



# GOVERNMENT GAZETTE

OF THE

# REPUBLIC OF NAMIBIA

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## Government Notice

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### OFFICE OF THE PRIME MINISTER

No. 67

1991

### PROMULGATION OF ACT OF THE NATIONAL ASSEMBLY

The following Act which has been passed by the National Assembly and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 7 of 1991: Merchant Shipping Amendment Act, 1991.

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**MERCHANT SHIPPING  
AMENDMENT ACT, 1991**

EXPLANATORY NOTE:

\_\_\_\_\_ Words underlined with solid line indicate insertions proposed.

[            ] Words in bold type in square brackets indicate omissions proposed.

**ACT**

**To amend the Merchant Shipping Act, 1951, in order to adjust its provisions in view of the independence of Namibia; and to provide for incidental matters.**

*(Signed by the President on 27 May 1991)*

BE IT ENACTED by the National Assembly of the Republic of Namibia, as follows:-

Amendment of section 2 of Act 57 of 1951, as amended by section 3 of Act 30 of 1959, section 31 of Act 69 of 1962, section 1 of Act 40 of 1963, section 1 of Act 13 of 1965, section 1 of Act 42 of 1969, section 1 of Act 24 of 1974, section 1 of Act 5 of 1976, section 1 of Act 3 of 1981, section 1 of Act 3 of 1982 and section 1 of Act 25 of 1985

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

- (a) by the deletion in subsection (1) of the definition of "Director-General";
- (b) by the deletion in subsection (1) of the proviso to paragraph (b) of the definition of "international voyage";
- (c) by the substitution in subsection (1) for the definition of "Minister" of the following definition:

" 'Minister' means the Minister of [**Transport Affairs**] Works, Transport and Communication:";

- (d) by the insertion in subsection (1) after the definition of "Minister" of the following definition:

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“ ‘Namibian ship’ means a ship registered in Namibia in terms of this Act or deemed to be so registered;”;

- (e) by the insertion in subsection (1) after the definition of “passenger ship safety certificate” of the following definition:

“ ‘Permanent Secretary’ means the Permanent Secretary: Works, Transport and Communication;”;

- (f) by the substitution in subsection (1) for paragraph (b) of the definition of “port” of the following paragraph:

“(b) a port in [**the Republic**] Namibia means a harbour [**contemplated in the definition of “harbours”**] as defined in section 1 of the [South African Transport Services Act, 1981 (Act No. 65 of 1981)] National Transport Corporation Act, 1987 (Act 21 of 1987), or a fishing harbour [**contemplated**] as defined in section 1 of the Sea Fisheries Act, 1973 (Act No. 58 of 1973), or any place which has under this Act or any other law been designated as a place from or at which any vessel or a vessel of a particular type may be launched, beached, moored or berthed;”;

- (g) by the substitution in subsection (1) for the definition of “recognized non-South African” of the following definition:

“ ‘recognized [**non-South African**] non-Namibian’, used in relation to a safety convention certificate or an international load line certificate, signifies that the certificate has been issued by or under the authority of the Government of a country other than [**the Republic**] Namibia to which the Safety Convention or the Load Line Convention, as the case may be, applies, and that the certificate complies with the regulations made under paragraph (a) of subsection (2) of section [**three hundred and fifty-six**] 356 to give effect to the relative provisions of the Safety Convention

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or with those made under paragraph (c) of that subsection to give effect to the relative provisions of the Load Line Convention, respectively;”;

- (h) by the substitution in subsection (1) for the definition of “savings bank” of the following definition:

“ ‘savings bank’ means the Post Office Savings Bank, or a banking institution registered under the Banking Act, 1965 (Act No. 23 of 1965), or a building society registered under the [**Building Societies Act, 1965 (Act No. 24 of 1965)**] Building Societies Act, 1986 (Act 2 of 1986), or, in respect of the allotment of premiums, a person registered or deemed to be registered as an insurer under the Insurance Act, 1943 (Act No. 27 of 1943), or any other body designated by the Minister;”;

- (i) by the deletion in subsection (1) of the definition of “South African ship”; and

- (j) by the deletion in subsection (1) of the definition of “superior court”.

Amendment of section 3 of Act 57 of 1951, as amended by section 4 of Act 30 of 1959, section 32 of Act 69 of 1962, section 2 of Act 40 of 1963, section 2 of Act 13 of 1965 and section 2 of Act 25 of 1985.

2. Section 3 of the principal Act is hereby amended by the deletion of subsections (1) and (2).

Amendment of section 10 of Act 57 of 1951, as amended by section 3 of Act 42 of 1969.

3. Section 10 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Every person who at the coming into operation of [**this section**] the Merchant Shipping Amendment Act, 1991, is building, or after such coming into operation intends to build, a vessel which when completed will be required to be registered or licensed in terms of this Act, 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 [**Director-General**] Permanent Secretary such written particulars of the vessel as may be prescribed.”.

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Amendment of section 11 of Act 57 of 1951, as amended by section 33 of Act 69 of 1962 and section 4 of Act 40 of 1963.

4. Section 11 of the principal Act is hereby amended by the addition to subsection (1) of the following paragraph:

“(d) persons of any country other than a treaty country approved by the Minister.”

Repeal of section 14 of Act 57 of 1951, as amended by section 6 of Act 40 of 1963.

5. Section 14 of the principal Act is hereby repealed.

Amendment of section 64 of Act 57 of 1951, as amended by section 8 of Act 40 of 1963 and section 4 of Act 25 of 1985.

6. Section 64 of the principal Act is hereby amended by the substitution for paragraph (b) of the following paragraph:

“(b) any ship which in terms of [section *fourteen* or] subsection (2) of section [thirty] 30 is deemed to be registered under this Act;”;

Amendment of section 135 of Act 57 of 1951.

7. Section 135 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Nothing in this section shall affect the provisions of this Act regarding allotment notes or those of section [three hundred and twenty-six] 326 of this Act or those of sections [seventy-four and seventy-five] 91 and 92 of the [Income Tax Act, 1941 (Act No. 31 of 1941)] Income Tax Act, 1981 (Act 24 of 1981).”

Substitution of section 152 of Act 57 of 1951, as amended by section 25 of Act 40 of 1963.

8. The following section is hereby substituted for section 152 of the principal Act:

“Transmission by Permanent Secretary of property of deceased seaman.

152. If any property of a deceased seaman or apprentice-officer who at the date of such seaman's or apprentice-officer's death was ordinarily resident in Namibia, comes into the hands of the Permanent Secretary, the Permanent Secretary shall, after deducting for expenses incurred in respect of that seaman or apprentice-officer or of such seaman's or apprentice-officer's property such sum as the Permanent Secretary thinks proper to allow, transmit the residue to the Master referred to in section 1 of the Administration of Estates Act, 1965 (Act 66 of 1965), and the Master shall take such steps as may be necessary to ensure that such residue shall be dealt with in the manner provided by law.”

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Amendment of section 161 of Act 57 of 1951, as amended by section 27 of Act 40 of 1963.

**9.** Section 161 of the principal Act is hereby amended by the deletion of subsection (2).

Amendment of section 180 of Act 57 of 1951, as amended by section 24 of Act 30 of 1959.

**10.** Section 180 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) (a) If the provisions of this subsection have in terms of subsection (1) been applied to seamen and apprentice-officers belonging to ships of any foreign country, any magistrate may, on application by the master of a ship of that country, if he or she is satisfied from information taken on oath that reasonable grounds exist for suspecting that any seaman or apprentice-officer has deserted or is absent without leave from that ship, issue a warrant for the apprehension of that seaman or apprentice-officer and for bringing [him] such seaman or apprentice-officer before a judicial officer.

(b) Every such warrant shall be executed in the same manner as a warrant issued under section [twenty-eight] 43 of the [Criminal Procedure Act, 1955 (Act No. 56 of 1955)] Criminal Procedure Act, 1977 (Act 51 of 1977).

(c) A judicial officer before whom the seaman or apprentice-officer is brought may, on proof that [he] such seaman or apprentice-officer has deserted or is absent without leave from that ship, order that [he] such seaman or apprentice-officer be conveyed on board that ship or delivered to the master or a ship's officer or the owner of that ship, to be so conveyed, and any such order shall be duly executed.”

Repeal of section 251 of Act 57 of 1951, as amended by section 45 of Act 40 of 1963.

**11.** (1) Section 251 of the principal Act is hereby repealed.

(2) Any certificate or memorandum which in terms of the section repealed by subsection (1) is deemed to have been issued under the principal Act, and of which the period of validity as specified therein has not yet expired, shall, notwithstanding the repeal of the said section, continue to be valid until the said period expires.

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Amendment of section 267 of Act 57 of 1951, as substituted by section 9 of Act 3 of 1981.

**12.** Section 267 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A court of marine enquiry shall consist of a judge or ex-judge of the High Court or Supreme Court, magistrate, ex-magistrate, advocate or attorney, who shall be the presiding officer, and either two or four other members.”.

Amendment of section 292 of Act 57 of 1951.

**13.** Section 292 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Any person aggrieved by any decision of a court of marine enquiry or a maritime court may appeal to the High Court.”.

Amendment of section 298 of Act 57 of 1951, as amended by section 36 of Act 30 of 1959 and section 51 of Act 40 of 1963.

**14.** Section 298 of the principal Act is hereby amended -

- (a) by the deletion of paragraph (c) of subsection (1); and
- (b) by the substitution for paragraph (d) of subsection (1) of the following paragraph:

“(d) any commissioned officer in the [**South African**] Namibia Defence Force.”.

Substitution of section 355 of Act 57 of 1951, as amended by section 41 of Act 30 of 1959 and section 58 of Act 40 of 1963.

**15.** The following section is hereby substituted for section 355 of the principal Act:

“Application of certain industrial laws to seamen.

355. (1) Nothing in this Act contained shall affect the application of the provisions of the [**Industrial Conciliation Act, 1956 (Act No. 28 of 1956), or of the Wage Act, 1957 (Act No. 5 of 1957), or of the Black Labour (Settlement of Disputes) Act, 1953 (Act No. 48 of 1953)**] Wage and Industrial Conciliation Ordinance, 1952 (Ordinance 35 of 1952), to seamen in respect of their employment as such.

(2) To the extent to which any provisions of this Act which, but for the provisions of this section, would apply to any seamen is inconsistent with any agreement or

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award [**under the Industrial Conciliation Act, 1956,**] or any determination under the [**Wage Act, 1957, or any order under the Black Labour (Settlement of Disputes) Act, 1953,**] Wage and Industrial Conciliation Ordinance, 1952 (Ordinance 35 of 1952), which is binding in respect of those seamen, the provisions of this Act referred to shall not apply in respect of those seamen.

(3) Any agreement or award [**under the Industrial Conciliation Act, 1956,**] or any determination under the [**Wage Act, 1957, or any order under the Black Labour (Settlement of Disputes) Act, 1953**] Wage and Industrial Conciliation Ordinance, 1952 (Ordinance 35 of 1952), which is binding in respect of any seamen employed on board any ship which is registered in [**the Republic**] Namibia or on board any ship which is not registered in [**the Republic**] Namibia and is wholly engaged in plying between ports in [**the Republic**] Namibia while the ship is in [**the Republic**] Namibia, shall be binding in respect of such seamen while the ship is outside [**the Republic**] Namibia.

(4) No seaman who is an employee, as defined in section [**one of the Industrial Conciliation Act, 1956**] 79 of the Wage and Industrial Conciliation Ordinance, 1952, who is not a person referred to in subsection (2) of section [**two**] 2 of that [Act] Ordinance, and who is engaged on or belongs to any [**South African**] Namibian ship, shall be guilty of an offence under paragraph (b), (c), (d) or (f) of subsection (2) of section [**one hundred and seventy-four, section one hundred and seventy-five or section one hundred and seventy-six**] 174, 175 or 176, merely by reason of the fact that [**he**] such seaman has taken part in a strike or in the continuation of a strike, as defined in section [**one**] 79 of that [Act] Ordinance, in such circumstances that the act or omission by which [**he**] such seaman has taken part therein does not constitute an offence under section [**sixty-five**] 58 of that [Act] Ordinance; Provided that this subsection shall not apply in respect of any act which is committed or any omission which occurs while the ship is at sea.



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(5) In this section the expression "seamen" includes all persons employed or engaged in any capacity on board any ship."

Amendment of section 356 of Act 57 of 1951, as amended by section 42 of Act 30 of 1959, section 59 of Act 40 of 1963, section 6 of Act 24 of 1974, section 11 of Act 5 of 1976, section 19 of Act 3 of 1982 and section 9 of Act 25 of 1985.

**16.** Section 356 of the principal Act is hereby amended by the substitution in subsection (1) for subparagraph (a) of paragraph (xxxviA) of the following subparagraph:

"(a) requiring such life-saving appliances to comply with specifications determined [by the **South African Bureau of Standards mentioned**] in terms of the Standards Act, 1962 (Act No. 33 of 1962); and

Substitution of section 356bis of Act 57 of 1951, as amended by section 60 of Act 40 of 1963 and section 20 of Act 3 of 1982.

**17.** The following section is hereby substituted for section 356bis of the principal Act:

"Proclamation of certain conventions and of certain amendments of conventions.

**356bis.** The President may by proclamation in the *Gazette* -

- (a) add to this Act any Schedule setting out any convention relating to merchant shipping and ratified as contemplated in the Namibian Constitution; and
- (b) (i) amend any Schedule to this Act to give effect to any amendment of any convention setting out in the Schedule concerned; and
- (ii) substitute for any convention appearing in any Schedule to this Act, any convention which has been substituted for such convention."

Substitution of certain words in Act 57 of 1951.

**18.** The principal Act is hereby amended -

- (a) by the substitution for the words "State President", wherever they occur, of the word "President";
- (b) by the substitution for the expression "Director-General", wherever it occurs, of the words "Permanent Secretary";

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- (c) by the substitution for the words "either of the official languages" and "one of the official languages", wherever they occur, of the words "the official language";
- (d) by the substitution for the words "South African" and "non-South African", wherever they occur, of the words "Namibian" and "non-Namibian" respectively;
- (e) by the substitution for the words "Department of Health", wherever they occur, of the words "Ministry of Health and Social Services";
- (f) by the substitution for the words "the superior court within whose area of jurisdiction the port of registry of the ship is situated", "the superior court within the area of jurisdiction of which that person resides", "superior courts", "a superior court", "any superior court", "the Supreme Court", wherever they occur, and the words "any court" in section 44, of the words "the High Court";
- (g) by the substitution for the words "the Republic", wherever they occur, of the word "Namibia";
- (h) by the substitution for the words "Consolidated Revenue Fund", where they occur in section 323(3), of the words "State Revenue Fund"; and
- (i) by the substitution in section 3(3) for the words "the Railway Administration" of the words "Transnamib Limited", and the words "the Railway Administration" and "that Administration", wherever they occur, of the words "Transnamib Limited" and the word "it", respectively.

Short title.

**19.** This Act shall be called the Merchant Shipping Amendment Act, 1991.

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