the Director-General of the International Labour Office by the government of any Member of the Organization or by the group of Shipowner representatives or the group of Seafarer representatives who have been appointed to the Committee referred to in Article XIII. An amendment proposed by a government must have been proposed by, or be supported by, at least five governments of Members that have ratified the Convention or by the group of Shipowner or Seafarer representatives referred to in this paragraph. 30

3. Having verified that the proposal for amendment meets the requirements of paragraph 2 of this Article, the Director-General shall promptly communicate the proposal, accompanied by any comments or suggestions deemed appropriate, to all Members of the Organization, with an invitation to them to transmit their observations or suggestions concerning the proposal within a period of six months or such other period (which shall not be less than three months nor more than nine months) prescribed by the Governing Body. 35 40

4. At the end of the period referred to in paragraph 3 of this Article, the proposal, accompanied by a summary of any observations or suggestions made under that paragraph, shall be transmitted to the Committee for consideration at a meeting. An amendment shall be considered adopted by the Committee if:

- (a) at least half the governments of Members that have ratified this Convention are represented in the meeting at which the proposal is considered; and 45
- (b) a majority of at least two-thirds of the Committee members vote in favour of the amendment; and
- (c) this majority comprises the votes in favour of at least half the government voting power, half the Shipowner voting power and half the Seafarer voting power of the Committee members registered at the meeting when the proposal is put to the vote. 50

5. Amendments adopted in accordance with paragraph 4 of this Article shall be submitted to the next session of the Conference for approval. Such approval shall require a majority of two-thirds of the votes cast by the delegates present. If such majority is not obtained, the proposed amendment shall be referred back to the Committee for reconsideration should the Committee so wish. 55

6. Amendments approved by the Conference shall be notified by the Director-General to each of the Members whose ratifications of this Convention were registered before the date of such approval by the Conference. These Members are referred to below as “the 60

ratifying Members". The notification shall contain a reference to the present Article and shall prescribe the period for the communication of any formal disagreement. This period shall be two years from the date of the notification unless, at the time of approval, the Conference has set a different period, which shall be a period of at least one year. A copy of the notification shall be communicated to the other Members of the Organization for their information. 5

7. An amendment approved by the Conference shall be deemed to have been accepted unless, by the end of the prescribed period, formal expressions of disagreement have been received by the Director-General from more than 40 per cent of the Members which have ratified the Convention and which represent not less than 40 per cent of the gross tonnage of the ships of the Members which have ratified the Convention. 10

8. An amendment deemed to have been accepted shall come into force six months after the end of the prescribed period for all the ratifying Members except those which had formally expressed their disagreement in accordance with paragraph 7 of this Article and have not withdrawn such disagreement in accordance with paragraph 11. However: 15

- (a) before the end of the prescribed period, any ratifying Member may give notice to the Director-General that it shall be bound by the amendment only after a subsequent express notification of its acceptance; and
- (b) before the date of entry into force of the amendment, any ratifying Member may give notice to the Director-General that it will not give effect to that amendment for a specified period. 20

9. An amendment which is the subject of a notice referred to in paragraph 8(a) of this Article shall enter into force for the Member giving such notice six months after the Member has notified the Director-General of its acceptance of the amendment or on the date on which the amendment first comes into force, whichever date is later. 25

10. The period referred to in paragraph 8(b) of this Article shall not go beyond one year from the date of entry into force of the amendment or beyond any longer period determined by the Conference at the time of approval of the amendment.

11. A Member that has formally expressed disagreement with an amendment may withdraw its disagreement at any time. If notice of such withdrawal is received by the Director-General after the amendment has entered into force, the amendment shall enter into force for the Member six months after the date on which the notice was registered. 30

12. After entry into force of an amendment, the Convention may only be ratified in its amended form. 35

13. To the extent that a maritime labour certificate relates to matters covered by an amendment to the Convention which has entered into force:

- (a) a Member that has accepted that amendment shall not be obliged to extend the benefit of the Convention in respect of the maritime labour certificates issued to ships flying the flag of another Member which: 40
 - (i) pursuant to paragraph 7 of this Article, has formally expressed disagreement to the amendment and has not withdrawn such disagreement; or
 - (ii) pursuant to paragraph 8(a) of this Article, has given notice that its acceptance is subject to its subsequent express notification and has not accepted the amendment; and 45
- (b) a Member that has accepted the amendment shall extend the benefit of the Convention in respect of the maritime labour certificates issued to ships flying the flag of another Member that has given notice, pursuant to paragraph 8(b) of this Article, that it will not give effect to that amendment for the period specified in accordance with paragraph 10 of this Article. 50

AUTHORITATIVE LANGUAGES

Article XVI

The English and French versions of the text of this Convention are equally authoritative. 55

Eighth Schedule

WORK IN FISHING CONVENTION, 2007

PREAMBLE

The General Conference of the International Labour Organization,
 Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its ninety-sixth Session on 30 May 2007, and 5
 Recognizing that globalization has a profound impact on the fishing sector, and
 Noting the ILO Declaration on Fundamental Principles and Rights at Work, 1998, and
 Taking into consideration the fundamental rights to be found in the following international labour Conventions: the Forced Labour Convention, 1930 (No. 29), the 10
 Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Equal Remuneration Convention, 1951 (No. 100), the Abolition of Forced Labour Convention, 1957 (No. 105), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Minimum Age Convention, 1973 (No. 138), and the 15
 Worst Forms of Child Labour Convention, 1999 (No. 182), and
 Noting the relevant instruments of the International Labour Organization, in particular the Occupational Safety and Health Convention (No. 155) and Recommendation (No. 164), 1981, and the Occupational Health Services Convention (No. 161) and Recommendation (No. 171), 1985, and 20
 Noting, in addition, the Social Security (Minimum Standards) Convention, 1952 (No. 102), and considering that the provisions of Article 77 of that Convention should not be an obstacle to protection extended by Members to fishers under social security schemes, and
 Recognizing that the International Labour Organization considers fishing as a 25
 hazardous occupation when compared to other occupations, and
 Noting also Article 1, paragraph 3, of the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), and
 Mindful of the core mandate of the Organization, which is to promote decent 30
 conditions of work, and
 Mindful of the need to protect and promote the rights of fishers in this regard, and
 Recalling the United Nations Convention on the Law of the Sea, 1982, and
 Taking into account the need to revise the following international Conventions adopted by the International Labour Conference specifically concerning the fishing sector, namely the Minimum Age (Fishermen) Convention, 1959 (No. 112), the Medical 35
 Examination (Fishermen) Convention, 1959 (No. 113), the Fishermen's Articles of Agreement Convention, 1959 (No. 114), and the Accommodation of Crews (Fishermen) Convention, 1966 (No. 126), to bring them up to date and to reach a greater number of the world's fishers, particularly those working on board smaller vessels, and
 Noting that the objective of this Convention is to ensure that fishers have decent 40
 conditions of work on board fishing vessels with regard to minimum requirements for work on board; conditions of service; accommodation and food; occupational safety and health protection; medical care and social security, and
 Having decided upon the adoption of certain proposals with regard to work in the fishing sector, which is the fourth item on the agenda of the session, and 45
 Having determined that these proposals shall take the form of an international Convention;
 adopts this fourteenth day of June of the year two thousand and seven the following Convention, which may be cited as the Work in Fishing Convention, 2007.

DEFINITIONS AND SCOPE

PART I

Definitions

ARTICLE 1

- For the purposes of the Convention: 5
- (a) commercial fishing means all fishing operations, including fishing operations on rivers, lakes or canals, with the exception of subsistence fishing and recreational fishing; 10
 - (b) competent authority means the minister, government department or other authority having power to issue and enforce regulations, orders or other instructions having the force of law in respect of the subject matter of the provision concerned; 10
 - (c) consultation means consultation by the competent authority with the representative organizations of employers and workers concerned, and in particular the representative organizations of fishing vessel owners and fishers, where they exist; 15
 - (d) fishing vessel owner means the owner of the fishing vessel or any other organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the vessel from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on fishing vessel owners in accordance with the Convention, regardless of whether any other organization or person fulfils certain of the duties or responsibilities on behalf of the fishing vessel owner; 20
 - (e) fisher means every person employed or engaged in any capacity or carrying out an occupation on board any fishing vessel, including persons working on board who are paid on the basis of a share of the catch but excluding pilots, naval personnel, other persons in the permanent service of a government, shore-based persons carrying out work aboard a fishing vessel and fisheries observers; 25
 - (f) fisher's work agreement means a contract of employment, articles of agreement or other similar arrangements, or any other contract governing a fisher's living and working conditions on board a vessel; 30
 - (g) fishing vessel or vessel means any ship or boat, of any nature whatsoever, irrespective of the form of ownership, used or intended to be used for the purpose of commercial fishing; 35
 - (h) gross tonnage means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I to the International Convention on Tonnage Measurement of Ships, 1969, or any instrument amending or replacing it; 35
 - (i) length (L) shall be taken as 96 per cent of the total length on a waterline at 85 per cent of the least moulded depth measured from the keel line, or as the length from the foreside of the stem to the axis of the rudder stock on that waterline, if that be greater. In vessels designed with rake of keel, the waterline on which this length is measured shall be parallel to the designed waterline; 40
 - (j) length overall (LOA) shall be taken as the distance in a straight line parallel to the designed waterline between the foremost point of the bow and the aftermost point of the stern; 45
 - (k) recruitment and placement service means any person, company, institution, agency or other organization, in the public or the private sector, which is engaged in recruiting fishers on behalf of, or placing fishers with, fishing vessel owners; 50
 - (l) skipper means the fisher having command of a fishing vessel.

SCOPE**ARTICLE 2**

1. Except as otherwise provided herein, this Convention applies to all fishers and all fishing vessels engaged in commercial fishing operations.
2. In the event of doubt as to whether a vessel is engaged in commercial fishing, the question shall be determined by the competent authority after consultation. 5
3. Any Member, after consultation, may extend, in whole or in part, to fishers working on smaller vessels the protection provided in this Convention for fishers working on vessels of 24 metres in length and over.

ARTICLE 3 10

1. Where the application of the Convention raises special problems of a substantial nature in the light of the particular conditions of service of the fishers or of the fishing vessels' operations concerned, a Member may, after consultation, exclude from the requirements of this Convention, or from certain of its provisions:
- (a) fishing vessels engaged in fishing operations in rivers, lakes or canals; 15
 - (b) limited categories of fishers or fishing vessels.
2. In case of exclusions under the preceding paragraph, and where practicable, the competent authority shall take measures, as appropriate, to extend progressively the requirements under this Convention to the categories of fishers and fishing vessels concerned. 20
3. Each Member which ratifies this Convention shall:
- (a) in its first report on the application of this Convention submitted under article 22 of the Constitution of the International Labour Organisation:
 - (i) list any categories of fishers or fishing vessels excluded under paragraph 1; 25
 - (ii) give the reasons for any such exclusions, stating the respective positions of the representative organizations of employers and workers concerned, in particular the representative organizations of fishing vessel owners and fishers, where they exist; and
 - (iii) describe any measures taken to provide equivalent protection to the excluded categories; and 30
 - (b) in subsequent reports on the application of the Convention, describe any measures taken in accordance with paragraph 2.

ARTICLE 4

1. Where it is not immediately possible for a Member to implement all of the measures provided for in this Convention owing to special problems of a substantial nature in the light of insufficiently developed infrastructure or institutions, the Member may, in accordance with a plan drawn up in consultation, progressively implement all or some of the following provisions:
- (a) Article 10, paragraph 1; 40
 - (b) Article 10, paragraph 3, in so far as it applies to vessels remaining at sea for more than three days;
 - (c) Article 15;
 - (d) Article 20;
 - (e) Article 33; and 45
 - (f) Article 38.
2. Paragraph 1 does not apply to fishing vessels which:
- (a) are 24 metres in length and over; or
 - (b) remain at sea for more than seven days; or
 - (c) normally navigate at a distance exceeding 200 nautical miles from the coastline of the flag State or navigate beyond the outer edge of its continental shelf, whichever distance from the coastline is greater; or 50
 - (d) are subject to port State control as provided for in Article 43 of this Convention, except where port State control arises through a situation of force majeure, nor to fishers working on such vessels. 55
3. Each Member which avails itself of the possibility afforded in paragraph 1 shall:

- (a) in its first report on the application of this Convention submitted under article 22 of the Constitution of the International Labour Organisation:
- (i) indicate the provisions of the Convention to be progressively implemented;
 - (ii) explain the reasons and state the respective positions of representative organizations of employers and workers concerned, and in particular the representative organizations of fishing vessel owners and fishers, where they exist; and
 - (iii) describe the plan for progressive implementation; and
- (b) in subsequent reports on the application of this Convention, describe measures taken with a view to giving effect to all of the provisions of the Convention.

ARTICLE 5

1. For the purpose of this Convention, the competent authority, after consultation, may decide to use length overall (LOA) in place of length (L) as the basis for measurement, in accordance with the equivalence set out in Annex I. In addition, for the purpose of the paragraphs specified in Annex III of this Convention, the competent authority, after consultation, may decide to use gross tonnage in place of length (L) or length overall (LOA) as the basis for measurement in accordance with the equivalence set out in Annex III.

2. In the reports submitted under article 22 of the Constitution, the Member shall communicate the reasons for the decision taken under this Article and any comments arising from the consultation.

GENERAL PRINCIPLES

PART II

IMPLEMENTATION

ARTICLE 6

1. Each Member shall implement and enforce laws, regulations or other measures that it has adopted to fulfil its commitments under this Convention with respect to fishers and fishing vessels under its jurisdiction. Other measures may include collective agreements, court decisions, arbitration awards, or other means consistent with national law and practice.

2. Nothing in this Convention shall affect any law, award or custom, or any agreement between fishing vessel owners and fishers, which ensures more favourable conditions than those provided for in this Convention.

COMPETENT AUTHORITY AND COORDINATION

ARTICLE 7

Each Member shall:

- (a) designate the competent authority or authorities; and
- (b) establish mechanisms for coordination among relevant authorities for the fishing sector at the national and local levels, as appropriate, and define their functions and responsibilities, taking into account their complementarities and national conditions and practice.

RESPONSIBILITIES OF FISHING VESSEL OWNERS, SKIPPERS AND FISHERS

ARTICLE 8

1. The fishing vessel owner has the overall responsibility to ensure that the skipper is provided with the necessary resources and facilities to comply with the obligations of this Convention.

2. The skipper has the responsibility for the safety of the fishers on board and the safe operation of the vessel, including but not limited to the following areas:
- (a) providing such supervision as will ensure that, as far as possible, fishers perform their work in the best conditions of safety and health;
 - (b) managing the fishers in a manner which respects safety and health, including prevention of fatigue; 5
 - (c) facilitating on-board occupational safety and health awareness training; and
 - (d) ensuring compliance with safety of navigation, watchkeeping and associated good seamanship standards. 10
3. The skipper shall not be constrained by the fishing vessel owner from taking any decision which, in the professional judgement of the skipper, is necessary for the safety of the vessel and its safe navigation and safe operation, or the safety of the fishers on board. 10
4. Fishers shall comply with the lawful orders of the skipper and applicable safety and health measures. 15

MINIMUM REQUIREMENTS FOR WORK ON BOARD FISHING VESSELS PART III

MINIMUM AGE

ARTICLE 9

1. The minimum age for work on board a fishing vessel shall be 16 years. However, the competent authority may authorize a minimum age of 15 for persons who are no longer subject to compulsory schooling as provided by national legislation, and who are engaged in vocational training in fishing. 20
2. The competent authority, in accordance with national laws and practice, may authorize persons of the age of 15 to perform light work during school holidays. In such cases, it shall determine, after consultation, the kinds of work permitted and shall prescribe the conditions in which such work shall be undertaken and the periods of rest required. 25
3. The minimum age for assignment to activities on board fishing vessels, which by their nature or the circumstances in which they are carried out are likely to jeopardize the health, safety or morals of young persons, shall not be less than 18 years. 30
4. The types of activities to which paragraph 3 of this Article applies shall be determined by national laws or regulations, or by the competent authority, after consultation, taking into account the risks concerned and the applicable international standards. 35
5. The performance of the activities referred to in paragraph 3 of this Article as from the age of 16 may be authorized by national laws or regulations, or by decision of the competent authority, after consultation, on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons concerned have received adequate specific instruction or vocational training and have completed basic pre-sea safety training. 40
6. The engagement of fishers under the age of 18 for work at night shall be prohibited. For the purpose of this Article, "night" shall be defined in accordance with national law and practice. It shall cover a period of at least nine hours starting no later than midnight and ending no earlier than 5 a.m. An exception to strict compliance with the night work restriction may be made by the competent authority when: 45
- (a) the effective training of the fishers concerned, in accordance with established programmes and schedules, would be impaired; or
 - (b) the specific nature of the duty or a recognized training programme requires that fishers covered by the exception perform duties at night and the authority determines, after consultation, that the work will not have a detrimental impact on their health or well-being. 50
7. Nothing in this Article shall affect any obligations assumed by the Member arising from the ratification of any other international labour Convention.

MEDICAL EXAMINATION

ARTICLE 10

1. No fishers shall work on board a fishing vessel without a valid medical certificate attesting to fitness to perform their duties.

2. The competent authority, after consultation, may grant exemptions from the application of paragraph 1 of this Article, taking into account the safety and health of fishers, size of the vessel, availability of medical assistance and evacuation, duration of the voyage, area of operation, and type of fishing operation. 5

3. The exemptions in paragraph 2 of this Article shall not apply to a fisher working on a fishing vessel of 24 metres in length and over or which normally remains at sea for more than three days. In urgent cases, the competent authority may permit a fisher to work on such a vessel for a period of a limited and specified duration until a medical certificate can be obtained, provided that the fisher is in possession of an expired medical certificate of a recent date. 10

ARTICLE 11

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Each Member shall adopt laws, regulations or other measures providing for:

- (a) the nature of medical examinations;
- (b) the form and content of medical certificates;
- (c) the issue of a medical certificate by a duly qualified medical practitioner or, in the case of a certificate solely concerning eyesight, by a person recognized by the competent authority as qualified to issue such a certificate; these persons shall enjoy full independence in exercising their professional judgement; 20
- (d) the frequency of medical examinations and the period of validity of medical certificates;
- (e) the right to a further examination by a second independent medical practitioner in the event that a person has been refused a certificate or has had limitations imposed on the work he or she may perform; and 25
- (f) other relevant requirements.

ARTICLE 12

In addition to the requirements set out in Article 10 and Article 11, on a fishing vessel of 24 metres in length and over, or on a vessel which normally remains at sea for more than three days: 30

1. The medical certificate of a fisher shall state, at a minimum, that:

- (a) the hearing and sight of the fisher concerned are satisfactory for the fisher's duties on the vessel; and 35
- (b) the fisher is not suffering from any medical condition likely to be aggravated by service at sea or to render the fisher unfit for such service or to endanger the safety or health of other persons on board.

2. The medical certificate shall be valid for a maximum period of two years unless the fisher is under the age of 18, in which case the maximum period of validity shall be one year. 40

3. If the period of validity of a certificate expires in the course of a voyage, the certificate shall remain in force until the end of that voyage.

CONDITIONS OF SERVICE

PART IV

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MANNING AND HOURS OF REST

ARTICLE 13

Each Member shall adopt laws, regulations or other measures requiring that owners of fishing vessels flying its flag ensure that:

- (a) their vessels are sufficiently and safely manned for the safe navigation and operation of the vessel and under the control of a competent skipper; and 50

- (b) fishers are given regular periods of rest of sufficient length to ensure safety and health.

ARTICLE 14

1. In addition to the requirements set out in Article 13, the competent authority shall:
- (a) for vessels of 24 metres in length and over, establish a minimum level of manning for the safe navigation of the vessel, specifying the number and the qualifications of the fishers required; 5
 - (b) for fishing vessels regardless of size remaining at sea for more than three days, after consultation and for the purpose of limiting fatigue, establish the minimum hours of rest to be provided to fishers. Minimum hours of rest shall not be less than: 10
 - (i) ten hours in any 24-hour period; and
 - (ii) 77 hours in any seven-day period.
2. The competent authority may permit, for limited and specified reasons, temporary exceptions to the limits established in paragraph 1(b) of this Article. However, in such circumstances, it shall require that fishers shall receive compensatory periods of rest as soon as practicable. 15
3. The competent authority, after consultation, may establish alternative requirements to those in paragraphs 1 and 2 of this Article. However, such alternative requirements shall be substantially equivalent and shall not jeopardize the safety and health of the fishers. 20
4. Nothing in this Article shall be deemed to impair the right of the skipper of a vessel to require a fisher to perform any hours of work necessary for the immediate safety of the vessel, the persons on board or the catch, or for the purpose of giving assistance to other boats or ships or persons in distress at sea. Accordingly, the skipper may suspend the schedule of hours of rest and require a fisher to perform any hours of work necessary until the normal situation has been restored. As soon as practicable after the normal situation has been restored, the skipper shall ensure that any fishers who have performed work in a scheduled rest period are provided with an adequate period of rest. 25

CREW LIST

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ARTICLE 15

Every fishing vessel shall carry a crew list, a copy of which shall be provided to authorized persons ashore prior to departure of the vessel, or communicated ashore immediately after departure of the vessel. The competent authority shall determine to whom and when such information shall be provided and for what purpose or purposes. 35

FISHER'S WORK AGREEMENT

ARTICLE 16

- Each Member shall adopt laws, regulations or other measures:
- (a) requiring that fishers working on vessels flying its flag have the protection of a fisher's work agreement that is comprehensible to them and is consistent with the provisions of this Convention; and 40
 - (b) specifying the minimum particulars to be included in fishers' work agreements in accordance with the provisions contained in Annex II.

ARTICLE 17

- Each Member shall adopt laws, regulations or other measures regarding: 45
- (a) procedures for ensuring that a fisher has an opportunity to review and seek advice on the terms of the fisher's work agreement before it is concluded;
 - (b) where applicable, the maintenance of records concerning the fisher's work under such an agreement; and
 - (c) the means of settling disputes in connection with a fisher's work agreement. 50

ARTICLE 18

The fisher's work agreement, a copy of which shall be provided to the fisher, shall be carried on board and be available to the fisher and, in accordance with national law and practice, to other concerned parties on request.

ARTICLE 19

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Articles 16 to 18 and Annex II do not apply to a fishing vessel owner who is also single-handedly operating the vessel.

ARTICLE 20

It shall be the responsibility of the fishing vessel owner to ensure that each fisher has a written fisher's work agreement signed by both the fisher and the fishing vessel owner or by an authorized representative of the fishing vessel owner (or, where fishers are not employed or engaged by the fishing vessel owner, the fishing vessel owner shall have evidence of contractual or similar arrangements) providing decent work and living conditions on board the vessel as required by this Convention. 10

REPATRIATION

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ARTICLE 21

1. Members shall ensure that fishers on a fishing vessel that flies their flag and that enters a foreign port are entitled to repatriation in the event that the fisher's work agreement has expired or has been terminated for justified reasons by the fisher or by the fishing vessel owner, or the fisher is no longer able to carry out the duties required under the work agreement or cannot be expected to carry them out in the specific circumstances. This also applies to fishers from that vessel who are transferred for the same reasons from the vessel to the foreign port. 20

2. The cost of the repatriation referred to in paragraph 1 of this Article shall be borne by the fishing vessel owner, except where the fisher has been found, in accordance with national laws, regulations or other measures, to be in serious default of his or her work agreement obligations. 25

3. Members shall prescribe, by means of laws, regulations or other measures, the precise circumstances entitling a fisher covered by paragraph 1 of this Article to repatriation, the maximum duration of service periods on board following which a fisher is entitled to repatriation, and the destinations to which fishers may be repatriated. 30

4. If a fishing vessel owner fails to provide for the repatriation referred to in this Article, the Member whose flag the vessel flies shall arrange for the repatriation of the fisher concerned and shall be entitled to recover the cost from the fishing vessel owner.

5. National laws and regulations shall not prejudice any right of the fishing vessel owner to recover the cost of repatriation under third party contractual agreements. 35

RECRUITMENT AND PLACEMENT**ARTICLE 22**

Recruitment and placement of fishers:

1. Each Member that operates a public service providing recruitment and placement for fishers shall ensure that the service forms part of, or is coordinated with, a public employment service for all workers and employers. 40

2. Any private service providing recruitment and placement for fishers which operates in the territory of a Member shall do so in conformity with a standardized system of licensing or certification or other form of regulation, which shall be established, maintained or modified only after consultation. 45

3. Each Member shall, by means of laws, regulations or other measures:

- (a) prohibit recruitment and placement services from using means, mechanisms or lists intended to prevent or deter fishers from engaging for work;
- (b) require that no fees or other charges for recruitment or placement of fishers be borne directly or indirectly, in whole or in part, by the fisher; and 50

- (c) determine the conditions under which any licence, certificate or similar authorization of a private recruitment or placement service may be suspended or withdrawn in case of violation of relevant laws or regulations; and specify the conditions under which private recruitment and placement services can operate. 5

PRIVATE EMPLOYMENT AGENCIES

4. A Member which has ratified the Private Employment Agencies Convention, 1997 (No. 181), may allocate certain responsibilities under this Convention to private employment agencies that provide the services referred to in paragraph 1(b) of Article 1 of that Convention. The respective responsibilities of any such private employment agencies and of the fishing vessel owners, who shall be the “user enterprise” for the purpose of that Convention, shall be determined and allocated, as provided for in Article 12 of that Convention. Such a Member shall adopt laws, regulations or other measures to ensure that no allocation of the respective responsibilities or obligations to the private employment agencies providing the service and to the “user enterprise” pursuant to this Convention shall preclude the fisher from asserting a right to a lien arising against the fishing vessel. 10 15

5. Notwithstanding the provisions of paragraph 4, the fishing vessel owner shall be liable in the event that the private employment agency defaults on its obligations to a fisher for whom, in the context of the Private Employment Agencies Convention, 1997 (No. 181), the fishing vessel owner is the “user enterprise”. 20

6. Nothing in this Convention shall be deemed to impose on a Member the obligation to allow the operation in its fishing sector of private employment agencies as referred to in paragraph 4 of this Article.

PAYMENT OF FISHERS 25

ARTICLE 23

Each Member, after consultation, shall adopt laws, regulations or other measures providing that fishers who are paid a wage are ensured a monthly or other regular payment.

ARTICLE 24 30

Each Member shall require that all fishers working on board fishing vessels shall be given a means to transmit all or part of their payments received, including advances, to their families at no cost.

ACCOMMODATION AND FOOD

PART V 35

ARTICLE 25

Each Member shall adopt laws, regulations or other measures for fishing vessels that fly its flag with respect to accommodation, food and potable water on board.

ARTICLE 26

Each Member shall adopt laws, regulations or other measures requiring that accommodation on board fishing vessels that fly its flag shall be of sufficient size and quality and appropriately equipped for the service of the vessel and the length of time fishers live on board. In particular, such measures shall address, as appropriate, the following issues: 40

- (a) approval of plans for the construction or modification of fishing vessels in respect of accommodation; 45
- (b) maintenance of accommodation and galley spaces with due regard to hygiene and overall safe, healthy and comfortable conditions;
- (c) ventilation, heating, cooling and lighting;
- (d) mitigation of excessive noise and vibration; 50

- (e) location, size, construction materials, furnishing and equipping of sleeping rooms, mess rooms and other accommodation spaces;
- (f) sanitary facilities, including toilets and washing facilities, and supply of sufficient hot and cold water; and
- (g) procedures for responding to complaints concerning accommodation that does not meet the requirements of this Convention. 5

ARTICLE 27

Each Member shall adopt laws, regulations or other measures requiring that:

- (a) the food carried and served on board be of a sufficient nutritional value, quality and quantity; 10
- (b) potable water be of sufficient quality and quantity; and
- (c) the food and water shall be provided by the fishing vessel owner at no cost to the fisher. However, in accordance with national laws and regulations, the cost can be recovered as an operational cost if the collective agreement governing a share system or a fisher's work agreement so provides. 15

ARTICLE 28

1. The laws, regulations or other measures to be adopted by the Member in accordance with Articles 25 to 27 shall give full effect to Annex III concerning fishing vessel accommodation. Annex III may be amended in the manner provided for in Article 45. 20

2. A Member which is not in a position to implement the provisions of Annex III may, after consultation, adopt provisions in its laws and regulations or other measures which are substantially equivalent to the provisions set out in Annex III, with the exception of provisions related to Article 27.

MEDICAL CARE, HEALTH PROTECTION AND SOCIAL SECURITY 25

PART VI

MEDICAL CARE

ARTICLE 29

Each Member shall adopt laws, regulations or other measures requiring that:

- (a) fishing vessels carry appropriate medical equipment and medical supplies for the service of the vessel, taking into account the number of fishers on board, the area of operation and the length of the voyage; 30
- (b) fishing vessels have at least one fisher on board who is qualified or trained in first aid and other forms of medical care and who has the necessary knowledge to use the medical equipment and supplies for the vessel concerned, taking into account the number of fishers on board, the area of operation and the length of the voyage; 35
- (c) medical equipment and supplies carried on board be accompanied by instructions or other information in a language and format understood by the fisher or fishers referred to in subparagraph (b); 40
- (d) fishing vessels be equipped for radio or satellite communication with persons or services ashore that can provide medical advice, taking into account the area of operation and the length of the voyage; and
- (e) fishers have the right to medical treatment ashore and the right to be taken ashore in a timely manner for treatment in the event of serious injury or illness. 45

ARTICLE 30

For fishing vessels of 24 metres in length and over, taking into account the number of fishers on board, the area of operation and the duration of the voyage, each Member shall adopt laws, regulations or other measures requiring that: 50

- (a) the competent authority prescribe the medical equipment and medical supplies to be carried on board;

- (b) the medical equipment and medical supplies carried on board be properly maintained and inspected at regular intervals established by the competent authority by responsible persons designated or approved by the competent authority;
- (c) the vessels carry a medical guide adopted or approved by the competent authority, or the latest edition of the International Medical Guide for Ships; 5
- (d) the vessels have access to a prearranged system of medical advice to vessels at sea by radio or satellite communication, including specialist advice, which shall be available at all times;
- (e) the vessels carry on board a list of radio or satellite stations through which medical advice can be obtained; and 10
- (f) to the extent consistent with the Member's national law and practice, medical care while the fisher is on board or landed in a foreign port be provided free of charge to the fisher.

OCCUPATIONAL SAFETY AND HEALTH AND ACCIDENT PREVENTION 15

ARTICLE 31

Each Member shall adopt laws, regulations or other measures concerning:

- (a) the prevention of occupational accidents, occupational diseases and work-related risks on board fishing vessels, including risk evaluation and management, training and on-board instruction of fishers; 20
- (b) training for fishers in the handling of types of fishing gear they will use and in the knowledge of the fishing operations in which they will be engaged;
- (c) the obligations of fishing vessel owners, fishers and others concerned, due account being taken of the safety and health of fishers under the age of 18;
- (d) the reporting and investigation of accidents on board fishing vessels flying its flag; and 25
- (e) the setting up of joint committees on occupational safety and health or, after consultation, of other appropriate bodies.

ARTICLE 32

1. The requirements of this Article shall apply to fishing vessels of 24 metres in length and over normally remaining at sea for more than three days and, after consultation, to other vessels, taking into account the number of fishers on board, the area of operation, and the duration of the voyage. 30

2. The competent authority shall:

- (a) after consultation, require that the fishing vessel owner, in accordance with national laws, regulations, collective bargaining agreements and practice, establish on-board procedures for the prevention of occupational accidents, injuries and diseases, taking into account the specific hazards and risks on the fishing vessel concerned; and 35
- (b) require that fishing vessel owners, skippers, fishers and other relevant persons be provided with sufficient and suitable guidance, training material, or other appropriate information on how to evaluate and manage risks to safety and health on board fishing vessels. 40

3. Fishing vessel owners shall:

- (a) ensure that every fisher on board is provided with appropriate personal protective clothing and equipment; 45
- (b) ensure that every fisher on board has received basic safety training approved by the competent authority; the competent authority may grant written exemptions from this requirement for fishers who have demonstrated equivalent knowledge and experience; and 50
- (c) ensure that fishers are sufficiently and reasonably familiarized with equipment and its methods of operation, including relevant safety measures, prior to using the equipment or participating in the operations concerned.

ARTICLE 33

Risk evaluation in relation to fishing shall be conducted, as appropriate, with the participation of fishers or their representatives. 55

SOCIAL SECURITY

ARTICLE 34

Each Member shall ensure that fishers ordinarily resident in its territory, and their dependants to the extent provided in national law, are entitled to benefit from social security protection under conditions no less favourable than those applicable to other workers, including employed and self-employed persons, ordinarily resident in its territory. 5

ARTICLE 35

Each Member shall undertake to take steps, according to national circumstances, to achieve progressively comprehensive social security protection for all fishers who are ordinarily resident in its territory. 10

ARTICLE 36

Members shall cooperate through bilateral or multilateral agreements or other arrangements, in accordance with national laws, regulations or practice:

- (a) to achieve progressively comprehensive social security protection for fishers, taking into account the principle of equality of treatment irrespective of nationality; and 15
- (b) to ensure the maintenance of social security rights which have been acquired or are in the course of acquisition by all fishers regardless of residence.

ARTICLE 37 20

Notwithstanding the attribution of responsibilities in Articles 34, 35 and 36, Members may determine, through bilateral and multilateral agreements and through provisions adopted in the framework of regional economic integration organizations, other rules concerning the social security legislation to which fishers are subject.

PROTECTION IN THE CASE OF WORK-RELATED SICKNESS, INJURY OR DEATH 25

ARTICLE 38

1. Each Member shall take measures to provide fishers with protection, in accordance with national laws, regulations or practice, for work-related sickness, injury or death.
2. In the event of injury due to occupational accident or disease, the fisher shall have access to: 30
 - (a) appropriate medical care; and
 - (b) the corresponding compensation in accordance with national laws and regulations.
3. Taking into account the characteristics within the fishing sector, the protection referred to in paragraph 1 of this Article may be ensured through: 35
 - (a) a system for fishing vessel owners' liability; or
 - (b) compulsory insurance, workers' compensation or other schemes.

ARTICLE 39

1. In the absence of national provisions for fishers, each Member shall adopt laws, regulations or other measures to ensure that fishing vessel owners are responsible for the provision to fishers on vessels flying its flag, of health protection and medical care while employed or engaged or working on a vessel at sea or in a foreign port. Such laws, regulations or other measures shall ensure that fishing vessel owners are responsible for defraying the expenses of medical care, including related material assistance and support, during medical treatment in a foreign country, until the fisher has been repatriated. 45
2. National laws or regulations may permit the exclusion of the liability of the fishing vessel owner if the injury occurred otherwise than in the service of the vessel or the

sickness or infirmity was concealed during engagement, or the injury or sickness was due to wilful misconduct of the fisher.

COMPLIANCE AND ENFORCEMENT

PART VII

ARTICLE 40 5

Each Member shall effectively exercise its jurisdiction and control over vessels that fly its flag by establishing a system for ensuring compliance with the requirements of this Convention including, as appropriate, inspections, reporting, monitoring, complaint procedures, appropriate penalties and corrective measures, in accordance with national laws or regulations. 10

ARTICLE 41

1. Members shall require that fishing vessels remaining at sea for more than three days, which:
 - (a) are 24 metres in length and over; or
 - (b) normally navigate at a distance exceeding 200 nautical miles from the coastline of the flag State or navigate beyond the outer edge of its continental shelf, whichever distance from the coastline is greater, carry a valid document issued by the competent authority stating that the vessel has been inspected by the competent authority or on its behalf, for compliance with the provisions of this Convention concerning living and working conditions. 15 20
2. The period of validity of such document may coincide with the period of validity of a national or an international fishing vessel safety certificate, but in no case shall such period of validity exceed five years.

ARTICLE 42

1. The competent authority shall appoint a sufficient number of qualified inspectors 25 to fulfil its responsibilities under Article 41.
2. In establishing an effective system for the inspection of living and working conditions on board fishing vessels, a Member, where appropriate, may authorize public institutions or other organizations that it recognizes as competent and independent to carry out inspections and issue documents. In all cases, the Member shall remain fully 30 responsible for the inspection and issuance of the related documents concerning the living and working conditions of the fishers on fishing vessels that fly its flag.

ARTICLE 43

1. A Member which receives a complaint or obtains evidence that a fishing vessel that flies its flag does not conform to the requirements of this Convention shall take the steps 35 necessary to investigate the matter and ensure that action is taken to remedy any deficiencies found.
2. If a Member, in whose port a fishing vessel calls in the normal course of its business or for operational reasons, receives a complaint or obtains evidence that such vessel does not conform to the requirements of this Convention, it may prepare a report 40 addressed to the government of the flag State of the vessel, with a copy to the Director-General of the International Labour Office, and may take measures necessary to rectify any conditions on board which are clearly hazardous to safety or health.
3. In taking the measures referred to in paragraph 2 of this Article, the Member shall notify forthwith the nearest representative of the flag State and, if possible, shall have 45 such representative present. The Member shall not unreasonably detain or delay the vessel.
4. For the purpose of this Article, the complaint may be submitted by a fisher, a professional body, an association, a trade union or, generally, any person with an interest in the safety of the vessel, including an interest in safety or health hazards to the fishers 50 on board.
5. This Article does not apply to complaints which a Member considers to be manifestly unfounded.

ARTICLE 44

Each Member shall apply this Convention in such a way as to ensure that the fishing vessels flying the flag of any State that has not ratified this Convention do not receive more favourable treatment than fishing vessels that fly the flag of any Member that has ratified it.

5

AMENDMENT OF ANNEXES I, II AND III**PART VIII****ARTICLE 45**

1. Subject to the relevant provisions of this Convention, the International Labour Conference may amend Annexes I, II and III. The Governing Body of the International Labour Office may place an item on the agenda of the Conference regarding proposals for such amendments established by a tripartite meeting of experts. The decision to adopt the proposals shall require a majority of two-thirds of the votes cast by the delegates present at the Conference, including at least half the Members that have ratified this Convention.

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2. Any amendment adopted in accordance with paragraph 1 of this Article shall enter into force six months after the date of its adoption for any Member that has ratified this Convention, unless such Member has given written notice to the Director-General of the International Labour Office that it shall not enter into force for that Member, or shall only enter into force at a later date upon subsequent written notification.

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FINAL PROVISIONS**PART IX****ARTICLE 46**

This Convention revises the Minimum Age (Fishermen) Convention, 1959 (No. 112), the Medical Examination (Fishermen) Convention, 1959 (No. 113), the Fishermen's Articles of Agreement Convention, 1959 (No. 114), and the Accommodation of Crews (Fishermen) Convention, 1966 (No. 126).

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ARTICLE 47

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

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ARTICLE 48

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.

2. It shall come into force 12 months after the date on which the ratifications of ten Members, eight of which are coastal States, have been registered with the Director-General.

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3. Thereafter, this Convention shall come into force for any Member 12 months after the date on which its ratification is registered.

ARTICLE 49

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1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

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2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound

for another period of ten years and, thereafter, may denounce this Convention within the first year of each new period of ten years under the terms provided for in this Article.

ARTICLE 50

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications, declarations and denunciations that have been communicated by the Members of the Organization. 5

2. When notifying the Members of the Organization of the registration of the last of the ratifications required to bring the Convention into force, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention will come into force. 10

ARTICLE 51

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and denunciations registered by the Director-General. 15

ARTICLE 52

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part, taking into account also the provisions of Article 45. 20

ARTICLE 53

1. Should the Conference adopt a new Convention revising this Convention, then, unless the new Convention otherwise provides: 25

- (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 49 above, if and when the new revising Convention shall have come into force;
- (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members. 30

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

ARTICLE 54

The English and French versions of the text of this Convention are equally authoritative. 35

ANNEX I

EQUIVALENCE IN MEASUREMENT

For the purpose of this Convention, where the competent authority, after consultation, decides to use length overall (LOA) rather than length (L) as the basis of measurement: 40

- (a) a length overall (LOA) of 16.5 metres shall be considered equivalent to a length (L) of 15 metres;
- (b) a length overall (LOA) of 26.5 metres shall be considered equivalent to a length (L) of 24 metres;
- (c) a length overall (LOA) of 50 metres shall be considered equivalent to a length (L) of 45 metres. 45

ANNEX II

FISHER'S WORK AGREEMENT

The fisher's work agreement shall contain the following particulars, except in so far as the inclusion of one or more of them is rendered unnecessary by the fact that the matter is regulated in another manner by national laws or regulations, or a collective bargaining agreement where applicable: 5

- (a) the fisher's family name and other names, date of birth or age, and birthplace;
- (b) the place at which and date on which the agreement was concluded;
- (c) the name of the fishing vessel or vessels and the registration number of the vessel or vessels on board which the fisher undertakes to work; 10
- (d) the name of the employer, or fishing vessel owner, or other party to the agreement with the fisher;
- (e) the voyage or voyages to be undertaken, if this can be determined at the time of making the agreement;
- (f) the capacity in which the fisher is to be employed or engaged; 15
- (g) if possible, the place at which and date on which the fisher is required to report on board for service;
- (h) the provisions to be supplied to the fisher, unless some alternative system is provided for by national law or regulation;
- (i) the amount of wages, or the amount of the share and the method of calculating such share if remuneration is to be on a share basis, or the amount of the wage and share and the method of calculating the latter if remuneration is to be on a combined basis, and any agreed minimum wage; 20
- (j) the termination of the agreement and the conditions thereof, namely:
 - (i) if the agreement has been made for a definite period, the date fixed for its expiry; 25
 - (ii) if the agreement has been made for a voyage, the port of destination and the time which has to expire after arrival before the fisher shall be discharged;
 - (iii) if the agreement has been made for an indefinite period, the conditions which shall entitle either party to rescind it, as well as the required period of notice for rescission, provided that such period shall not be less for the employer, or fishing vessel owner or other party to the agreement with the fisher; 30
- (k) the protection that will cover the fisher in the event of sickness, injury or death in connection with service; 35
- (l) the amount of paid annual leave or the formula used for calculating leave, where applicable;
- (m) the health and social security coverage and benefits to be provided to the fisher by the employer, fishing vessel owner, or other party or parties to the fisher's work agreement, as applicable; 40
- (n) the fisher's entitlement to repatriation;
- (o) a reference to the collective bargaining agreement, where applicable;
- (p) the minimum periods of rest, in accordance with national laws, regulations or other measures; and 45
- (q) any other particulars which national law or regulation may require.

ANNEX III

FISHING VESSEL ACCOMMODATION

GENERAL PROVISIONS

1. For the purposes of this Annex: 50
 - (a) "new fishing vessel" means a vessel for which:
 - (i) the building or major conversion contract has been placed on or after the date of the entry into force of the Convention for the Member concerned; or
 - (ii) the building or major conversion contract has been placed before 55 the date of the entry into force of the Convention for the Member

- concerned, and which is delivered three years or more after that date; or
- (iii) in the absence of a building contract, on or after the date of the entry into force of the Convention for the Member concerned:
- the keel is laid; 5
 - construction identifiable with a specific vessel begins; or
 - assembly has commenced comprising at least 50 tonnes or 1 per cent of the estimated mass of all structural material, whichever is less;
- (b) “existing vessel” means a vessel that is not a new fishing vessel. 10
2. The following shall apply to all new, decked fishing vessels, subject to any exclusions provided for in accordance with Article 3 of the Convention. The competent authority may, after consultation, also apply the requirements of this Annex to existing vessels, when and in so far as it determines that this is reasonable and practicable.
3. The competent authority, after consultation, may permit variations to the provisions of this Annex for fishing vessels normally remaining at sea for less than 24 hours where the fishers do not live on board the vessel in port. In the case of such vessels, the competent authority shall ensure that the fishers concerned have adequate facilities for resting, eating and sanitation purposes. 15
4. Any variations made by a Member under paragraph 3 of this Annex shall be reported to the International Labour Office under article 22 of the Constitution of the International Labour Organisation. 20
5. The requirements for vessels of 24 metres in length and over may be applied to vessels between 15 and 24 metres in length where the competent authority determines, after consultation, that this is reasonable and practicable. 25
6. Fishers working on board feeder vessels which do not have appropriate accommodation and sanitary facilities shall be provided with such accommodation and facilities on board the mother vessel.
7. Members may extend the requirements of this Annex regarding noise and vibration, ventilation, heating and air conditioning, and lighting to enclosed working spaces and spaces used for storage if, after consultation, such application is considered appropriate and will not have a negative influence on the function of the process or working conditions or the quality of the catches. 30
8. The use of gross tonnage as referred to in Article 5 of the Convention is limited to the following specified paragraphs of this Annex: 14, 37, 38, 41, 43, 46, 49, 53, 55, 61, 64, 65 and 67. For these purposes, where the competent authority, after consultation, decides to use gross tonnage (*gt*) as the basis of measurement: 35
- (a) a gross tonnage of 75 *gt* shall be considered equivalent to a length (*L*) of 15 metres or a length overall (LOA) of 16.5 metres;
 - (b) a gross tonnage of 300 *gt* shall be considered equivalent to a length (*L*) of 24 metres or a length overall (LOA) of 26.5 metres; 40
 - (c) a gross tonnage of 950 *gt* shall be considered equivalent to a length (*L*) of 45 metres or a length overall (LOA) of 50 metres.

PLANNING AND CONTROL

1. The competent authority shall satisfy itself that, on every occasion when a vessel is newly constructed or the crew accommodation of a vessel has been reconstructed, such vessel complies with the requirements of this Annex. The competent authority shall, to the extent practicable, require compliance with this Annex when the crew accommodation of a vessel is substantially altered and, for a vessel that changes the flag it flies to the flag of the Member, require compliance with those requirements of this Annex that are applicable in accordance with paragraph 2 of this Annex. 45 50
2. For the occasions noted in paragraph 9 of this Annex, for vessels of 24 metres in length and over, detailed plans and information concerning accommodation shall be required to be submitted for approval to the competent authority, or an entity authorized by it. 55
3. For vessels of 24 metres in length and over, on every occasion when the crew accommodation of the fishing vessel has been reconstructed or substantially altered, the competent authority shall inspect the accommodation for compliance with the requirements of the Convention, and when the vessel changes the flag it flies to the flag of the Member, for compliance with those requirements of this Annex that are applicable 60

in accordance with paragraph 2 of this Annex. The competent authority may carry out additional inspections of crew accommodation at its discretion.

4. When a vessel changes flag, any alternative requirements which the competent authority of the Member whose flag the ship was formerly flying may have adopted in accordance with paragraphs 15, 39, 47 or 62 of this Annex cease to apply to the vessel. 5

DESIGN AND CONSTRUCTION

HEADROOM

1. There shall be adequate headroom in all accommodation spaces. For spaces where fishers are expected to stand for prolonged periods, the minimum headroom shall be prescribed by the competent authority. 10

2. For vessels of 24 metres in length and over, the minimum permitted headroom in all accommodation where full and free movement is necessary shall not be less than 200 centimetres.

3. Notwithstanding the provisions of paragraph 14, the competent authority may, after consultation, decide that the minimum permitted headroom shall not be less than 190 centimetres in any space—or part of any space—in such accommodation, where it is satisfied that this is reasonable and will not result in discomfort to the fishers. 15

OPENINGS INTO AND BETWEEN ACCOMMODATION SPACES

1. There shall be no direct openings into sleeping rooms from fish rooms and machinery spaces, except for the purpose of emergency escape. Where reasonable and practicable, direct openings from galleys, storerooms, drying rooms or communal sanitary areas shall be avoided unless expressly provided otherwise. 20

2. For vessels of 24 metres in length and over, there shall be no direct openings, except for the purpose of emergency escape, into sleeping rooms from fish rooms and machinery spaces or from galleys, storerooms, drying rooms or communal sanitary areas; that part of the bulkhead separating such places from sleeping rooms and external bulkheads shall be efficiently constructed of steel or another approved material and shall be watertight and gas-tight. This provision does not exclude the possibility of sanitary areas being shared between two cabins. 25

INSULATION 30

1. Accommodation spaces shall be adequately insulated; the materials used to construct internal bulkheads, panelling and sheeting, and floors and joinings shall be suitable for the purpose and shall be conducive to ensuring a healthy environment. Sufficient drainage shall be provided in all accommodation spaces.

OTHER 35

1. All practicable measures shall be taken to protect fishing vessels' crew accommodation against flies and other insects, particularly when vessels are operating in mosquito-infested areas.

2. Emergency escapes from all crew accommodation spaces shall be provided as necessary. 40

NOISE AND VIBRATION

1. The competent authority shall take measures to limit excessive noise and vibration in accommodation spaces and, as far as practicable, in accordance with relevant international standards.

2. For vessels of 24 metres in length and over, the competent authority shall adopt standards for noise and vibration in accommodation spaces which shall ensure adequate protection to fishers from the effects of such noise and vibration, including the effects of noise- and vibration-induced fatigue. 45

VENTILATION

1. Accommodation spaces shall be ventilated, taking into account climatic conditions. The system of ventilation shall supply air in a satisfactory condition whenever fishers are on board.
2. Ventilation arrangements or other measures shall be such as to protect non-smokers from tobacco smoke. 5
3. Vessels of 24 metres in length and over shall be equipped with a system of ventilation for accommodation, which shall be controlled so as to maintain the air in a satisfactory condition and to ensure sufficiency of air movement in all weather conditions and climates. Ventilation systems shall be in operation at all times when fishers are on board. 10

HEATING AND AIR CONDITIONING

1. Accommodation spaces shall be adequately heated, taking into account climatic conditions.
2. For vessels of 24 metres in length and over, adequate heat shall be provided, through an appropriate heating system, except in fishing vessels operating exclusively in tropical climates. The system of heating shall provide heat in all conditions, as necessary, and shall be in operation when fishers are living or working on board, and when conditions so require. 15
3. For vessels of 24 metres in length and over, with the exception of those regularly engaged in areas where temperate climatic conditions do not require it, air conditioning shall be provided in accommodation spaces, the bridge, the radio room and any centralized machinery control room. 20

LIGHTING

1. All accommodation spaces shall be provided with adequate light. 25
2. Wherever practicable, accommodation spaces shall be lit with natural light in addition to artificial light. Where sleeping spaces have natural light, a means of blocking the light shall be provided.
3. Adequate reading light shall be provided for every berth in addition to the normal lighting of the sleeping room. 30
4. Emergency lighting shall be provided in sleeping rooms.
5. Where a vessel is not fitted with emergency lighting in mess rooms, passageways, and any other spaces that are or may be used for emergency escape, permanent night lighting shall be provided in such spaces.
6. For vessels of 24 metres in length and over, lighting in accommodation spaces shall meet a standard established by the competent authority. In any part of the accommodation space available for free movement, the minimum standard for such lighting shall be such as to permit a person with normal vision to read an ordinary printed newspaper on a clear day. 35

SLEEPING ROOMS 40

GENERAL

1. Where the design, dimensions or purpose of the vessel allow, the sleeping accommodation shall be located so as to minimize the effects of motion and acceleration but shall in no case be located forward of the collision bulkhead.

FLOOR AREA 45

2. The number of persons per sleeping room and the floor area per person, excluding space occupied by berths and lockers, shall be such as to provide adequate space and comfort for the fishers on board, taking into account the service of the vessel.
3. For vessels of 24 metres in length and over but which are less than 45 metres in length, the floor area per person of sleeping rooms, excluding space occupied by berths and lockers, shall not be less than 1.5 square metres. 50

4. For vessels of 45 metres in length and over, the floor area per person of sleeping rooms, excluding space occupied by berths and lockers, shall not be less than 2 square metres.

5. Notwithstanding the provisions of paragraphs 37 and 38, the competent authority may, after consultation, decide that the minimum permitted floor area per person of sleeping rooms, excluding space occupied by berths and lockers, shall not be less than 1.0 and 1.5 square metres respectively, where the competent authority is satisfied that this is reasonable and will not result in discomfort to the fishers. 5

PERSONS PER SLEEPING ROOM

1. To the extent not expressly provided otherwise, the number of persons allowed to occupy each sleeping room shall not be more than six. 10

2. For vessels of 24 metres in length and over, the number of persons allowed to occupy each sleeping room shall not be more than four. The competent authority may permit exceptions to this requirement in particular cases if the size, type or intended service of the vessel makes the requirement unreasonable or impracticable. 15

3. To the extent not expressly provided otherwise, a separate sleeping room or sleeping rooms shall be provided for officers, wherever practicable.

4. For vessels of 24 metres in length and over, sleeping rooms for officers shall be for one person wherever possible and in no case shall the sleeping room contain more than two berths. The competent authority may permit exceptions to the requirements of this paragraph in particular cases if the size, type or intended service of the vessel makes the requirements unreasonable or impracticable. 20

OTHER

1. The maximum number of persons to be accommodated in any sleeping room shall be legibly and indelibly marked in a place in the room where it can be conveniently seen. 25

2. Individual berths of appropriate dimensions shall be provided. Mattresses shall be of a suitable material.

3. For vessels of 24 metres in length and over, the minimum inside dimensions of the berths shall not be less than 198 by 80 centimetres.

4. Notwithstanding the provisions of paragraph 46, the competent authority may, after consultation, decide that the minimum inside dimensions of the berths shall not be less than 190 by 70 centimetres, where it is satisfied that this is reasonable and will not result in discomfort to the fishers. 30

5. Sleeping rooms shall be so planned and equipped so as to ensure reasonable comfort for the occupants and to facilitate tidiness. Equipment provided shall include berths, individual lockers sufficient for clothing and other personal effects, and a suitable writing surface. 35

6. For vessels of 24 metres in length and over, a desk suitable for writing, with a chair, shall be provided.

7. Sleeping accommodation shall be situated or equipped, as practicable, so as to provide appropriate levels of privacy for men and for women. 40

MESS ROOMS

1. Mess rooms shall be as close as possible to the galley, but in no case shall be located forward of the collision bulkhead.

2. Vessels shall be provided with mess-room accommodation suitable for their service. To the extent not expressly provided otherwise, mess-room accommodation shall be separate from sleeping quarters, where practicable. 45

3. For vessels of 24 metres in length and over, mess-room accommodation shall be separate from sleeping quarters.

4. The dimensions and equipment of each mess room shall be sufficient for the number of persons likely to use it at any one time. 50

5. For vessels of 24 metres in length and over, a refrigerator of sufficient capacity and facilities for making hot and cold drinks shall be available and accessible to fishers at all times.

TUBS OR SHOWERS, TOILETS AND WASHBASINS

1. Sanitary facilities, which include toilets, washbasins, and tubs or showers, shall be provided for all persons on board, as appropriate for the service of the vessel. These facilities shall meet at least minimum standards of health and hygiene and reasonable standards of quality. 5
2. The sanitary accommodation shall be such as to eliminate contamination of other spaces as far as practicable. The sanitary facilities shall allow for reasonable privacy.
3. Cold fresh water and hot fresh water shall be available to all fishers and other persons on board, in sufficient quantities to allow for proper hygiene. The competent authority may establish, after consultation, the minimum amount of water to be provided. 10
4. Where sanitary facilities are provided, they shall be fitted with ventilation to the open air, independent of any other part of the accommodation.
5. All surfaces in sanitary accommodation shall be such as to facilitate easy and effective cleaning. Floors shall have a non-slip deck covering. 15
6. On vessels of 24 metres in length and over, for all fishers who do not occupy rooms to which sanitary facilities are attached, there shall be provided at least one tub or shower or both, one toilet, and one washbasin for every four persons or fewer.
7. Notwithstanding the provisions of paragraph 61, the competent authority may, after consultation, decide that there shall be provided at least one tub or shower or both and one washbasin for every six persons or fewer, and at least one toilet for every eight persons or fewer, where the competent authority is satisfied that this is reasonable and will not result in discomfort to the fishers. 20

LAUNDRY FACILITIES

1. Amenities for washing and drying clothes shall be provided as necessary, taking into account the service of the vessel, to the extent not expressly provided otherwise. 25
2. For vessels of 24 metres in length and over, adequate facilities for washing, drying and ironing clothes shall be provided.
3. For vessels of 45 metres in length and over, adequate facilities for washing, drying and ironing clothes shall be provided in a compartment separate from sleeping rooms, mess rooms and toilets, and shall be adequately ventilated, heated and equipped with lines or other means for drying clothes. 30

FACILITIES FOR SICK AND INJURED FISHERS

1. Whenever necessary, a cabin shall be made available for a fisher who suffers illness or injury. 35
2. For vessels of 45 metres in length and over, there shall be a separate sick bay. The space shall be properly equipped and shall be maintained in a hygienic state.

OTHER FACILITIES

A place for hanging foul-weather gear and other personal protective equipment shall be provided outside of, but convenient to, sleeping rooms. 40

BEDDING, MESS UTENSILS AND MISCELLANEOUS PROVISIONS

Appropriate eating utensils, and bedding and other linen shall be provided to all fishers on board. However, the cost of the linen can be recovered as an operational cost if the collective agreement or the fisher's work agreement so provides.

RECREATIONAL FACILITIES 45

For vessels of 24 metres in length and over, appropriate recreational facilities, amenities and services shall be provided for all fishers on board. Where appropriate, mess rooms may be used for recreational activities.

COMMUNICATION FACILITIES

All fishers on board shall be given reasonable access to communication facilities, to the extent practicable, at a reasonable cost and not exceeding the full cost to the fishing vessel owner.

ALLEY AND FOOD STORAGE FACILITIES 5

1. Cooking equipment shall be provided on board. To the extent not expressly provided otherwise, this equipment shall be fitted, where practicable, in a separate galley.
2. The galley, or cooking area where a separate galley is not provided, shall be of adequate size for the purpose, well lit and ventilated, and properly equipped and maintained. 10
3. For vessels of 24 metres in length and over, there shall be a separate galley.
4. The containers of butane or propane gas used for cooking purposes in a galley shall be kept on the open deck and in a shelter which is designed to protect them from external heat sources and external impact. 15
5. A suitable place for provisions of adequate capacity shall be provided which can be kept dry, cool and well ventilated in order to avoid deterioration of the stores and, to the extent not expressly provided otherwise, refrigerators or other low-temperature storage shall be used, where possible.
6. For vessels of 24 metres in length and over, a provisions storeroom and refrigerator 20 and other low-temperature storage shall be used.

FOOD AND POTABLE WATER

1. Food and potable water shall be sufficient, having regard to the number of fishers, and the duration and nature of the voyage. In addition, they shall be suitable in respect of nutritional value, quality, quantity and variety, having regard as well to the fishers' 25 religious requirements and cultural practices in relation to food.
2. The competent authority may establish requirements for the minimum standards and quantity of food and water to be carried on board.

CLEAN AND HABITABLE CONDITIONS

1. Accommodation shall be maintained in a clean and habitable condition and shall be kept free of goods and stores which are not the personal property of the occupants or for their safety or rescue. 30
2. Galley and food storage facilities shall be maintained in a hygienic condition.
3. Waste shall be kept in closed, well-sealed containers and removed from foodhandling areas whenever necessary. 35

INSPECTIONS BY THE SKIPPER OR UNDER THE AUTHORITY OF THE SKIPPER

For vessels of 24 metres in length and over, the competent authority shall require frequent inspections to be carried out, by or under the authority of the skipper, to ensure that: 40

- (a) accommodation is clean, decently habitable and safe, and is maintained in a good state of repair;
- (b) food and water supplies are sufficient; and
- (c) galley and food storage spaces and equipment are hygienic and in a proper state of repair. 45

The results of such inspections, and the actions taken to address any deficiencies found, shall be recorded and available for review.

VARIATIONS

The competent authority, after consultation, may permit derogations from the provisions in this Annex to take into account, without discrimination, the interests of 50 fishers having differing and distinctive religious and social practices, on condition that such derogations do not result in overall conditions less favourable than those which would result from the application of this Annex.”

MEMORANDUM ON THE OBJECTS OF THE MERCHANT SHIPPING AMENDMENT BILL

1. BACKGROUND

- 1.1 The Bill seeks to give effect to the Maritime Labour Convention, 2006 (“MLC, 2006”) and the Work in Fishing Convention, 2007 (“C188”) and to provide for matters connected therewith.
- 1.2 The MLC, 2006 and C188 was adopted under the auspices of the International Labour Organization (“ILO”), a United Nations body aimed at promoting rights at work, encouraging decent employment opportunities, enhancing social protection and strengthening dialogue on work-related issues.
- 1.3 The C188 addresses amongst other things the responsibilities of fishing vessel owners and skippers for the safety of the fishers on board and the safety of the vessels; minimum age for work on board fishing vessels and for assignment to certain types of activities; medical examination and certification required for work on fishing vessels; manning and hours of rest; crew lists; fishers work agreements; repatriations; recruitment and placement of fishers and the use of private employment agencies; payment of fishers; on board accommodation and food; medical care at sea; occupational safety and health; social security and protection in the case of work-related sickness, injury or death.
- 1.4 The MLC, 2006 provides for a set of comprehensive rights and duties of seafarers at work. The MLC, 2006 also aims to achieve minimum working conditions for seafarers by covering a wide range of matters including working hours, health and safety, crew accommodation, seafarers’ welfare and seafarers’ contractual agreements.
- 1.5 The Government of the Republic of South Africa through the Department of Labour and the Department of Transport (“the Department”) participated in the deliberations wherein the MLC, 2006 and C188 were adopted.
- 1.6 Most of the world trade is carried out on ships and seafarers are essential to international trade and the international economy and trade system. The new labour standard consolidates and updates more than 68 international labour standards related to the Maritime sector adopted over the last 80 years.
- 1.7 The MLC, 2006 and C188 has been designed to become a global instrument known as the “fourth pillar” of the international regulatory regime for quality shipping, complementing the key Conventions of the International Maritime Organization, such as the International Convention for the Safety of Life at Sea, the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers and the International Convention for the Prevention of Pollution from Ships.
- 1.8 The Department has been working jointly with the Department of Labour on the ratification of the MLC, 2006 and C188 which will ensure global protection of the rights of seafarers and decent working and living conditions for seafarers.
- 1.9 The Republic has ratified the MLC, 2006 and C188 on 7 June 2013 by depositing the instrument of ratification with the Director-General of the ILO.
- 1.10 The implementation of the MLC, 2006 and C188 is a two-fold process in that the Department of Labour is responsible for attending to all the necessary procedures to ensure ratification of the MLC, 2006 and C188 and the Department ensuring that domestic legislation is in place to enforce the provisions of the MLC, 2006 and C188 that relate to the Department.
- 1.11 The Bill seeks to amend the Merchant Shipping Act, 1951 (Act No. 57 of 1951) (“the Act”), in order to give effect to the MLC, 2006 and C188.

2. OBJECTS OF BILL

2. 1 Clause 1 of the Bill seeks to amend section 2 of the Act. Section 2 of the Act contains the definitions which guide the interpretation of the provisions in the Act. Clause 1 proposes definitions of “fishing vessel” and “seafarer” as well as definitions of the two Conventions, namely the MLC, 2006 and C188. The first two definitions are required to bring the Act in line with the Conventions. The definition of “seafarer” mirrors the current definition of “seaman” in the Act except that the reference to an apprentice-officer in the definition is deleted. Since the word “seafarer” will be used in the Act, the definition of “seaman” has become obsolete and it is proposed that it be deleted. Lastly, a technical correction to the expression “South African ship” is proposed in order to make it clear that such a ship must also be licenced in the Republic.
2. 2 The proposed use of the word “seafarer” and the proposed deletion of the expression “apprentice-officer” will necessitate various consequential amendments to the Act. They are found in clauses 2, 3, 4, 5, 6, 11, 12, 13, 16, 17, 19, 20, 21, 22, 23, 24, 25, 27 and 29 of the Bill. Clause 26 of the Bill seeks to bring section 355 in line with the proposed amended definition of “South African ship” and to correct references to repealed laws. The rest of the clauses propose amendments to the Act in order to give effect the MLC, 2006 and C188.
2. 3 Clause 7 of the Bill seeks to amend section 102 of the Act by imposing a duty on the master of a ship to enter into an agreement with a seafarer on behalf of the employer irrespective of the size of the ship or tonnage that the ship carries.
2. 4 Clause 8 of the Bill seeks to amend section 110 of the Act prohibiting the master or owner of a South African ship to employ children under the age of sixteen.
2. 5 Clause 9 of the Bill proposes an amendment to section 111 of the Act by prohibiting the owner or master of ship to employ a young person to work at night unless it is part of their training. The clause also seeks to remove the limitation that a young person may only be employed as a trimmer or fireman.
2. 6 Clause 10 of the Bill proposes the insertion of a new section 111A in the Act. The new section will deal with a seafarer’s entitlement to leave.
2. 7 Clause 14 of the Bill seeks to amend section 121 of the Act by imposing a duty on the Master or owner of a South African ship to furnish a seafarer with a monthly account of his or her wages.
2. 8 Clause 15 of the Bill seeks to amend section 130 of the Act by empowering the seafarer, by means of allotment notes, to pay over any portion of his or her wages to a person designated in the said allotment note. There are also proposals for consequential amendments of the nature referred to in paragraph 2. 2 and a proposal to refer to the Advisory Board on Social Development Act, 2001 (Act No. 3 of 2001), instead of the National Welfare Act that has been repealed by the first mentioned Act.
2. 9 Clause 18 of the Bill proposes the insertion of a new section 158A in the Act. The new section will impose a duty on the master or the owner of a South African ship to keep and make accessible a complaint procedure on board that ship and also allow lodging of complains by seafarers individually and not necessarily collectively only.
2. 10 Clause 27 of the Bill proposes an amendment to section 356(2) of the Act by adding references in that section to the two Conventions, namely the MLC, 2006 and C188. There are also proposals for consequential amendments of the nature referred to in paragraph 2. 2.

- 2.11 Clause 28 of the Bill seeks to amend section 356*bis* of the Act. The amendment seeks to provide that the two Conventions, namely the MLC, 2006 and C188 will have the force of law in the Republic from the date on which the Bill if promulgated takes effect. The second proposal must be considered together with the proposal in clause 30 that the two Conventions, namely the MLC, 2006 and C188 be added to the Act as the Seventh and Eighth Schedule, respectively. The second proposal in clause 28 seeks to enable the Minister of Transport to amend the Conventions, by notice in the *Gazette*, after the entry into force for the Republic of any amendment to any of the Conventions.
- 2.12 Clause 31 of the Bill contains the short title and provides for the commencement of the Bill.

3. CONSULTATION

The draft Bill was published for public comments in *Government Gazette* No. 36329 of 3 April 2013. Comments were received from—

- Bowman and Gilfillan.
- NEDLAC.
- South African Maritime Safety Authority.

The draft Bill was also presented to the Global Governance Committee on 18 September 2013. Comments received were, where appropriate, incorporated in the final draft of the Bill.

4. FINANCIAL IMPLICATION FOR STATE

There are no financial implications brought about by the draft Bill.

5. PARLIAMENTARY PROCEDURE

- 5.1 The tagging of Bills is dealt with in sections 75 and 76 of the Constitution of the Republic of South Africa, 1996 (“the Constitution”). Section 75 provides for the procedure to be followed regarding ordinary Bills which are not affecting provinces, whilst section 76 provides for the procedure to be followed regarding ordinary Bills which are affecting provinces. [See in this regard also the Constitutional Court cases of *Ex parte the President: In re Constitutionality of the Liquor Bill 2000 (1) BCLR 1 (CC)* and *Tongoane and Others v National Minister for Agriculture and Land Affairs and Others 2010 (8) BCLR 741 (CC)*]
- 5.2 The object of the Bill is to amend the Act so as to give effect to the Maritime Labour Convention, 2006, and the Work in Fishing Convention, 2007 and to provide for matters connected therewith. The Conventions in question are international conventions dealing with international and national shipping.
- 5.3 Schedules 4 and 5 to the Constitution, which list the functional areas of concurrent national and provincial legislative competence and exclusive provincial legislative competence, respectively, do not contain any item involving these matters. In fact, one of the areas listed in Schedule 4 to the Constitution reads as follows: “Pontoons, ferries, jetties, piers and harbours, **excluding the regulation of international and national shipping and matters related thereto** (emphasis added)”. The Office of the Chief State Law Adviser and the Department are therefore of the opinion that the Bill should be dealt with in accordance with section 75 of the Constitution, as it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

- 5.4 The Department and the Office of the Chief State Law Adviser are further of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

