

REPUBLIC OF SOUTH AFRICA

---

# SHIP REGISTRATION BILL

---

*(As introduced in the National Assembly)*

---

(MINISTER OF TRANSPORT)

[B 77—98]

---

REPUBLIEK VAN SUID-AFRIKA

---

# WETSONTWERP OP SKEEPSREGISTRASIE

---

*(Soos ingedien in die Nasionale Vergadering)*

---

(MINISTER VAN VERVOER)

[W 77—98]

ISBN 0 621 28409 2

**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 provide anew for the registration of ships in the Republic; and to provide for incidental matters.**

---

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

## **ARRANGEMENT OF SECTIONS**

*Section*

1. Definitions 5

### **CHAPTER 1**

#### **APPLICATION OF ACT**

2. Application of Act

### **CHAPTER 2**

#### **SOUTH AFRICAN SHIPS 10**

3. South African ships  
4. National Flag  
5. Offences relating to South African character of ship  
6. Declaration of ship's nationality before clearance

### **CHAPTER 3 15**

#### **REGISTRAR AND REGISTRATION OFFICE**

7. Registration Office  
8. Registrar and Deputy Registrars of Ships  
9. Appointment of Registrar and Deputy Registrars  
10. Powers and duties of Registrar 20  
11. Acting Registrar or Deputy Registrar  
12. Appointment of staff  
13. Limitation of liability  
14. Seal of Registration Office and signature of Registrar

**CHAPTER 4****REGISTRATION OF SOUTH AFRICAN SHIPS***Part 1**Registration*

- |     |  |   |
|-----|--|---|
| 15. | Registration of property in ships                              | 5 |
| 16. | Ships entitled to be registered                                |   |
| 17. | Inspection and tonnage measurement of ship before registration |   |
| 18. | Refusal of registration  |   |
| 19. | Prohibition on dual registration                               |   |

*Part 2*

10

*Identification*

- |     |  |  |
|-----|--|--|
| 20. | Marking of ship                                      |  |
| 21. | Name of registered ship and change of name           |  |
| 22. | Power of Minister to disallow proposed name for ship |  |

*Part 3*

15

*Registration certificates*

- |     |  |    |
|-----|--|----|
| 23. | Registration certificate   |    |
| 24. | Status and custody of registration certificate                                   |    |
| 25. | New certificate and provisional certificate                                      |    |
| 26. | Provisional certificate for ship becoming entitled to be registered while abroad | 20 |
| 27. | Provisional certificate issued by Registrar                                      |    |
| 28. | Provisional certificate not to be issued in certain circumstances                |    |
| 29. | Temporary pass   |    |
| 30. | Improper use of certificate  |    |

**CHAPTER 5**

25

**PRIVATE LAW PROVISIONS**

- |     |  |  |
|-----|--|--|
| 31. | Private law matters                          |  |
| 32. | Liability of person with beneficial interest |  |

**CHAPTER 6****THE REGISTER**

30

- |     |   |    |
|-----|---|----|
| 33. | South African Ships Register              |    |
| 34. | Access to Register                        |    |
| 35. | Obsolete or incorrect entries in Register |    |
| 36. | Correction of clerical errors in Register |    |
| 37. | Rectification of Register                 | 35 |
| 38. | False entries in Register                 |    |

**CHAPTER 7****GENERAL PROVISIONS**

- |     |  |    |
|-----|--|----|
| 39. | Interpretation                                       |    |
| 40. | Registered agent                                     | 40 |
| 41. | Alterations to ship                                  |    |
| 42. | Ship lost or ceasing to be entitled to be registered |    |
| 43. | Power to remove ship from Register                   |    |

44.	Unregistered ship entitled to be registered not to leave Republic	
45.	Unregistered ship entitled to be registered not to leave foreign port	
46.	Effects of non-registration	
47.	Notice to consular representative	
48.	Forfeiture	5
49.	Detention of ships	
50.	Co-operation with officers	
51.	False statements	
52.	Offences and penalties	
53.	Administrative penalty on admission of guilt	10
54.	Admissibility of documentary evidence	
55.	Jurisdiction	
56.	Regulations	
57.	Charges	
58.	Exemption from stamp duty	15
59.	Delegation of powers	
60.	Repeal and amendment of laws	
61.	Transitional provisions	
62.	Short title and commencement	
<i>Schedules</i>		20
1.	Private law provisions for registered ships	
2.	Amendment of laws	
3.	Transitional provisions	

## Definitions

1. (1)	In this Act, unless the context indicates otherwise—	25
(i)	“Authority” means the South African Maritime Safety Authority established by section 2(1) of the South African Maritime Safety Authority Act, 1998; (xx)	
(ii)	“bareboat charter”, in relation to a ship, means the charter of the ship for a fixed period on terms that give the charterer possession and control of the ship, including the right to appoint the master and crew; (xix)	30
(iii)	“beneficial interest” includes any interest in a ship arising under contract, testamentary disposition or otherwise, but does not include any interest held by way of a mortgage; (xl)	
(iv)	“branch office” means a branch office of the Registration Office; (xxxv)	35
(v)	“charge” means any charge contemplated in section 57; (vii)	
(vi)	“clearance” includes any clearance or transire referred to in the Customs and Excise Act, 1964 (Act No. 91 of 1964); (xxxvii)	
(vii)	“court” means a competent court having jurisdiction; (xiii)	
(viii)	“customs officer” means an officer as defined in section 1 of the Customs and Excise Act, 1964 (Act No. 91 of 1964); (v)	40
(ix)	“Deputy Registrar” means a Deputy Registrar of Ships referred to in section 8(2); (ii)	
(x)	“fishing vessel” means a fishing vessel as defined in section 1 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998); (xxxix)	45
(xi)	“foreign port” means any place in another state, whether proclaimed a public harbour or not, to which ships may resort for shelter or to ship or unship goods or passengers; (xliii)	
(xii)	“lodged” means lodged with the Registrar in terms of this Act; (xiv)	
(xiii)	“master” means the person having lawful command or charge, or for the time being in charge, of a ship, but does not include a pilot aboard a ship solely for the purpose of providing navigational assistance; (x)	50
(xiv)	“Merchant Shipping Act, 1951” means the Merchant Shipping Act, 1951 (Act No. 57 of 1951); (xi)	
(xv)	“Minister” means the Minister of Transport; (xvi)	55
(xvi)	“mortgage” means a mortgage registered in terms of item 9 of Schedule 1; (xxxviii)	
(xvii)	“National Flag” means the national flag of the Republic in terms of section 5 of the Constitution; (xvii)	

- (xviii) “officer”, except as provided in section 48, means a person, including the Minister, exercising powers or performing duties in terms of this Act; (iii)
- (xix) “organ of state”, means an organ of state as defined in section 239 of the Constitution; (xxx)
- (xx) “owner”, except as provided in section 39, means the registered owner; (vi) 5
- (xxi) “person” includes a trust; (xxi)
- (xxii) “prescribed” means prescribed under regulations; (xli)
- (xxiii) “proper officer” means a proper officer as defined in section 2(1) of the Merchant Shipping Act, 1951; (iv)
- (xxiv) “provisional registration certificate” means a provisional registration certificate issued in terms of section 25, 26 or 27; (xlii) 10
- (xxv) “Register” means the South African Ships Register, established by section 33; (xxii)
- (xxvi) “registered”, except with reference to the law of another state, means registered or deemed to be or regarded as registered in terms of this Act; (viii) 15
- (xxvii) “registered agent”, in relation to a ship, means the person whose name and address are entered in the Register in respect of the ship in terms of section 40; (ix)
- (xxviii) “Registrar” means the Registrar of Ships referred to in section 8(1); (xxv)
- (xxix) “registration certificate”, except as provided in section 24, means a registration certificate issued in terms of this Act, but does not include a provisional registration certificate; (xxiv) 20
- (xxx) “Registration Office” means the South African Ship Registration Office, established by section 7; (xxiii)
- (xxxi) “regulation” means a regulation made under section 56; (xxvi) 25
- (xxxii) “share”, in relation to a ship, means one of the shares into which the property right in the ship is divided in terms of section 15; (i)
- (xxxiii) “ship” means any type of vessel capable of navigation by water, including—  
 (a) a barge, lighter or other floating vessel;  
 (b) a structure that is able to float or be floated and is able to move or be moved as an entity from one place to another; and 30  
 (c) a dynamically supported craft as defined in section 2(1) of the Merchant Shipping Act, 1951,  
 and includes all gear, equipment, stores, cargo and fuel aboard the ship, and any article belonging to or to be used in connection with or necessary for the operation and safety of the ship; (xxviii) 35
- (xxxiv) “ship entitled to be registered” means a ship entitled to be registered in terms of section 16; (xxix)
- (xxxv) “Shipping Acts” means the Merchant Shipping Act, 1951, the Marine Traffic Act, 1981 (Act No. 2 of 1981), the Marine Pollution (Control and Civil Liability) Act, 1981 (Act No. 6 of 1981), the Marine Pollution (Prevention of Pollution from Ships) Act, 1986 (Act No. 2 of 1986), the Marine Pollution (Intervention) Act, 1987 (Act No. 64 of 1987), and this Act; (xxvii) 40
- (xxxvi) “small vessel” means a vessel of less than 25 gross tons and of more than three metres in length; (xv) 45
- (xxxvii) “South African Maritime Safety Authority Act, 1998” means the South African Maritime Safety Authority Act, 1998 (Act No. 5 of 1998); (xliv)
- (xxxviii) “South African national” means—  
 (a) a South African citizen in terms of the South African Citizenship Act, 1995 (Act No. 88 of 1995); 50  
 (b) a body corporate established in terms of a law of the Republic with a place of business in the Republic;  
 (c) a trust in which—  
 (i) the majority of trustees having the controlling power at any given time are South African nationals referred to in paragraphs (a) and (b); and 55  
 (ii) a majority of the beneficial interests are held by such South African nationals; and  
 (d) the Government of the Republic; (xxxiii)

- (xxxix) “South African port” means a harbour or a fishing harbour or any place in the Republic that has been designated under any law as a place from or at which any ship or any ship of a particular type may be launched, beached, moored or berthed; (xxxix)
- (xl) “South African resident” means— 5
- (a) a natural person whose permanent place of abode is in the Republic, whether or not he or she is from time to time temporarily absent from the Republic;
- (b) a natural person whose domicile is in the Republic, unless his or her permanent place of abode is outside the Republic; 10
- (c) a body corporate, wherever incorporated, that has its principal place of business in the Republic; and
- (d) a trust in which—
- (i) the majority of trustees having the controlling power at any given time are South African residents referred to in paragraphs (a), (b) and (c); and 15
- (ii) a majority of the beneficial interests are held by such South African residents; (xxxii)
- (xli) “South African ship” means a ship having South African nationality in terms of section 3; (xxxiv) 20
- (xlii) “temporary pass” means a temporary pass issued in terms of section 29; (xxxvi)
- (xliii) “this Act” includes the regulations; (xii)
- (xliv) “unregistered”, in relation to a ship, means not registered in terms of this Act or in terms of the law of another state. (xviii) 25
- (2) In this Act, unless the context indicates otherwise, a reference to the owner of a ship is, if the ship has more than one owner, a reference to each of the owners.
- (3) A reference in this Act to failing to do an act or thing includes a refusal to do that act or thing.
- (4) A reference in this Act to a South African-owned ship is a reference to— 30
- (a) a fishing vessel that is owned, or owned and controlled, as provided in the definition of local fishing vessel in section 1 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998); or
- (b) any other ship, other than a fishing vessel, that— 35
- (i) is wholly owned by one or more South African nationals;
- (ii) is owned by three or more persons as joint owners of the ship, where the majority of those persons are South African nationals; or
- (iii) is owned by two or more persons as owners in common, where the majority of the shares in the ship are owned by South African nationals.
- (5) For the purposes of subsection (4)(b)(iii), where two or more persons are joint 40 owners of a share or shares in a ship—
- (a) in the case of two or more particular shares that are owned by the same persons, the interest of each owner in the shares is ascertained by dividing the number of the shares by the number of the owners of the shares; or
- (b) in the case of a share to which paragraph (a) does not apply, the interest of 45 each owner in the share is ascertained by dividing the number one by the number of the owners of the share,
- and, if the sum of the interests so ascertained in respect of all jointly-owned shares in the ship as being the interests of South African nationals is a whole number or a whole number and a fraction, the number of those shares that are equal to that whole number 50 is deemed to be owned by South African nationals.
- (6) A reference in this Act to a ship on bareboat charter to a South African national is a reference to a ship that—
- (a) is registered in terms of the law of another state;
- (b) is not a prescribed ship or a ship of a prescribed class or description; and 55

- (c) is on bareboat charter to one or more South African nationals, and to no other person.
- (7) In the application of this Act, a ship is deemed to be constructively lost if—
  - (a) the ship is reasonably abandoned for the reason that its actual total loss appears to be unavoidable; 5
  - (b) the ship cannot be preserved from actual total loss without an expenditure that would exceed its value when the expenditure has been incurred; or
  - (c) the ship has been damaged to the extent that the cost of repairing the damage would exceed its value when repaired.

## CHAPTER 1 10

### APPLICATION OF ACT

#### Application of Act

- 2. (1) This Act applies—
  - (a) in the territory of the Republic, and has extraterritorial application regardless whether the territory of another state is involved; and 15
  - (b) to the Prince Edward Islands referred to in section 1 of the Prince Edward Islands Act, 1948 (Act No. 43 of 1948),
 but does not apply to ships belonging to the South African National Defence Force or to a naval, military or air force of another state.
  - (2) Subject to subsection (1), this Act binds the State and all organs of state. 20

## CHAPTER 2

### SOUTH AFRICAN SHIPS

#### South African ships

- 3. The following ships are South African ships and have South African nationality: 25
  - (a) Registered ships; and
  - (b) unregistered ships, being ships entitled to be registered in terms of section 16(a) or (b).

#### National Flag

- 4. (1) Every South African ship is entitled to fly the National Flag, without any defacement or modification. 30
- (2) The master of a South African ship must cause the National Flag to be hoisted—
  - (a) on a signal being made to the ship by any ship in the naval service of the Republic;
  - (b) on entering or leaving any foreign port; and
  - (c) if the ship is of 50 or more gross tons, on entering or leaving any South African port. 35
- (3) No person on board a South African ship may hoist—
  - (a) any distinctive national colours except the National Flag;
  - (b) any colours usually worn by ships in the naval service of the Republic or colours resembling such colours; or 40
  - (c) any pennant usually carried by ships in the naval service of the Republic or any pennant resembling such pennant.
- (4) Any owner of a South African ship who permits anything to be done on board the ship that is an offence in terms of subsection (3), is guilty of an offence.
- (5) On application in the prescribed manner by the owner of a ship contemplated in section 3(b), the Registrar must issue a certificate to that owner stating that the ship is entitled to fly the National Flag in terms of this section. 45

### **Offences relating to South African character of ship**

5. (1) Subject to subsection (2), if the master or owner of a ship that is not a South African ship does anything, or permits anything to be done, to cause the ship to appear to be a South African ship, that ship is subject to forfeiture in terms of this Act, and the master or owner, as the case may be, is guilty of an offence. 5
- (2) Subsection (1) does not apply—
- (a) where the assumption of South African nationality has been made for the purpose of escaping capture by an enemy or by a foreign ship of war in the exercise of some belligerent right; or
  - (b) in respect of any prescribed mark displayed on a ship within a period of 14 days after the date of termination of that ship's registration in terms of any provision of this Act. 10
- (3) If the master or owner of a South African ship does anything, or permits anything to be done, for the purpose of—
- (a) concealing the nationality of the ship from any person entitled by law to inquire into the nationality of the ship; 15
  - (b) deceiving a person contemplated in paragraph (a); or
  - (c) causing the ship to appear not to be a South African ship, 20
- that ship is subject to forfeiture in terms of this Act, and the master or owner, as the case may be, is guilty of an offence. 20
- (4) Without prejudice to the generality of subsections (1) and (3), those subsections apply in particular to acts or deliberate omissions relating to—
- (a) the flying of a national flag;
  - (b) the carrying or production of registration certificates or other documents relating to the nationality of a ship; and 25
  - (c) the display of marks required by the law of any state.

### **Declaration of ship's nationality before clearance**

6. (1) A customs officer may not grant a clearance in respect of any ship until the master of the ship has declared to that officer the nationality of the ship, which declaration the officer must record on the clearance certificate. 30
- (2) A ship that attempts to proceed to sea without a clearance contemplated in subsection (1) may be detained by a customs officer or an officer referred to in section 48(1) until the relevant declaration is made.

## **CHAPTER 3**

### **REGISTRAR AND REGISTRATION OFFICE 35**

#### **Registration Office**

7. (1) The South African Ship Registration Office is hereby established.
- (2) The Authority may establish branch offices of the Registration Office.
- (3) The Registration Office and its branch offices are at the respective places in the Republic that the Authority may determine. 40

#### **Registrar and Deputy Registrars of Ships**

8. (1) There must be an officer for the Republic, called the Registrar of Ships, who, subject to the directions of the Authority, is responsible for the maintenance of the Register and has chief control of the Registration Office.
- (2) There may be appointed Deputy Registrars of Ships, the number of which may be determined by the Authority, who, subject to the directions of the Registrar, have all the powers and duties conferred on the Registrar by this Act, except the power of delegation in terms of section 59. 45

### **Appointment of Registrar and Deputy Registrars**

**9.** The Registrar and Deputy Registrars must be appointed by the Minister from the staff of the Authority appointed in terms of section 27 of the South African Maritime Safety Authority Act, 1998.

### **Powers and duties of Registrar** 5

**10.** (1) The Registrar may do all things necessary or convenient to be done for or in connection with, or incidental to, the exercise of his or her powers in terms of this Act or any other law, including, but without prejudice to the generality of the foregoing, powers that may be prescribed for and in relation to requiring the furnishing of information and documents, as well as the delivery of certificates and other documents granted or issued in terms of this Act. 10

(2) In addition to any other duty imposed by this Act or any other law, the Registrar must maintain the Register and must for that purpose—

- (a) receive and record all information and documents required or permitted to be lodged with the Registrar in terms of this Act; 15
- (b) grant, issue, vary or revoke the certificates and other documents that are required or permitted to be granted or issued in terms of this Act; and
- (c) issue copies of and extracts from—
  - (i) any certificate or other document contemplated in paragraph (b); and
  - (ii) any entry in the Register. 20

### **Acting Registrar or Deputy Registrar**

**11.** (1) The Authority may appoint a member of its staff to act as Registrar or Deputy Registrar—

- (a) during a vacancy in the office of Registrar or Deputy Registrar, as the case may be, whether or not an appointment has previously been made to that office; or 25
- (b) during any period when the Registrar or a Deputy Registrar, as the case may be, is absent from duty or from the Republic or is, for any other reason, unable to perform the functions of his or her office.
- (2) An appointment of a person under subsection (1)— 30
  - (a) may provide that it has effect only in the circumstances that are determined in the instrument of appointment; and
  - (b) may be terminated at any time.
- (3) If an office becomes vacant while a person is acting in it in terms of subsection (1)(b), that person may, subject to subsection (2), continue to act in that office until the Authority directs otherwise or the vacancy is filled. 35
- (4) A duly appointed acting Registrar or acting Deputy Registrar may exercise all the powers and must perform all the duties of the Registrar or a Deputy Registrar, as the case may be, in terms of this Act or any other law.
- (5) The validity of anything done by a person purporting to act in terms of this section may not be called in question on the ground— 40
  - (a) that the occasion of his or her appointment had not arisen;
  - (b) that there is a defect or irregularity in or in connection with his or her appointment;
  - (c) that the appointment had ceased to have effect; or 45
  - (d) that the occasion for him or her to act had not arisen or had ceased.

### **Appointment of staff**

**12.** The Authority may appoint the necessary staff for the Registration Office or any branch office from its staff appointed in terms of section 27 of the South African Maritime Safety Authority Act, 1998. 50

**Limitation of liability**

**13.** The State, the Minister, the Authority, any person in the service or acting on the authority of an organ of state or the Authority, or any person appointed to exercise any power or to perform any duty in terms of this Act, is not liable in respect of any loss or damage resulting from anything done or not done in good faith in terms of this Act. 5

**Seal of Registration Office and signature of Registrar**

**14.** (1) There must be a seal of the Registration Office, in a form approved by the Minister, which is under the control of the Registrar.

(2) In all judicial proceedings judicial notice must be taken of the impression of the seal of the Registration Office on a document and it must be presumed, in the absence of evidence to the contrary, that the seal was duly impressed. 10

(3) If a signature on a document purports to be the signature of the Registrar or of a person authorised to sign the document by virtue of a delegation in terms of section 58, it must be presumed, in the absence of evidence to the contrary, that the signature is that of a person who at the relevant time was holding the office of Registrar or was performing the duties of the office of the Registrar, or was empowered to sign that document, as the case may be. 15

**CHAPTER 4****REGISTRATION OF SOUTH AFRICAN SHIPS***Part 1* 20*Registration***Registration of property in ships**

**15.** (1) For the purposes of the registration of a ship—

- (a) the property in a ship is divided into 64 shares; 25
- (b) subject to paragraph (c), subsection (2) and item 4 of Schedule 1, the number of persons registered as owners of a ship may not at any time exceed 64;
- (c) any number of persons not exceeding five may be registered as joint owners of a ship or of one or more shares in a ship;
- (d) a joint owner of a ship or of one or more shares in a ship may not dispose of his or her interest separately; 30
- (e) a person may not be registered as the owner of a fractional part of a share in a ship;
- (f) a body corporate is registered as an owner by its corporate name; and
- (g) a trust is registered as an owner in the name of the trust.

(2) For the purposes of subsection (1)(b), where a share in a ship is jointly owned or two or more shares in a ship are jointly owned by the same persons, the joint owners of that share or of those shares, as the case may be, must be regarded as one person. 35

**Ships entitled to be registered**

**16.** Subject to this Chapter, the following ships are entitled to be registered:

- (a) South African-owned ships; 40
- (b) small vessels, other than fishing vessels, that are—
  - (i) wholly owned by South African residents or South African residents and South African nationals; or
  - (ii) operated solely by South African residents or South African nationals or both such residents and such nationals; and 45
- (c) ships on bareboat charter to South African nationals.

**Inspection and tonnage measurement of ship before registration**

**17.** (1) No ship may be registered, unless—

- (a) it has undergone the prescribed inspection; and

- (b) a certificate relating to the tonnage measurement of the ship, issued in terms of the Merchant Shipping Act, 1951, has been lodged with the Registrar.
- (2) Subsection (1)(b) does not apply to a prescribed ship, or ships of a prescribed class or description.

### **Refusal of registration**

5

- 18.** (1) Despite a ship being entitled to be registered, the Registrar may refuse to register the ship if he or she is satisfied that—
- (a) it would be inappropriate for the ship to be registered having regard—
- (i) to the relevant requirements of the Shipping Acts in respect of—
- (aa) the condition of the ship in respect of its safety or any risk of pollution; and
- (bb) the safety, health and welfare of persons employed or engaged on the ship; or
- (ii) to the interests of the Republic or international merchant shipping;
- (b) the prescribed conditions have not been complied with; or
- (c) the registration of the ship is prohibited in terms of regulations under section 56(3)(d).
- (2) If the Registrar refuses in terms of this section to register a ship, he or she must serve a notice on the applicant stating that registration is refused because he or she is satisfied as contemplated in subsection (1)(a), (b) or (c).

20

### **Prohibition on dual registration**

- 19.** (1) The Registrar may not register a ship in terms of this Act if it is registered in terms of the law of another state, unless—
- (a) in the case of a South African-owned ship, it was acquired pursuant to an order of court in terms of section 9 of the Admiralty Jurisdiction Regulation Act, 1983 (Act No. 105 of 1983), and the evidence contemplated in subsection (2)(c) has been lodged with the Registrar; or
- (b) in the case of a ship on bareboat charter to a South African national, the evidence contemplated in subsection (2)(d) has been lodged with the Registrar.
- (2) If, in respect of a ship that has at any time been registered in terms of the law of another state, an application is made for the registration of the ship in terms of this Act, the application must be accompanied by the evidence required by the Registrar to establish—
- (a) that the ship is no longer registered in terms of the law of another state;
- (b) that steps have been taken or are proposed to terminate registration in terms of the law of another state before the ship is registered in terms of this Act;
- (c) in the case of a ship referred to in subsection (1)(a), that all reasonable steps to secure the termination of the ship's registration in terms of the law of that other state have been unsuccessful; or
- (d) in the case of a ship referred to in subsection (1)(b), that the owner of the ship and the competent authority of the state of primary registration consent to the ship's registration in terms of this Act.

30

35

40

## **Part 2**

### **Identification**

45

### **Marking of ship**

- 20.** (1) A ship may not be registered until it has been marked in the prescribed manner with the marks directed by the Registrar by notice in writing served on the owner or one of the owners, and the prescribed evidence that the ship has been so marked is lodged with the Registrar.
- (2) Subject to subsection (4), if the markings placed on a registered ship in accordance with the requirements of subsection (1) are not maintained, the owner and master of the ship are each guilty of an offence.
- (3) Subject to subsection (4), no person may conceal, remove, alter, deface or

50

obliterate, or allow any person under his or her control to conceal, remove, alter, deface or obliterate any marking that is on a registered ship in accordance with the requirements of subsection (1).

(4) Subsections (2) and (3) do not apply in respect of anything authorised by the regulations or done for the purpose of escaping capture by an enemy or by a foreign ship of war in the exercise of some belligerent right. 5

### **Name of registered ship and change of name**

**21.** (1) A registered ship may not be described by any name other than the name by which the ship is for the time being registered.

(2) Subject to this Act, an application may be made to the Registrar in the prescribed manner for a change in the name of a registered ship. 15

(3) The Registrar must disallow a name if—

(a) the name proposed for a ship in an application for the registration of the ship; or

(b) the new name proposed for a registered ship in an application in terms of subsection (2), 15

is a prescribed name, or a name included in a prescribed class of names.

(4) If the Registrar grants an application in terms of subsection (2)—

(a) he or she must cause the new name to be entered in the Register and endorsed on the ship's registration certificate; and 20

(b) section 20 applies in respect of the marking of the new name on the ship as if the ship had been registered by that name.

### **Power of Minister to disallow proposed name for ship**

**22.** If the Minister has reason to believe that the description of a ship by a certain name is likely to prejudice the Republic's international relations, the Minister may, by notice in writing given to the Registrar, disallow— 25

(a) the name proposed for a ship in an application for the registration of the ship; or

(b) the new name proposed for a registered ship in an application in terms of section 21(2). 30

## **Part 3**

### **Registration certificates**

#### **Registration certificate**

**23.** (1) On completion of the registration of a ship, the Registrar must issue a registration certificate in respect of the ship in the prescribed form. 35

(2) The certificate contemplated in subsection (1) must contain the particulars entered in the Register in respect of the ship, and any other matter that may be prescribed.

#### **Status and custody of registration certificate**

**24.** (1) In this section, "registration certificate" includes a provisional registration certificate. 40

(2) A registration certificate may be used only for the lawful navigation of a ship, and may not be detained to secure any civil right or claim.

(3) A person who has possession or control of a registration certificate may not fail, without reasonable grounds, to deliver the certificate on demand to— 45

(a) the person entitled to the custody thereof for the purposes of the lawful navigation of the ship;

(b) the Registrar, a Deputy Registrar or a proper officer;

(c) a customs officer; or

(d) any other person entitled by law to require its delivery. 50

(4) If the person required by subsection (3) to deliver a registration certificate is

outside the Republic, or persists in not delivering the certificate, the certificate must be regarded as lost and section 25(1)(a) is applicable.

(5) If in any criminal proceedings in respect of a contravention of this section a court is of the opinion that a certificate is lost, the court must make an order to that effect and cause a copy of the order to be served on the Registrar. 5

### **New certificate and provisional certificate**

**25.** (1) If a registration certificate—

(a) is mislaid, lost or destroyed; or

(b) is lodged with the Registrar,

the Registrar must, on application in the prescribed manner, issue a new certificate in substitution for that certificate. 10

(2) If an event contemplated in subsection (1)(a) occurs while the ship concerned—

(a) is at a foreign port at which there is a proper officer; or

(b) is at sea or at a foreign port at which there is no proper officer and, subsequently, but before arriving at a South African port, the ship arrives at a foreign port at which there is a proper officer, 15

the Registrar or the proper officer at that port must, subject to the regulations, on application to him or her, issue a provisional registration certificate in respect of that ship in the prescribed form.

(3) Subject to subsection (5), a provisional registration certificate issued in terms of subsection (2) must be regarded as a registration certificate until— 20

(a) the ship arrives at a South African port; or

(b) the expiration of a period of six months, calculated from the date on which the certificate was issued,

whichever may occur first. 25

(4) A proper officer who issues a provisional registration certificate in terms of this section must forward a copy of the certificate to the Registrar.

(5) If, while a provisional registration certificate issued in terms of subsection (2) is valid, an application is made in the prescribed manner, the Registrar may by notice in writing served on the applicant extend the period referred to in subsection (3)(b), and in that event the reference in that provision to a period of six months must be regarded as a reference to such extended period. 30

(6) A person who has possession of a provisional registration certificate issued in terms of subsection (2) must lodge that certificate with the Registrar within 10 days after the ship's arrival at a South African port. 35

(7) On lodgment of a provisional registration certificate in terms of subsection (6), the Registrar may—

(a) issue a further provisional registration certificate in respect of that ship; or

(b) issue a new registration certificate in respect of that ship.

(8) A provisional registration certificate issued in terms of subsection (7)(a) must with effect from the date on which it was issued be regarded as a registration certificate for the period that the Registrar may determine in that certificate. 40

### **Provisional certificate for ship becoming entitled to be registered while abroad**

**26.** (1) If, while a ship—

(a) is at a foreign port at which there is a proper officer, it becomes a ship entitled to be registered; or 45

(b) is at sea or at a foreign port at which there is no proper officer, it becomes a ship entitled to be registered and, subsequently, but before arriving at a South African port, the ship arrives at a foreign port at which there is a proper officer,

the proper officer at that port may, subject to the regulations, on application to him or her, issue a provisional registration certificate in respect of that ship in the prescribed form. 50

(2) Subject to subsection (4), a provisional registration certificate issued in terms of this section must be regarded as a registration certificate until—

- (a) the ship arrives at a South African port; or
- (b) the expiration of a period of six months, calculated from the date on which the certificate was issued,

whichever may occur first.

(3) A proper officer who issues a provisional registration certificate in terms of this section must forward a copy of the certificate to the Registrar. 5

(4) If, while a provisional registration certificate issued in terms of subsection (1) is valid, an application is made in the prescribed manner, the Registrar may by notice in writing served on the applicant extend the period referred to in subsection (2)(b), and in that event the reference in that provision to a period of six months must be regarded as a reference to such extended period. 10

(5) A person who has possession of a provisional registration certificate issued in terms of subsection (1) must lodge the certificate with the Registrar within 10 days after the ship's arrival at a South African port.

(6) On lodgment of a provisional registration certificate in terms of subsection (5), the Registrar may issue a further provisional registration certificate in respect of that ship. 15

(7) A provisional registration certificate issued in terms of subsection (6) must with effect from the date on which it was issued be regarded as a registration certificate for the period that the Registrar may determine in that certificate. 20

### **Provisional certificate issued by Registrar**

27. (1) If, while a ship is at sea or at a foreign port, it becomes a ship entitled to be registered, the Registrar may, subject to the regulations, on application to him or her, issue a provisional registration certificate in respect of that ship in the prescribed form.

(2) If, while a ship is at a South African port, it becomes a ship entitled to be registered, the Registrar may, subject to the regulations, on application to him or her, if he or she is satisfied that it is the intention of the owner of the ship that the ship will depart from that port to a place outside the Republic, issue a provisional registration certificate in respect of that ship in the prescribed form. 25

(3) Subject to subsection (4), a provisional registration certificate issued in terms of this section must be regarded as a registration certificate until— 30

(a) in the case of a ship in respect of which a certificate was issued in terms of subsection (1)—

- (i) the ship arrives at a South African port; or
  - (ii) the expiration of a period of six months, calculated from the date on which the certificate was issued, 35
- whichever may occur first; or

(b) in the case of a ship in respect of which a certificate was issued in terms of subsection (2)—

- (i) the ship returns from a place outside the Republic to a South African port; 40
  - or
  - (ii) the expiration of a period of six months, calculated from the date on which the certificate was issued, 40
- whichever may occur first.

(4) If, while a provisional registration certificate issued in terms of subsection (1) or (2) is valid, an application is made in the prescribed manner, the Registrar may by notice in writing served on the applicant extend the period referred to subsection (3)(a)(ii) or (b)(ii), as the case may be, and in that event the reference in the relevant provision to a period of six months must be regarded as a reference to such extended period. 45

(5) A person who has possession of a provisional registration certificate issued in terms of subsection (1) or (2) must lodge the certificate with the Registrar— 50

(a) if the certificate was issued in terms of subsection (1), within 10 days after the ship's arrival at a South African port; or

(b) if the certificate was issued in terms of subsection (2), within 10 days after the ship's return from a place outside the Republic to a South African port. 55

(6) On lodgment of a provisional registration certificate in terms of subsection (5), the Registrar may issue a further provisional registration certificate in respect of that ship.

(7) A provisional registration certificate issued in terms of subsection (6) must with effect from the date on which it was issued, be regarded as a registration certificate for the period that the Registrar may determine in that certificate. 5

#### **Provisional certificate not to be issued in certain circumstances**

**28.** A provisional registration certificate may not be issued by a proper officer in terms of section 26(1), or by the Registrar in terms of section 27(1) or (2), unless the person who issues the certificate is satisfied that, at the time when he or she issues the certificate, an application for registration of the ship has been lodged with the Registrar and that the application has yet to be dealt with. 10

#### **Temporary pass**

**29.** (1) The Authority may direct the Registrar to issue a temporary pass in respect of an unregistered ship entitled to be registered if the Authority is satisfied that by reason of special circumstances permission should be granted for the ship to travel— 15

(a) from a South African port to a foreign port; or

(b) from a foreign port to another foreign port or to a South African port.

(2) The Registrar must issue the pass contemplated in subsection (1) in the prescribed form and may determine in the pass— 20

(a) the voyage that the ship is authorised to make; and

(b) the date of expiry of the pass.

(3) Subject to the matters that may be determined in the pass, a temporary pass issued in terms of this section must be regarded as a registration certificate.

#### **Improper use of certificate** 25

**30.** A person who, in relation to a ship, whether or not it is a registered ship, uses or permits the use of an invalid registration certificate, provisional registration certificate or temporary pass, is guilty of an offence.

### **CHAPTER 5**

#### **PRIVATE LAW PROVISIONS** 30

##### **Private law matters**

**31.** (1) Despite anything to the contrary in any other law, but subject to subsection (2), a registered ship or a share in a registered ship may not, after the coming into operation of this Act, be mortgaged by a bond registered in a deeds registry, and no bond so registered— 35

(a) before such coming into operation, confers upon the mortgagee any preference against other creditors after the expiration of 60 days from such coming into operation; or

(b) after such coming into operation, confers upon the mortgagee any preference against other creditors. 40

(2) The mortgagee under any bond by which a registered ship or a share in a registered ship is hypothecated and that is registered in a deeds registry at the coming into operation of this Act may produce to the Registrar within 60 days after such coming into operation or within any further period the Registrar may allow in special circumstances a copy of the duplicate original of the bond filed in the deeds registry certified by the registrar of deeds in charge of that registry; and the Registrar must thereupon record the mortgage in the Register, whereafter the provisions of this Act relating to the mortgage of ships and shares in ships apply in respect of that mortgage: Provided that for the 45

purposes of item 10 of Schedule 1 the mortgage must be regarded to have been registered in the Register on the date on which and at the time at which the said bond was registered in the deeds registry.

(3) Whenever the Registrar records any mortgage in terms of subsection (2), he or she must send written notice thereof to the registrar of deeds in charge of the deeds registry in which the bond was registered, and on receipt of that notice the registrar must endorse on the duplicate original of the bond filed in the deeds registry the fact that the mortgage has been so recorded. 5

(4) Subsections (1), (2) and (3) do not apply in respect of any bond referred to in 46(1) of the Merchant Shipping Act, 1951. 10

(5) Subject to subsection (6), a mortgage of a registered ship or of a share in a registered ship is deemed to be a special mortgage as defined in section 2 of the Insolvency Act, 1936 (Act No. 24 of 1936), and ranks and is dealt with as if it were a mortgage bond hypothecating immovable property situate in the Republic.

(6) For the purposes of subsection (5)— 15

(a) “mortgage”, in relation to a ship or a share in a ship, means a registered mortgage executed and valid in accordance with the law of the state in which the ship is registered; and

(b) “registered” includes to be registered in terms of the law of another state.

(7) Subject to subsections (8) and (9), Schedule 1 applies in respect of— 20

(a) the creation, transfer, transmission or discharge of a mortgage of a ship or a share in a ship;

(b) the transfer or transmission of rights in a ship or a share in a ship; and

(c) any matter incidental to paragraphs (a) and (b).

(8) Schedule 1 does not apply in respect of a ship excluded from its application by regulations under section 56(3)(c). 25

(9) The provisions of Schedule 1 and regulations made for the purposes of that Schedule, or the provisions of the regulations under section 56(3)(c), do not apply to ships registered in terms of section 16(c), and any matter or question in respect of such ships corresponding to those provisions are determined by reference to the law of the state of primary registration. 30

### **Liability of person with beneficial interest**

32. If any person has a beneficial interest in any ship or share in a ship registered in the name of any other person as owner, the person so interested and the registered owner are liable for any pecuniary penalty imposed in terms of the Shipping Acts or any other law on the owners of registered ships, and the Authority may institute civil proceedings for the enforcement of any such penalty against both the person so interested and the owner, or either of them, jointly or jointly and severally. 35

## **CHAPTER 6**

### **THE REGISTER** 40

#### **South African Ships Register**

33. (1) There is hereby established the South African Ships Register, in which must be entered all matters required or permitted by this Act to be entered in the Register.

(2) The Register may be divided into parts so as to distinguish between classes or descriptions of ships. 45

(3) The Register and copies of the Register, or of such part or parts of the Register that the Authority may direct, must be kept at the Registration Office or at the branch offices that the Authority may direct.

#### **Access to Register**

34. Any person may have access to the Register at any reasonable time during the hours when the Registration Office, or a branch office, as the case may be, is open for business, and is entitled against payment of the relevant charge to be furnished with a copy of or extract from any entry in the Register. 50

### Obsolete or incorrect entries in Register

- 35.** (1) The Registrar may, by notice in writing served on the registered agent or any owner of a ship, require him or her to furnish the Registrar within a period determined in the notice, but not less than 30 days after the date of service of the notice, with the information and documents relating to the ship that are determined in the notice, if— 5
- (a) in respect of the particular ship, no entry or amendment of an entry has been made in the Register for the prescribed period; and
  - (b) the Registrar has reason to suspect that—
    - (i) any particular entered in the Register in respect of that ship, other than particulars relating to a mortgage, are incorrect; 10
    - (ii) in respect of that ship, any notice, information or document in respect of which an entry in the Register is required by this Act to be made has not been lodged with the Registrar within the period contemplated in paragraph (a); or
    - (iii) the ship has been either actually or constructively lost, taken by an enemy, burnt or broken up. 15
- (2) If a person on whom a notice is served in terms of subsection (1)—
- (a) fails to furnish the Registrar within the period determined in the notice with the information and documents determined in the notice; or
  - (b) furnishes information or documents that in the opinion of the Registrar justify the closure of the registration of the ship or the alteration of any entry made in the Register in respect of that ship, 20
- the Registrar must inform the Authority of that failure or furnish the Authority with that information or those documents, as the case may be.
- (3) If the Authority is of the opinion that the failure of a person to comply with a notice served on him or her in terms of subsection (1), or any information or document it was furnished with by the Registrar justifies further action, the Authority may by notice in writing give the Registrar the directions that it deems fit in respect of the closure of the registration of the ship or in respect of any entry or amendment of an entry to be made in the Register. 25 30
- (4) The Registrar must comply with any direction given in terms of subsection (3) and, where the Authority directs the closure of the registration of the ship—
- (a) if the Authority states in the direction that it is of the opinion that the ship has been either actually or constructively lost, taken by an enemy, burnt or broken up, the Registrar must make an entry in the Register of that statement, and the registration of the ship must be regarded as closed, except in so far as it relates to any unsatisfied mortgage of the ship; or 35
  - (b) in any case other than contemplated in paragraph (a), the directions contemplated in subsection (3) must be regarded as a notice in terms of section 42(1)(b), and section 42 is applicable. 40

### Correction of clerical errors in Register

**36.** The Registrar may correct or cause to be corrected, without deleting, any clerical error or obvious mistake in the Register.

### Rectification of Register

- 37.** (1) In this section, “court” means any division of the High Court within its area of jurisdiction. 45
- (2) If an entry—
- (a) is omitted from the Register;
  - (b) is made in the Register without sufficient cause;
  - (c) wrongly exists in the Register; or 50
  - (d) in the Register contains an error or defect,
- whether or not by reason of a decision of an officer, including a decision that the officer was empowered in terms of this Act to make, any interested person or the Registrar may

apply to a court for rectification of the Register, and that court may make the order that it deems fit in respect of the rectification of the Register.

(3) Without prejudice to the generality of subsection (2)(a), the reference in that provision to an entry omitted from the Register includes a reference to a matter that is required or permitted by this Act to be entered or to remain in the Register, but is not entered in or is removed from the Register. 5

(4) A court may in proceedings in terms of this section decide any question that it is necessary or expedient to decide in connection with the rectification of the Register.

(5) Notice of an application in terms of this section by an interested person must be served on the Registrar, who may appear and be heard in court and who must appear if so directed by the court. 10

(6) A copy of an order in terms of this section must be served on the Registrar, and on receipt of the order the Registrar must rectify the Register accordingly.

### **False entries in Register**

**38.** No person may intentionally make a false entry or cause a false entry to be made in the Register. 15

## **CHAPTER 7**

### **GENERAL PROVISIONS**

#### **Interpretation**

**39.** In this Chapter, “owner”, except in sections 40 and 52, means— 20

- (a) in relation to a ship registered in terms of section 16(a) or (b)(i), the registered owner of the ship; and
- (b) in relation to a ship registered in terms of section 16(b)(ii) or (c), the registered agent of the ship.

#### **Registered agent** 25

**40.** (1) In respect of every registered ship the name and address of a person must be entered in the Register as the registered agent of that ship for all purposes of this Act.

(2) The registered agent of a ship must be—

- (a) in the case of a ship referred to in section 16(b)(ii), the operator or one of the operators of the ship; 30
- (b) in the case of a ship referred to in section 16(c), the charterer or one of the charterers of the ship;
- (c) in the case of a ship without a managing owner, other than a ship referred to in paragraph (a) or (b), the person or one of the persons who is a ship’s agent in respect of the ship or a person managing the ship; or 35
- (d) in any other case, the managing owner or one of the managing owners.

(3) If a change occurs in the person or the address of the registered agent, a notice of the change, containing the prescribed information, must be lodged with the Registrar within 14 days after the change has occurred—

- (a) by the person whose name appears as the registered agent in the Register if that person is not the owner of the ship; or 40
- (b) in any case other than paragraph (a), the owner of the ship.

(4) A reference in subsections (1) and (3) to the address of a person is a reference to—

- (a) in the case of a natural person— 45
  - (i) the address of the place in the Republic at which the person ordinarily resides; or
  - (ii) if the person does not ordinarily reside in the Republic, the address in the Republic to which all communications to that person should be sent in terms of subsection (5); or
- (b) in the case of any other person, the address of the principal place of business in the Republic of that person. 50

(5) Any document required or permitted to be served in terms of the Shipping Acts, or required or permitted to be served in terms of any other law for the purpose of the institution of, or otherwise in connection with, proceedings for the contravention of any provision of the Shipping Acts, or in terms of any instrument in terms of those Acts, on the owner of a ship, must be regarded as duly served on that owner if— 5

- (a) delivered to the registered agent;
- (b) sent to the registered agent by post at the last address notified in terms of subsection (3); or
- (c) left for the registered agent at the address contemplated in paragraph (b).

### **Alterations to ship** 10

41. If a registered ship has been altered to the extent that it no longer corresponds with the particulars relating to the ship's tonnage or description contained in the Register, the registered agent must give notice of the alteration to the Registrar in the prescribed manner and within the prescribed period, and the Registrar must, subject to sections 17 and 20, enter the alteration in the Register as prescribed and issue a new registration certificate in respect of the ship as if the ship were not registered. 15

### **Ship lost or ceasing to be entitled to be registered**

42. (1) If a registered ship—

- (a) is either actually or constructively lost, taken by an enemy, burnt or broken up; or 20
- (b) ceases to be entitled to be registered,

the owner of the ship must, immediately after obtaining knowledge of the event, give notice of the event in writing to the Registrar.

(2) When the Registrar receives a notice contemplated in subsection (1), the Registrar must make an entry of the event to which the notice relates in the Register. 25

(3) Where an entry has been made in the Register in terms of subsection (2), the registration of the ship must be regarded as closed, except in so far as it relates to any unsatisfied mortgage of the ship.

(4) If a ship in respect of which the Registrar has received notice in terms of subsection (1) is subject to an unsatisfied mortgage— 30

- (a) the registration of the ship, in so far as it relates to the mortgage, but subject to subsections (5) and (6), is not closed; and
- (b) the Registrar must give notice in writing to each mortgagee that he or she has received notice in terms of subsection (1) of the event so referred to.

(5) Subject to subsection (6), where the Registrar gives notice in terms of subsection (4), the registration of the ship, in so far as it relates to the mortgage, must be regarded as closed on the expiration of a period of 60 days after the date of the notice. 35

(6) If a mortgagee makes an application to a court within 60 days after the date of the notice in terms of subsection (4) or within the extended period that the court, on application made either before or after the expiration of that period, may allow, the court may— 40

- (a) order that the ship and the ship's equipment be sold;
- (b) make any other order for and in respect of the distribution of the proceeds of the sale that it deems fit; and
- (c) make the orders and give the directions with respect to the closure of the registration of the ship that it deems fit, including, in the case of an application for an extension of time, an order that the registration may not be regarded as closed for the period that the court may determine. 45

(7) Notice of an application made in terms of subsection (6), including an application for an extension of time, must be served on the Registrar. 50

(8) An order in terms of subsection (6) may be on the terms and conditions as to costs and otherwise that the court deems fit.

(9) The Registrar must give effect to any order or direction given by the court in terms of this section in so far as such order relates to the Register.

(10) Where the registration of a ship is closed or regarded as closed in terms of this section, the person having possession of the registration certificate or provisional registration certificate relating to that ship must deliver the certificate to the Registrar or a proper officer in accordance with the regulations.

**Power to remove ship from Register** 5

- 43.** (1) Where the Authority—
- (a) has reason to suspect that a registered ship is not entitled to be registered; or
  - (b) is satisfied that, having regard to the matters referred to in section 18(1), it would be inappropriate for a registered ship to continue to be registered,
- it may serve a notice in terms of subsection (2) on the registered agent of the ship. 10
- (2) A notice contemplated in subsection (1) must state that the Authority—
- (a) is not satisfied that the ship in question is entitled to be registered or to continue to be registered, as the case may be; and
  - (b) intends on the expiration of a period of 30 days after the date of service of the notice to direct that the ship's registration be closed, unless it is satisfied 15
- that it would be inappropriate to do so in view of representations that may be made to it by the registered agent within that period.
- (3) If, after consideration of the representations contemplated in subsection (2), the Authority is of the opinion that the ship's registration should be closed, it may by notice in writing given to the Registrar direct that the ship's registration be closed. 20
- (4) The Registrar must comply with a notice in terms of subsection (3), and that notice must be regarded as a notice in terms of section 42(1)(b), with the result that section 42 is applicable.

**Unregistered ship entitled to be registered not to leave Republic**

- 44.** (1) An unregistered ship entitled to be registered may not depart from a South 25  
African port to a place outside the Republic.
- (2) The master of a ship that departs from a South African port in contravention of subsection (1), and any owner of that ship who orders or permits such departure, are each guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three years. 30
- (3) A customs officer may not grant a clearance in respect of an unregistered ship entitled to be registered that is about to depart from a South African port to a place outside the Republic.
- (4) Subsections (1) and (3) do not apply to a prescribed ship, or a ship of a prescribed 35  
class or description.

**Unregistered ship entitled to be registered not to leave foreign port**

- 45.** (1) Where an unregistered ship entitled to be registered is at a foreign port at which there is a proper officer, the ship may not depart from that port on a voyage unless and until a registration certificate, provisional registration certificate or temporary pass is issued in respect of that ship. 40
- (2) The master of a ship that departs from a foreign port in contravention of subsection (1) and any owner of that ship who orders or permits such departure are each guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three years.
- (3) Subsection (1) does not apply to a prescribed ship, or a ship of a prescribed class 45  
or description.

**Effects of non-registration**

- 46.** (1) A ship contemplated in section 44(2) or 45(2)—
- (a) is not recognised as a South African ship; and
  - (b) is not entitled to any benefit, privilege, advantage or protection usually 50  
enjoyed by a registered ship.

- (2) A ship to which subsection (1) applies, is dealt with in the same manner in all respects as if the ship were registered for the purposes of any law providing for—
- (a) the payment of levies, fees or other charges;
  - (b) the liability for fines, detention and forfeiture; and
  - (c) the punishment of offences committed on board a ship or by any person belonging to a ship. 5

#### **Notice to consular representative**

47. If any foreign ship is detained in terms of this Act, or if any criminal proceedings are instituted in terms of this Act against the master or owner of any foreign ship, notice must forthwith be served by the Authority on the consular representative of the flag state at or nearest to the port where the ship is for the time being, and such notice must state the grounds on which the ship has been detained or the proceedings have been taken. 10

#### **Forfeiture**

48. (1) In this section, “officer” means—
- (a) an officer of the Authority appointed in writing to be an officer for the purposes of this section; 15
  - (b) a member of the South African Police Service; or
  - (c) a member of the South African National Defence Force.
- (2) Where a ship is subject to forfeiture in terms of this Act, an officer may seize and detain the ship and the Minister may apply to a court for an order contemplated in subsection (3). 20
- (3) On application being made in terms of subsection (2), the court may order a ship and its equipment to be forfeited to the State.
- (4) Anything forfeited in terms of this section becomes the property of the State and may be sold or otherwise dealt with as the Minister deems fit. 25

#### **Detention of ships**

49. (1) Where it is provided by this Act that a ship may be detained, the ship may be detained by an officer referred to in section 48(1).
- (2) Where a ship detained in terms of this Act goes to sea before it is released from detention by a competent authority, the master and any owner of that ship who orders or permits such action are each guilty of an offence. 30
- (3) A customs officer may not grant a clearance in respect of a ship that is detained in terms of this Act.

#### **Co-operation with officials**

50. (1) If an officer is taken to sea in a ship without his or her consent, the master, and any owner of the relevant ship who orders or permits such action, are each guilty of an offence and, in addition to any penalty for that offence, are jointly and severally liable to pay all expenses incidental to the officer’s return. 35
- (2) The master and each member of the crew of any ship must—
- (a) immediately comply with any lawful instruction given or request made by an officer and must facilitate safe boarding and inspection of the ship; and 40
  - (b) must take all measures to ensure the safety of an officer in the performance of his or her duties.

#### **False statements**

51. (1) A person who, by means of a statement that he or she knows to be false or misleading or by means of a document that to his or her knowledge contains information that is false or misleading, causes or attempts to cause an officer to do or refrain from doing any act or thing in the exercise of powers or the performance of duties in terms of this Act, is guilty of an offence. 45

- (2) No person may—
- (a) make a statement to an officer, whether orally or in writing; or
  - (b) present a statement in writing to an officer,
- knowing it to be false or misleading in a material aspect.
- (3) For the purposes of the application of this section in respect of a body corporate, 5  
but without prejudice to the liability of any person other than the body corporate—
- (a) a statement made or presented or otherwise used by a person acting on behalf  
of a body corporate is deemed to have been made, presented or otherwise used  
by the body corporate; and
  - (b) the knowledge of any person employed by or concerned in the management of 10  
a body corporate is deemed to be knowledge of the body corporate.

### Offences and penalties

- 52.** (1) Any person who fails to comply with or contravenes section 4(2) or (3),  
20(3), 21(1), 24(2) or (3), 25(6), 26(5), 27(5), 38, 42(10), 50(2) or 51(2) or item 4(1),  
12(2), 13(1) or 14(2) of Schedule 1 is guilty of an offence. 15
- (2) Except where this Act provides otherwise, a person who has been convicted of an  
offence in terms of this Act, is liable to a fine or to imprisonment for a period not  
exceeding two years.
- (3) Any person who fails to comply with or contravenes section 20(2), 41 or 42(1) or  
item 8(1) or (2) of Schedule 1 is, in respect of each day on which that person contravenes 20  
that section or item, guilty of an offence, including the day of a conviction for an offence  
in terms of this subsection or any subsequent day, and liable on conviction to a fine or  
to imprisonment for a period not exceeding three months.
- (4) A person who has been convicted of a contravention of section 5(1) or (3), 24, 30  
or 51(1) or (2) is liable on conviction to a fine or to imprisonment for a period not 25  
exceeding five years.
- (5) Where a body corporate is guilty of an offence in terms of this Act, a director,  
manager, secretary or other officer of the body corporate who is in any way, by act or  
omission, directly or indirectly, knowingly concerned in or a party to the offence, is also  
guilty of that offence and is punishable accordingly. 30

### Administrative penalty on admission of guilt

- 53.** (1) If a person—
- (a) admits to the Authority that he or she has contravened or failed to comply with  
any provision of this Act, which contravention or failure constitutes an  
offence; 35
  - (b) agrees to abide by the decision of the Authority; and
  - (c) deposits with the Authority the sum determined by it, but not exceeding the  
maximum fine that may be imposed on a conviction for the contravention or  
failure in question,
- the Authority may, after any enquiry that it may deem fit, determine the matter 40  
summarily and may, without legal proceedings, order the whole or any part of the said  
deposit to be forfeited to the State by way of a penalty.
- (2) When a penalty exceeding R2 000 is imposed, there is a right of appeal to the  
Minister from a determination or order by the Authority in terms of subsection (1),  
provided that such right must be exercised within a period of three months from the date 45  
of the determination or order.
- (3) The imposition of a penalty in terms of subsection (1) is deemed not to be a  
conviction of an offence, but no prosecution in respect of the offence in question may  
thereafter be instituted.

### Admissibility of documentary evidence 50

- 54.** (1) A document that is admissible in evidence in terms of this Act is on mere  
production thereof admissible in evidence in any proceedings as *prima facie* evidence of  
any matter stated in the document in pursuance of this Act or in pursuance of any duty

in terms of this Act, and of the fact that it was signed by the person by whom it purports to be signed.

(2) The Registrar may, subject to this Act, supply copies of or extracts from any entry in the Register or any document forming part of or associated with the Register, and certify them in writing, signed by him or her. 5

(3) The person to whose custody a document referred to in subsection (1), other than a copy or extract referred to in subsection (2), is entrusted, must against payment of the relevant charge, supply a copy of or extract from the document, certified in writing and signed by him or her, to any person applying for such a copy or extract.

(4) A document purporting to be a copy or extract supplied in terms of subsection (2) or (3) is admissible in evidence. 10

### **Jurisdiction**

**55.** (1) Any offence in terms of this Act is, for purposes in relation to the jurisdiction of a court to try the offence, deemed to have been committed within the area of jurisdiction of the court in which the prosecution is instituted. 15

(2) Notwithstanding anything to the contrary in any other Act, a magistrate's court has jurisdiction to impose any penalty prescribed by this Act.

### **Regulations**

**56.** (1) The Minister may make regulations regarding—

(a) any matter required or permitted to be prescribed in terms of this Act; and 20

(b) generally all matters that are reasonably necessary or expedient to be prescribed in order to achieve the objects of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations regarding—

(a) the persons by whom, the manner in which and the period within which applications in connection with registration and the issue of any certificate or pass are to be made; 25

(b) the information and evidence to be provided in connection with the applications contemplated in paragraph (a) and any supplementary information and evidence that may be required by any specified authority; 30

(c) the restriction and regulation of the names of ships registered or to be registered;

(d) the marking of ships registered or to be registered;

(e) the survey and inspection of ships registered or to be registered and the recording of their tonnage as ascertained or re-ascertained in terms of the Merchant Shipping Act, 1951; 35

(f) the period for which the registration of a ship is to remain effective without renewal;

(g) the refusal, suspension and closure of registration in specified circumstances;

(h) matters arising out of the expiration, suspension and closure of registration, including the removal of marks and the surrender and cancellation of certificates; 40

(i) the registration of ships on bareboat charter to South African nationals;

(j) the registration of registered ships on bareboat charter to persons other than South African nationals or South African residents; 45

(k) the re-registration of ships entitled to be registered, which have been abandoned or whose registration in terms of this Act, or in terms of any law repealed by this Act, has been closed;

(l) the keeping of the Register and copies of the Register, or a part or parts of the Register; 50

(m) the entries to be made in the Register;

(n) the manner in which and the period within which documents and information are to be lodged, including provisions empowering the Registrar—

(i) to direct a person who has lodged, or is seeking to lodge, any document

- or information to do anything that is necessary to ensure that it is in accordance with the requirements of this Act; or
- (ii) to treat any document or information as not having been lodged until it is in accordance with the requirements of this Act;
- (o) the registration, whether by way of entry in the Register or otherwise, of documents and information; 5
- (p) the verification of information and documents required for the purposes of this Act;
- (q) the qualifications required of, and other requirements relating to, registered agents; 10
- (r) the retention or return by the Registrar of documents lodged in accordance with this Act;
- (s) the selection and change of home ports for registered ships;
- (t) the matters to be recorded or endorsed on registration certificates, provisional registration certificates and temporary passes; 15
- (u) the making of any declaration or the doing of anything required or permitted by this Act to be made or done in the name and on behalf of a person incapable of making such a declaration or doing any such thing by reason of minority, mental disorder or defect, or other cause;
- (v) the manner in which instruments, notices and other documents in terms of this Act may be given to, or served on, persons; 20
- (w) the payment of fees and expenses to persons required in terms of this Act to attend and give evidence or make declarations before the Registrar or other persons;
- (x) the conduct of any matter relating to the Registration Office; 25
- (y) the declaration of specified documents, or of documents included in specified classes of documents, to be admissible in evidence for the purposes of section 54;
- (z) the form of any instrument, notice or other document permitted or required to be issued, furnished, lodged or registered for the purposes of this Act. 30
- (3) The regulations may—
- (a) make different provision for different classes or descriptions of ships and for different circumstances;
- (b) without prejudice to the generality of paragraph (a), make provision for the granting of exemptions or dispensations by the Authority from specified requirements of the regulations, subject to any condition that it may deem fit to impose; 35
- (c) make provision for the registration of any class or description of ships to be such as to exclude the application of Schedule 1 and may regulate the transfer, transmission or mortgaging of ships of the class or description so excluded; 40
- (d) prohibit the registration of any class or description of ships;
- (e) make the incidental or supplementary provisions that appear to the Minister to be necessary or expedient, including provisions authorising investigations and conferring powers of inspection.
- (4) A regulation made under this Act may provide that a person who contravenes or fails to comply with a provision thereof, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three years. 45

### Charges

- 57.** The Authority may, for the purposes of this Act, impose charges under section 44 of the Maritime Safety Authority Act, 1998, in respect of— 50
- (a) applications in terms of this Act;
- (b) the lodging and registration of documents or information;
- (c) the registration and re-registration of ships;
- (d) the issue of registration certificates, provisional registration certificates, temporary passes and certificates contemplated in section 4(5); 55

- (e) the supplying of copies of or extracts from entries in the Register or documents forming part of or associated with the Register; and
- (f) the inspection of ships.

### **Exemption from stamp duty**

**58.** No stamp duty is payable in respect of any document required or issued in terms of this Act. 5

### **Delegation of powers**

**59.** (1) The Registrar may, either generally or subject to conditions, in writing delegate to an officer of the Authority any power vested in him or her by or under this Act. 10

(2) A power delegated in terms of this section, when exercised by the delegated officer, must be regarded to have been exercised by the Registrar.

(3) A power delegated in terms of this section may not be delegated by the delegated officer.

(4) A delegation in terms of this section does not prevent the exercise of a delegated power by the Registrar. 15

### **Repeal and amendment of laws**

**60.** Subject to section 61—

- (a) sections 11 to 16 and 19 to 67 of the Merchant Shipping Act, 1951, are hereby repealed; and 20
- (b) the laws mentioned in Schedule 2 are hereby amended to the extent indicated in the third column thereof.

### **Transitional provisions**

**61.** (1) Schedule 3 applies to the transition to this Act after the repeal and amendment of the provisions of the laws referred to in section 60, and any matter incidental to that transition. 25

(2) In any other law, except a law declared by regulation to be a law to which this section does not apply, or any instrument made or having effect thereunder, unless the context indicates otherwise—

- (a) a reference, however expressed, to a ship registered in the Republic or required to be so registered must be regarded as a reference to a registered ship or a ship entitled to be registered, as the case may be, in terms of this Act; 30
- (b) a reference, however expressed, to the certificate of registry of a ship must be regarded as a reference to the registration certificate or provisional registration certificate, as the case may be, of the ship; and 35
- (c) a reference, however expressed, to the port of registry of a ship registered in the Republic must be regarded as a reference to the home port of a registered ship selected or changed in terms of this Act.

### **Short title and commencement**

**62.** This Act is called the Ship Registration Act, 1998, and comes into operation on a date fixed by the President by proclamation in the *Gazette*. 40

**Schedule 1****PRIVATE LAW PROVISIONS FOR REGISTERED SHIPS****(Section 31(7))****Definitions****1.** In this Schedule—

- (a) “bill of sale” means a bill of sale referred to in item 3; and
- (b) “ship” means a registered ship.

**General**

**2.** (1) No record of any interest in a ship or in a share in a ship, other than by way of ownership or mortgage, may be made in the Register and, subject to this Act and to any rights and powers appearing in the Register to be vested in any other person, the right of an owner of a ship or of a share in a ship to dispose of the ship or share is not affected by this Act.

(2) Subject to subitem (1), any beneficial interest may be enforced by or against the owner or mortgagee of a ship or of a share in a ship in respect of his or her interest in the ship or share in the same manner as in the case of any other movable property, or as permitted by law.

**Transfer of ship**

**3.** (1) Subject to item 4, a ship or a share in a ship is transferred by registration of a bill of sale made in the prescribed form, unless the transfer will result in the ship ceasing to be entitled to be registered.

(2) The transferee under a bill of sale contemplated in subitem (1) may not be registered as the owner of the ship or share unless—

- (a) he or she has lodged the prescribed application with the Registrar; and
- (b) the Registrar is satisfied that the ship continues to be entitled to be registered and that he or she would not refuse to register the ship in terms of this Act.

(3) If an application in terms of subitem (2) is granted by the Registrar, the Registrar must register the bill of sale by entering in the Register the name of the transferee as owner of the ship or share and must endorse on the bill of sale that such entry has been made, with the date and time of entry.

(4) Bills of sale lodged in terms of this item must be registered in the order of their lodgment.

**Transmission by operation of law**

**4.** (1) Where any interest in a ship or a share in a ship is transmitted to a person by any lawful means other than by a transfer in terms of item 3 and the ship continues to be entitled to be registered, that person must make a declaration of transmission in the prescribed form and must lodge that declaration, together with the evidence of the transmission that may be prescribed, with the Registrar within 14 days of that transmission taking place or within the further period that the Registrar may allow in special circumstances.

(2) If the Registrar is satisfied that the ship continues to be entitled to be registered and that he or she would not refuse to register the ship in terms of this Act, the Registrar must thereupon enter in the Register the name of that person as owner of the ship or share.

**Order for sale on transmission where ship ceases to be entitled to be registered**

**5.** (1) Where any interest in a ship or share in a ship is transmitted to a person by any lawful means other than by a transfer in terms of item 3, but as a result thereof the ship is no longer entitled to be registered, the Authority may, on application by or on behalf

of that person, order a sale of the property so transmitted and direct that the proceeds of the sale, after deducting the expenses of the sale, be paid to that person.

(2) If an application is made to the Authority in terms of subitem (1), it must cause notice of that application to be published in the *Gazette* and in the newspapers and be served on the persons that it may determine.

(3) A notice contemplated in subitem (2) must be in a form approved by the Authority and must call on all persons who may object to the order being made to lodge their objections in writing with the Authority within the period determined in the notice.

(4) On proof of the publication and service of the notice contemplated in subitem (2), and—

(a) if no objection in writing has been lodged with the Authority within the period mentioned in the notice; and

(b) if the Authority is satisfied of the legality of the applicant's claim, it must make the order contemplated in subitem (1).

(5) If an objection in writing is lodged with the Authority within the period determined in the notice or if it is not satisfied of the legality of the applicant's claim, it must refuse to make the order.

(6) If the Authority refuses to make an order contemplated in subitem (1), the applicant may apply to a court for such an order.

(7) The court may require any evidence in support of the application it deems necessary, and may make the order on the terms and conditions it deems fit, or may refuse to make the order.

(8) Any application contemplated in subitem (1) must be made to the Authority within 30 days of the transmission taking place, or within the further period, not exceeding one year, that the Authority may allow, and any application contemplated in subitem (6) must be made to the court within 30 days after the refusal by the Authority to make the order, or within the further period, not exceeding one year, that the court may allow.

(9) A ship or a share in a ship is subject to forfeiture under this Act if—

(a) an application is not made within the period allowed in terms of subitem (8); or

(b) the court refuses to make the required order.

#### **Transfer of ship by order of Authority or court**

6. (1) Where the Authority or a court orders the sale of any ship or share in a ship in terms of this Act, the order must contain a declaration vesting in a named person the right to transfer the ship or share.

(2) The person contemplated in subitem (1) is entitled to transfer the ship or share in the same manner and to the same extent as if he or she were the registered owner of the ship or share.

(3) The Registrar must deal with any application relating to the transfer of the ship or share made by the person contemplated in subitem (1) as if that person were the registered owner.

#### **Power of court to prohibit transfer**

7. (1) A court may, if it deems it necessary, without prejudice to the exercise of any other power, on the application of any interested person, make an order prohibiting any dealing with a ship or a share in a ship for a determined period.

(2) A court may make the order contemplated in subitem (1) on the terms and conditions it deems fit, or may refuse to make the order.

(3) When a copy of an order contemplated in subitem (1) is served on the Registrar, it is binding on him or her whether or not the Registrar was a party to the proceedings.

#### **Endorsement of registration certificate on change of ownership**

8. (1) Where a ship or a share in a ship is transferred to a person by a bill of sale or

transmitted to a person by any other lawful means, the person who has possession or control of the ship's registration certificate must deliver the certificate to the person to whom the ship or share is transferred or transmitted—

- (a) if the ship is at a South African port at the time of the transfer or transmission, within ten days after the transfer or transmission; or
  - (b) in any other case, as soon as is practicable after the transfer or transmission.
- (2) Where a registration certificate is delivered to a person in terms of subitem (1), that person must immediately deliver the certificate to the Registrar.
- (3) Where a registration certificate is delivered to the Registrar in terms of subitem (2), the Registrar must, subject to item 3(2) or 4(2), as the case may be—
- (a) endorse the registration certificate with the particulars of change of ownership of the ship or share; and
  - (b) cause the endorsed certificate to be returned to the registered agent of the ship or to the person that the registered agent directs.

### **Mortgage of ship**

**9.** (1) A ship or a share in a ship may be mortgaged as security for the discharge of an obligation in terms of this Act.

(2) A mortgage contemplated in subitem (1) is created by the registration of a mortgage instrument made in the prescribed form.

(3) Subject to subitem (4), on lodgment of a prescribed mortgage instrument, the Registrar must register the mortgage instrument by entering its particulars in the Register and must endorse the fact that such entry has been made on the instrument, with the date and time of entry.

(4) The Registrar may not register a subsequent mortgage instrument without the written consent of the existing mortgagees under all prior mortgages of the ship or share in question.

(5) Mortgage instruments lodged in terms of this item must be registered in the order of their lodgment.

### **Priority of mortgages**

**10.** Where two or more mortgages are registered in respect of the same ship or share in a ship, the priority among the mortgagees is in accordance with the order of registration of the mortgages.

### **Rights of mortgagee**

**11.** (1) The mortgagee under a mortgage of a ship or of a share in a ship may recover any amount due under the mortgage in a court and, when giving judgment or thereafter, the court may direct that the ship or share in question be sold in execution of the judgment.

(2) Subject to subitem (1), the mortgagee under a mortgage of a ship or of a share in a ship is not merely by reason of the mortgage entitled to sell or otherwise dispose of the ship or share.

### **Transfer of mortgage**

**12.** (1) A mortgage of a ship or of a share in a ship is transferred by an instrument of transfer made in the prescribed form.

(2) Where a mortgage is transferred as contemplated in subitem (1), the transferee must lodge the instrument of transfer, together with the relative mortgage instrument, with the Registrar within 14 days after execution of the instrument of transfer or within the further period that the Registrar may allow in special circumstances.

(3) The Registrar must enter in the Register the name of the transferee as the mortgagee of the ship or share which is the subject of the mortgage and must endorse the fact that such entry has been made on the instrument of transfer, with the date and time of entry.

(4) A transferee of a mortgage in terms of this Act enjoys the same right of preference that was enjoyed by the transferor.

**Transmission of mortgage by operation of law**

**13.** (1) Where the interest of a mortgagee in a mortgage of a ship or of a share in a ship is transmitted to a person by any lawful means other than by a transfer in terms of item 12, that person must make a declaration of transmission in the prescribed form and must lodge that declaration, together with the evidence of the transmission that may be prescribed, with the Registrar within 14 days of that transmission taking place or within the further period that the Registrar may allow in special circumstances.

(2) The Registrar must enter in the Register the name of the person contemplated in subitem (1) as mortgagee of the ship or share.

**Discharge of mortgage**

**14.** (1) In this item, “mortgagor”, in relation to a ship or a share in a ship, includes any person in whom, having regard to any intervening act and circumstances, the interest of the mortgagee would have been vested had the mortgage not been made.

(2) Where a mortgage is discharged, the mortgagor must lodge the mortgage instrument, together with the evidence of the discharge of the mortgage that may be prescribed, with the Registrar within 14 days after the discharge or within the further period that the Registrar may allow in special circumstances.

(3) The Registrar must make an entry in the Register to the effect that the mortgage has been discharged and, on that entry being made, any interest of the mortgagee under the mortgage vests in the mortgagor.

(4) Where the mortgage instrument cannot, for any reason, be lodged with the Registrar, the mortgagor must make and lodge with the Registrar a declaration setting out the particulars relating to the ship in respect of which the mortgage was given, the mortgage and its discharge and the particulars that may be prescribed for the purposes of this item.

## Schedule 2

**AMENDMENT OF LAWS**  
**(Section 60(b))**

No. and year of law	Short title	Extent of amendment
Act No. 57 of 1951	Merchant Shipping Act, 1951	<p><b>I. Amendment of section 2—</b></p> <p>(a) by the insertion in subsection (1) after the definition of “goods” of the following definition:  “<u>‘High Court’ means any division of the High Court of the Republic;</u>”;</p> <p>(b) by the insertion in subsection (1) after the definition of “international voyage” of the following definition:  “<u>‘licence’, in relation to a ship, means a licence contemplated in section 68; and ‘licensed’ shall be construed accordingly;</u>”;</p> <p>(c) by the substitution in subsection (1) for the definition of “owner” of the following definition:  “<u>‘owner’ means any person to whom a ship or a share in a ship belongs, except as provided otherwise by regulation;</u>”;</p> <p>(d) by the substitution in subsection (1) for the definition of “port of registry” of the following definition:  “<u>‘port of registry’, in relation to a ship, means its home port as selected or changed in accordance with the Ship Registration Act, 1998;</u>”;</p> <p>(e) by the insertion in subsection (1) after the definition of “recognized non-South African” of the following definition:  “<u>‘registered’, in relation to a ship (except with reference to the law of another country), means registered or deemed to be or regarded as registered under the Ship Registration Act, 1998;</u>”;</p> <p>(f) by the substitution in subsection (1) for the definition of “register tons” and “register tonnage” of the following definition:  “<u>‘register tons’ and ‘register tonnage’ mean, in relation to a South African ship, either the gross or net tonnage of the ship, as the case may be, recorded in the register established by section [fifteen] 33 of the Ship Registration Act, 1998, and in the case of any other ship, the tonnage accepted or determined by the Minister, Authority or proper officer;</u>”;</p> <p>(g) by the substitution in subsection (1) for the definition of “South African ship” of the following definition:  “<u>‘South African ship’ means a ship registered in the Republic [in terms of this Act or deemed to be so registered];</u>”;</p> <p>(h) by the deletion in subsection (1) of the definition of “superior court”; and</p>

No. and year of law	Short title	Extent of amendment
		<p>(i) by the substitution in subsection (1) for the definition of “surveyor” of the following definition:</p> <p>“ ‘surveyor’ means any person recognized or appointed in terms of section 4(b) <b>[or any qualified person employed as a surveyor by an organization referred to in an instrument of delegation issued under section 4(d)]</b>.”.</p> <p>2. Amendment of section 3—</p> <p>(a) by the substitution for subsection (4) of the following subsection:</p> <p>“(4) Unless otherwise indicated, those provisions of this Act which apply to vessels which are registered or licensed in the Republic or which in terms of this Act are required to be so <b>[registered or]</b> licensed shall so apply wherever such vessels may be.”; and</p> <p>(b) by the substitution for subsection (7) of the following subsection:</p> <p>“(7) <u>Except as provided otherwise by regulation</u>, the provisions of this Act shall apply to any vessel <b>[or ship]</b> contemplated in section 68(3)(b) as if such vessel <b>[or ship]</b> were licensed in terms of this Act.”.</p> <p>3. Substitution for section 4 of the following section:</p> <p><b>“Powers of Authority</b></p> <p>4. <u>The Authority may—</u></p> <p>(a) <u>appoint such officers as it considers necessary for the administration of this Act;</u></p> <p>(b) <u>recognize or appoint as a ship surveyor, engineer surveyor or radio or other surveyor any qualified person whom it deems fit to act as such for the purposes of this Act;</u></p> <p>(c) <u>subject to such conditions as may be determined by it, and with the concurrence of the Minister, exempt any person from any of or all the provisions of the regulations made under section 356.</u>”.</p> <p>4. Amendment of section 10 by the substitution for subsection (1) of the following subsection:</p> <p>“(1) Every person who at the coming into operation of this section is building, or after such coming into operation intends to build, a vessel which when completed will be <b>[required to be]</b> registered or licensed in <b>[terms of this Act]</b> the Republic, shall within sixty days of such coming into operation or before beginning to build the vessel, as the case may be, furnish to the proper officer at the port where the vessel will be registered or licensed or to the Authority such written particulars of the vessel as may be prescribed.”.</p> <p>5. Substitution for section 17 of the following section:</p>

No. and year of law	Short title	Extent of amendment
		<p data-bbox="852 253 1246 304"><b>“Tonnage once ascertained to be tonnage of ship</b></p> <p data-bbox="852 331 1246 645">17. Whenever the tonnage of a ship has been ascertained and <b>[registered]</b> recorded in accordance with this Act, that tonnage shall <b>[thenceforth]</b> be <b>[deemed to be]</b> the tonnage of the ship <b>[and shall be repeated in every subsequent registry thereof]</b> unless any alteration is made in the form or capacity of the ship, or unless it is discovered that the tonnage of the ship has been erroneously computed, in either of which cases the ship shall be resurveyed, and her tonnage redetermined in accordance with this Act.”.</p> <p data-bbox="807 656 1246 707">6. Amendment of section 18 by the substitution for subsection (4) of the following subsection:</p> <p data-bbox="852 707 1246 1178">“(4) If from the report of a surveyor so directed to inspect a ship it appears to the Authority that the tonnage of that ship, as so denoted, materially differs from that which would be her tonnage if measured under this Act or that her construction and equipment as regards the said space do not, for the purpose of determining her tonnage conform to the said standards, or if for any reason it appears to the Authority that the tonnage of any ship so registered has been erroneously computed, it may order that, notwithstanding any direction for the time being in force under this section, that ship or any ship registered in the country to which the direction relates shall, for all or any of the purposes of this Act or the <u>Ship Registration Act, 1998</u>, be surveyed in accordance with this Act.”.</p> <p data-bbox="807 1189 1246 1240">7. Substitution for section 68 of the following section:</p> <p data-bbox="852 1267 1246 1290"><b>“Certain vessels to be licensed</b></p> <p data-bbox="852 1323 1246 1503">68. (1) <u>The owner or the master of a vessel which is not registered in the Republic or elsewhere and which operates at or from a port in or from anywhere else on the coast of the Republic, shall be in possession of a licence issued to him in terms of this Act by a proper officer.</u></p> <p data-bbox="852 1514 1246 1659">(2) An application for a licence in terms of subsection (1) shall be made in the prescribed form and the owner or master shall produce to the proper officer a local general safety certificate and, where applicable, a local safety exemption certificate.</p> <p data-bbox="852 1671 1246 1715">(3) The provisions of this section shall not apply in respect of any vessel—</p> <p data-bbox="852 1727 1246 1816">(a) <u>unless the vessel is entitled to be registered in the Republic in terms of section 16(a) or (b) of the Ship Registration Act, 1998; or</u></p> <p data-bbox="852 1827 1246 1872">(b) <u>of less than 100 gross tons used solely for sport or recreation.”.</u></p>

No. and year of law	Short title	Extent of amendment
		<p><b>8.</b> Amendment of section 72A by the substitution for paragraph (b) of subsection (2) of the following paragraph: “(b) <u>prescribe the conditions subject to which any such vessel may so be used.</u>”.</p> <p><b>9.</b> Amendment of section 139 by the substitution for subsection (2) of the following subsection: “(2) For the purposes of this section, a ship shall be deemed to be <u>constructively lost if—</u> (a) <u>the ship is reasonably abandoned because its actual total loss appears to be unavoidable;</u> (b) <u>the ship cannot be preserved from actual total loss without an expenditure that would exceed its value when the expenditure has been incurred; or</u> (c) <u>the ship has been damaged to the extent that the cost of repairing the damage would exceed its value when repaired.</u>”.</p> <p><b>10.</b> Amendment of section 190 by the substitution for subsection (1) of the following subsection: “(1) If the owner of any vessel which [<b>in terms of this Act</b>] is [<b>required</b>] or is to be registered or licensed <u>in the Republic</u> desires that a safety convention certificate or a local safety certificate be issued in respect of the vessel, he shall, before he applies for the issue of the certificate, cause her to be inspected by a surveyor.”.</p> <p><b>11.</b> Amendment of section 192— (a) by the substitution for paragraph (a) of the following paragraph: “(a) that a passenger ship which [<b>in terms of this Act</b>] is [<b>required</b>] or is to be registered <u>in the Republic</u> is constructed and equipped in accordance with all the requirements of the construction regulations, the life-saving equipment regulations, the radio regulations, the collision regulations and any other regulations which may have been made, which are applicable to the ship when plying on international voyages or on short international voyages, it shall cause to be issued in respect of the ship a passenger ship safety certificate for an international voyage or a short international voyage, as the case may be;” and (b) by the substitution for paragraph (c) of the following paragraph:</p>

No. and year of law	Short title	Extent of amendment
		<p>“(c) that a passenger ship which <b>[in terms of this Act]</b> is <b>[required]</b> or <u>is</u> to be registered in the Republic is exempt, by virtue of the exercise by it of a power conferred on it by the construction regulations, the life-saving equipment regulations, the radio regulations, the collision regulations or any other regulations which may have been made, from any of the requirements of the said regulations applicable to the ship when plying on international voyages, or on short international voyages, or when engaged in any special passenger trade on such voyages, and that she is constructed and equipped in accordance with the remaining requirements, it shall cause to be issued in respect of the ship an exemption certificate and a passenger ship safety certificate.”.</p> <p><b>12. Amendment of section 193—</b></p> <p>(a) by the substitution in paragraph (1) for the words preceding subparagraph (a) of the following words:</p> <p>“that a ship (other than a passenger ship) to which the Safety Convention applies and which <b>[in terms of this Act]</b> is <b>[required]</b> or <u>is</u> to be registered in the Republic is constructed and equipped in accordance with all the requirements of the construction regulations, the life-saving equipment regulations, the collision regulations and any other regulations which may have been made, which are applicable to the ship when plying on international voyages, it shall cause to be issued in respect of that ship—”;</p> <p>(b) by the substitution in paragraph (2) for the words preceding subparagraph (a) of the following words:</p> <p>“that a ship (other than a passenger ship) to which the Safety Convention applies and which <b>[in terms of this Act]</b> is <b>[required]</b> or <u>is</u> to be registered in the Republic is exempt, by virtue of the exercise by it of a power conferred on it by the construction regulations, the life-saving equipment regulations, the collision regulations or any other regulations which may have been made, from any of the requirements of the said regulations applicable to the ship when plying on international voyages, and that she is constructed and equipped in accordance with the remaining requirements, it shall cause to be issued in respect of the ship—”;</p> <p>(c) by the substitution for paragraph (3) of the following paragraph:</p>

No. and year of law	Short title	Extent of amendment
		<p>“(3) that a ship (other than a passenger ship) to which the Safety Convention applies and which <b>[in terms of this Act] is [required] or is</b> to be registered in the Republic is equipped in accordance with all the requirements of the radio regulations applicable to the ship when plying on international voyages, it shall cause to be issued in respect of the ship a cargo ship safety radio certificate;” and</p> <p>(d) by the substitution in paragraph (4) for the words preceding subparagraph (a) of the following words:</p> <p>“that a ship (other than a passenger ship) to which the Safety Convention applies and which <b>[in terms of this Act] is [required] or is</b> to be registered in the Republic is exempt, by virtue of the exercise by it of a power conferred on it by the radio regulations, from any or all of the requirements of the said regulations applicable to the ship when plying on international voyages, and that she is equipped in accordance with the remaining requirements (if any), it shall cause to be issued in respect of the ship—”.</p> <p><b>13.</b> Amendment of section 194 by the substitution in subsection (2) for the words following on subparagraph (ii) of the following words:</p> <p>“and which <b>[in terms of this Act] are [required] or are</b> to be registered or licensed in the Republic.”.</p> <p><b>14.</b> Amendment of section 197 by the substitution for paragraph (a) of subsection (3) of the following paragraph:</p> <p>“(a) The Authority may grant an extension of—</p> <p>(i) any safety convention certificate, except a cargo ship safety construction certificate; or</p> <p>(ii) any local safety certificate, issued in respect of any vessel registered or licensed <b>[under this Act] in the Republic</b>, for a period not exceeding one month from the date when the certificate would, but for the extension, have expired, or, if the vessel is absent from the Republic on that date, for a period not exceeding five months from that date.”.</p> <p><b>15.</b> Amendment of section 200 by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:</p> <p>“Neither the owner nor the master of a South African ship shall cause or permit her to proceed to sea from any port within or outside the Republic, or cause or permit her to operate at or from a port in or from anywhere else on the coast of the Republic, unless there is on board and in force in respect of that ship—”.</p> <p><b>16.</b> Amendment of section 205 by the substitution for subsection (1) of the following subsection:</p>

No. and year of law	Short title	Extent of amendment
		<p>“(1) If the owner of any load line ship which <b>[in terms of this Act]</b> is <b>[required]</b> or is to be registered in the Republic desires that a load line certificate be issued in respect of the ship, he shall, before he applies for the issue of the certificate, cause her to be inspected by a surveyor.”.</p> <p><b>17.</b> Amendment of section 209 by the substitution for subsection (2) of the following subsection: “(2) The Authority may grant an extension of any international load line certificate or of any local load line certificate issued in respect of any ship registered <b>[under this Act]</b> in the Republic, for a period not exceeding one month from the date when the certificate would, but for the extension, have expired, or, if the ship is absent from the Republic on that date, for a period not exceeding five months from that date.”.</p> <p><b>18.</b> Amendment of section 232 by the substitution for the words preceding paragraph (a) of subsection (1) of the following words: “The master of a vessel which is registered or licensed in the Republic or which, in terms of this Act, is required to be so <b>[registered or]</b> licensed shall not, within or outside the Republic, and the master of any other vessel shall not, within the Republic or the territorial waters thereof, use or display or cause or permit any person under his authority to use or display, and no person shall use or display at a place on land within the Republic from which it can be seen from the sea—”.</p> <p><b>19.</b> Amendment of section 259 by the substitution for subsection (2) of the following subsection: “(2) Subsection (1) shall, subject to subsection (3), apply to every ship which is registered or licensed in the Republic or which is in terms of this Act required to be so <b>[registered or]</b> licensed and to or in respect of or on board of which any such event as is referred to in subsection (1) has occurred anywhere, and it shall apply to a ship registered in a country other than the Republic only while she is within the Republic or the territorial waters thereof and if any such event has occurred to or in respect of or on board of the ship during a voyage to a port in the Republic or within the Republic or the territorial waters thereof.”.</p> <p><b>20.</b> Amendment of section 264 by the substitution in paragraph (a) of subsection (1) for the words preceding subparagraph (i) of the following words: “in the case of a ship which is registered or licensed in the Republic or which is in terms of this Act required to be so <b>[registered or]</b> licensed, whenever—”.</p>

No. and year of law	Short title	Extent of amendment
		<p><b>21.</b> Amendment of section 269 by the substitution for subsection (2) of the following subsection: “(2) Subsection (1) shall apply in respect of masters or members of the crew of all ships which are registered or licensed in the Republic or which are in terms of this Act required to be so <b>[registered or]</b> licensed, and in respect of masters or members of the crew of ships registered in a country other than the Republic only if those ships are wholly engaged in plying between ports in the Republic.”.</p> <p><b>22.</b> Amendment of section 287 by the substitution for subparagraph (ii) of paragraph (b) of the following subparagraph: “(ii) outside the Republic and the territorial waters of the Republic only in respect of ships which are registered or licensed in the Republic or which are in terms of this Act required to be so <b>[registered or]</b> licensed.”.</p> <p><b>23.</b> Amendment of section 356— (a) by the deletion of paragraphs (iv), (v), (vii), (viii) and (xi)<i>bis</i> of subsection (1); and (b) by the deletion of subsection (7).</p> <p><b>24.</b> Substitution for the expression “superior court” wherever it occurs of the expression “High Court”.</p>
Act No. 2 of 1981	Marine Traffic Act, 1981	<p><b>25.</b> Amendment of section 1 by the substitution for the definition of “foreign” of the following definition: “ ‘foreign’, in relation to any ship, submarine or other underwater vehicle, means a ship, submarine or other underwater vehicle not having South African nationality by virtue of section <b>[64] 3</b> of the <b>[Merchant Shipping Act, 1951 (Act No. 57 of 1951)] Ship Registration Act, 1998;</b>”.</p>
Act No. 2 of 1986	Marine Pollution (Prevention of Pollution from Ships) Act, 1986	<p><b>26.</b> Amendment of section 1 by the substitution for the definition of “South African ship” of the following definition: “ ‘<u>South African ship</u>’ means any ship having <u>South African nationality by virtue of section 3 of the Ship Registration Act, 1998;</u>”.</p>
Act No. 94 of 1996	Wreck and Salvage Act, 1996	<p><b>27.</b> Amendment of section 1 by the substitution for the definition of “South African ship” of the following definition: “ ‘<u>South African ship</u>’ means any ship having <u>South African nationality by virtue of section 3 of the Ship Registration Act, 1998;</u>”.</p>

### Schedule 3

## TRANSITIONAL PROVISIONS (Section 61)

### Definitions

1. In this Schedule, unless the context indicates otherwise—
  - (a) “commencing date”, in relation to any provision of this Act, means the date fixed in respect of that provision under section 62; and
  - (b) “repealed law” means a law repealed by section 60(a).

### Additional operation of Schedule

2. Without prejudice to its effect apart from this item, this Schedule also has, by virtue of this item, the effect it would have if a reference in item 3 to a ship entitled to be registered were a reference to a ship other than a ship so entitled.

### Ships registered in Republic in terms of repealed law

3. (1) Every ship entitled to be registered that was immediately before the commencing date registered in terms of a repealed law at a South African port is deemed, on and from that date, to be registered in terms of this Act.
- (2) Any entry or record in respect of a ship referred to in subitem (1), that immediately before the commencing date appeared in a register book kept at a South African port in terms of a repealed law, is deemed to be an entry or record in the Register in respect of that ship and to have been made on the date on which and at the time when it was made in terms of the repealed law.

### Instrument made in terms of repealed law continues in force

4. (1) Subject to subitems (2) and (3)—
  - (a) any instrument or other document made in terms of a provision of a repealed law and in effect immediately before the commencing date; and
  - (b) any endorsement, memorandum or other note made in terms of a repealed law on any such instrument or document and in effect immediately before the commencing date,
 continue to have effect on and after that date as if it had been made in terms of the corresponding provision of this Act.
- (2) Where any instrument or other document referred to in subitem (1) is lodged with or received by the Registrar for the purposes of this Act, and the Registrar is of the opinion that—
  - (a) the instrument or document does not sufficiently comply with the requirements of this Act; or
  - (b) it would be inappropriate to accept the instrument or document for the purposes of this Act,
 the Registrar may refuse to accept the instrument or document for the purposes of this Act.
- (3) Subitem (1) does not apply to a certificate of mortgage or a certificate of sale granted in terms of section 52 of the Merchant Shipping Act, 1951.

### Applications in terms of repealed law

5. Despite anything to the contrary in this Act, where—
  - (a) before the commencing date, an application was made in terms of a repealed law, but not finalised; and
  - (b) the Registrar is satisfied that the requirements of this Act in respect of an application of the same kind are substantially similar to the requirements of the repealed law,
 the Registrar must treat that application as if it had been made in terms of this Act.

### **Certificates of registry may be recalled**

6. For the purpose of the issue of a registration certificate in terms of this Act in respect of a ship deemed to be registered by virtue of item 3, the Registrar may recall the certificate of registry issued in terms of a repealed law in respect of the ship.

### **Registers kept in terms of repealed law**

7. Each register kept at a South African port in terms of a repealed law is deemed to be part of the Register to be kept in terms of this Act, and any documents retained in terms of that repealed law that are associated with the register book kept in terms thereof must be retained by the Registrar.

### **Request for verification and information**

8. (1) The Registrar may by notice in writing served on the registered agent of a ship deemed to be registered by virtue of item 3 or, if there is no registered agent entered in the Register in respect of that ship, the registered owner of that ship, require him or her—

- (a) to verify, in the manner determined in the notice, any matter or particular appearing in the Register by virtue of item 7; or
- (b) to furnish the information and documents relating to the ship and its owner determined in the notice, being information and documents of the kind required in connection with or in support of an application for registration,

or to do that verification as well as to furnish that information and documents, within a determined period, but not less than 30 days after the date of service of the notice.

(2) If the person on whom a notice is served in terms of subitem (1) fails to verify a matter or particular or to furnish any information or document in accordance with that notice, the Authority may, unless the Authority has information that leads it to believe that the ship may still be entitled to be registered, by notice in writing given to the Registrar direct that the registration of the ship be closed and, on receipt of such a notice by the Registrar, that notice must be regarded as a notice in terms of section 42(1)(b), and section 42 is applicable.

(3) Where no entry or amendment of an entry has been made in respect of a ship in the Register for the period that may be prescribed for the purposes of this item, the Registrar may by notice in the *Gazette* specifying the name of the ship, the official number of the ship and the full name and address of the registered owner, determine that, unless the Registrar is contacted within 30 days by the registered owner, the registered agent, or another person having knowledge of the whereabouts of either the ship or the registered owner or registered agent, the Registrar must inform the Authority of the fact that a notice has been published in terms of this subitem and that no such contact has been made.

(4) Where the Registrar informs the Authority that he or she has published a notice in terms of subitem (3) and that he or she has not been contacted as required by that notice, the Authority may, unless the Authority has other information that leads it to believe that the ship may still be entitled to be registered, by notice in writing given to the Registrar direct that the registration of the ship be closed and, on receipt of such a notice by the Registrar, that notice must be regarded as a notice in terms of section 42(1)(b), and section 42 is applicable.

### **Ships deemed to be registered to cease to be registered if not entitled to be registered**

9. (1) In this item—

- (a) “last day on which the notice was served” means—
  - (i) where the notice is to be served on only one person, the day on which notice is served on that person; or

(ii) where the notice is to be served on more than one person—

(aa) if the notice is served on those persons on the same day, that day; or

(bb) if the notice is served on those persons on different days, the later or latest of the days on which notice is so served; and

(b) “mortgage” includes a mortgage deemed to be registered by virtue of this Schedule.

(2) At any time after the expiration of the period of six months after the commencing date, the Registrar must, if he or she has reason to suspect that a ship regarded as registered on that date was not on that date entitled to be registered, serve notice of that fact on the owner and any mortgagee of the ship, drawing attention to the provisions of this item.

(3) If, within a period of three months beginning on the last day on which the notice was served, evidence to the satisfaction of the Registrar that the ship is entitled to be registered is not produced, the Registrar must, on the expiration of that period, cause the registration of that ship to be closed.

### **Registrar may defer registration**

**10.** (1) Despite anything to the contrary in this Act, during the period of 14 days beginning on the commencing date, the Registrar may defer the following until the expiration of that period:

(a) The doing of any thing relating to documents lodged, or produced for lodgment;

(b) the making of any record or entry in the Register;

(c) the registration of any ship or of any matter; or

(d) the doing of any thing incidental to the registration of a ship or of any matter.

(2) Documents produced for lodgment or lodged during the period contemplated in subitem (1), must after the expiration of that period be dealt with in the order in which they were received by the Registrar.

(3) Where any document has been produced for lodgment or lodged during the period referred to in subitem (1) and the Registrar has deferred the making of a record or entry in the Register or the doing of any other thing in respect of the document during that period, then, for the purpose of making a record or entry in the Register or doing any other thing in respect of the document after the expiration of that period—

(a) in the case of a document for lodgment, if the Registrar considers that the document is in a form satisfactory for lodgment, the document is deemed to have been lodged on the date on which, and at the time when, it was so produced; and

(b) in the case of a document lodged, the record or entry made in the Register or the thing done relating to the document is deemed to have been made or done on the date on which, and at the time when, it was lodged.

### **Regulations for transitional purposes**

**11.** (1) The Minister may by regulation make provision for any matter arising from, consequential to or otherwise connected with the operation of this Schedule.

(2) Regulations made in pursuance of subitem (1) may be expressed to take effect on and from a date earlier than the date of the making of the regulations concerned, but not a date earlier than the commencing date.

## **MEMORANDUM ON THE OBJECTS OF THE SHIP REGISTRATION BILL**

1. The object of the Ship Registration Bill, 1998, is to regulate the registration of ships in the Republic and incidental matters such as the transfer of ownership and the creation and transfer of mortgages. It therefore repeals and replaces most of Chapter II of the Merchant Shipping Act, 1951 (Act No. 57 of 1951), which governs the recording, registering and licensing of ships in the Republic.

2. One of the principal aims of the Bill is to put into effect some of the objectives of the Government's White Paper on Transport Policy in so far as it relates to maritime affairs. Specifically, the Bill seeks to facilitate the development of the South African Ships Register through the introduction of revised conditions for the registration of ships in the Republic.

3. The following three key considerations influenced the Bill's development, namely—

- (a) the need for a "genuine link" between the Republic and ships entered in its Register, so as to avoid classification as an "open" or "convenience" register;
- (b) the provision of a professional and client-focused ship registration service; and
- (c) acceptability to industry and labour.

4. Principal changes made by the Bill are summarised as follows:

### *4.1 Changes affecting ownership and eligibility*

The Bill permits registration of the following ships:

- (a) South African-owned ships, i.e. fishing vessels owned, or owned and controlled, as provided for in the Marine Living Resources Act, 1998 (Act No. 18 of 1998), and ships (other than fishing vessels) either wholly owned or majority-owned by South African nationals;
- (b) ships (other than fishing vessels) of less than 25 gross tons wholly owned by residents of the Republic or by residents of the Republic and South African nationals;
- (c) ships (other than fishing vessels) of less than 25 gross tons operated solely by residents of the Republic or South African nationals or both;
- (d) ships on bareboat charter to South African nationals.

### *4.2 Bareboat charter in and out allowed*

4.2.1 The registration of bareboat chartered ships has become common practice in many maritime countries and is adopted in the Bill.

4.2.2 A foreign ship on bareboat charter to a South African national may be registered for the period of the charter, but the private law provisions for registered ships do not apply to such ships.

4.2.3 Regulations under the Bill will permit a registered South African-owned ship to operate under a foreign flag while on bareboat charter to a foreign resident.

### *4.3 Control of ships*

Measures are introduced to enhance control over ships having a South African connection in that unregistered ships entitled to be registered are prohibited to embark on international voyages from South African or foreign ports.

### *4.4 Registered agent*

A registered agent must be appointed in respect of every registered ship, the purpose of such an agent being to facilitate the Bill's administration.

### *4.5 Administration*

The Office of the Registrar of Ships and a South African Ship Registration Office are established for the purpose of the efficient administration of ship registration.

5. For the remainder, the Bill re-enacts, with minor modifications, certain provisions of the Merchant Shipping Act, 1951.

6. Consultations on the Bill took place over a two-year period and involved representatives from the shipping industry, organised labour and other stakeholders in the public and private sectors, nationally and internationally. They made valuable contributions, which have been incorporated wherever possible.

7. The State Law Advisers are of the opinion that the Bill must be dealt with in accordance with the procedure prescribed by section 75 of the Constitution, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.