

THE NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT FUND



ACT
(No. 30 of 2015)

THE NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT FUND
REGULATIONS, 2016

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*Paper laid by
the Majority party
Whip on 13/2016 (gw)*



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IN EXERCISE of the powers conferred by section 57 of the National Government Constituencies Development Fund Act, 2015, the National Government Constituencies Development Fund Board makes the following Regulations—

**THE NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT FUND
REGULATIONS, 2016**

Citation 1. These Regulations may be cited as the National Government Constituencies Development Fund Regulations, 2016.

Interpretation 2. In these Regulations unless the context otherwise requires—

No 30 of 2015 “Act” means the National Government Constituencies Development Fund Act, 2015;

“Board” means the National Government Constituencies Development Fund Board established under section 14 of the Act;

“Chairperson” means the chairperson of a Constituency Committee elected under regulation 8;

“Constituency Committee” means the National Government Constituencies Development Fund Committee established under section 43 of the Act;

“Constituency Office” means an Office established pursuant to regulations made under the Parliamentary Service Act;

“financial year” means the period of twelve months ending 30th June in each year;

“Fund” means the National Government Constituencies Development Fund established under section 4 of the Act;

“National Government Constituency office” means the designated office of the National Government Constituencies Development Fund Committee;

“National Assembly Select Committee” means the committee established under section 50 of the Act;

“secretary” means the secretary to a Constituency Committee elected under regulation 9;

“selection panel” means the selection panel established under these Regulations for the purpose of selecting persons for membership to the National Government Constituency Development Fund Committee in accordance with section 43(2) of the Act;

“ward” has the meaning assigned to it in the Elections Act, 2011.

Approval of nominees to the Board.

3.(1) The National Assembly shall, within twenty one days after receiving the names of the nominees to the Board from the Cabinet Secretary as provided under section 15 (4) of the Act, deliberate on the list of the nominees in accordance with the principles enshrined in Article 73(2) of the Constitution and the Public Appointments (Parliamentary Approval) Act 2011, and may approve or reject any of the nominees.

(2) Upon approval of the nominees by the National Assembly, the Cabinet Secretary shall, within fourteen days of receiving the approval, publish the names of the approved nominees in the Gazette.

(3) Whenever a vacancy arises in the membership of the Board, the Cabinet Secretary shall, within fourteen days of the vacancy arising, submit the names of the persons nominated to fill the vacancy to the National Assembly for approval as provided under section 15(4).

Recruitment of Chief Executive Officer of the Board.

4.(1) The Board shall, in recruiting the chief executive officer of the Board under section 20(1) of the Act, ensure that the recruitment is carried out in a transparent and competitive manner.

(2) The Board shall finalise the recruitment of the chief executive officer of the Board within sixty days from date of the close of the application period, and shall forward three names of the selected candidates to the Cabinet Secretary for consideration.

(3) The Cabinet Secretary shall, within twenty-one days after receiving the names of the selected candidates from the Board, forward the name of one of the selected candidates to the National Assembly for

approval.

(4) The National Assembly shall, within twenty-one days of receipt of the name of the selected candidate from the Cabinet Secretary, under paragraph (3) consider the nomination, and approve or reject the nomination.

(5) Where the National Assembly approves the nomination under paragraph (4), the Speaker of the National Assembly shall forward the name of the approved person to the Cabinet Secretary for appointment.

(6) The Cabinet Secretary shall, within fourteen days of the approval by the National Assembly, by notice in the Gazette, appoint the person approved by the National Assembly as the chief executive officer of the Board.

(7) Where the National Assembly rejects the person nominated by the Cabinet Secretary, the Speaker of the National Assembly shall, within three days of the decision, communicate the decision of the National Assembly to the Cabinet Secretary and request the Cabinet Secretary to submit a fresh nomination.

(8) The Cabinet Secretary shall submit to the National Assembly a name from the list initially forwarded by the Board within seven days of receipt of the communication from the Speaker

(9) Where the National Assembly rejects the names of all the persons nominated by the Cabinet Secretary the provisions of paragraph (2) shall apply.

Appointment of
members of
Constituency
Committee

5. (1) The members of a Constituency Committee provided for in section 43(2) (b), (c) and (d) shall be appointed by a selection panel established under paragraph (3).

(2) The Board shall, upon—

- (a) commencement of a new parliamentary term;
- (b) dissolution of a Constituency Committee;
- (c) removal of a member of a Constituency committee ;

or

- (d) the occurrence of a vacancy in a Constituency Committee,

request the officer of the Board seconded to a Constituency Committee to convene a meeting within fourteen days thereof, or within the time stipulated by the Board.

(3) The selection panel referred to in paragraph (1) shall consist of—

- (a) one person nominated by the national government official in charge of the sub-county or a designated representatives, who shall be the chairperson of the selection panel;
- (b) the Officer of the Board seconded to the Constituency who shall be the secretary to the selection panel; and
- (c) one person nominated by the Constituency office.

(4) The officer of the Board seconded to the Constituency shall within fourteen days of the first meeting of the selection panel invite application from persons who qualify for appointment to a Constituency Committee in accordance with guidelines issued by the Board.

(5) The selection panel shall, within twenty one days of the deadline specified for submission of applications evaluate the suitability of the applications received and select two applicants from each location, in accordance with section 43(2)(b)(c) and (d) of the Act.

(6) The officer of the Board seconded to the Constituency shall record the proceedings appropriately.

(7) The officer of the Board seconded to the Constituency shall within seven days of the selection process referred to in paragraph (5) submit to the Board a report on the selection process forwarding the names of the selected candidates

(8) The Board shall co-opt the person referred to in section

43(2) (g) of the Act to ensure equitable representation in the membership of a Constituency Committee.

(9) The Board shall submit the names received from the selection panel, to the National Assembly for approval.

(10) The Board shall, within twenty one days after receipt of the names approved by the National Assembly, appoint the members of a Constituency Committee by notice in the Gazette.

(11) The selection panel shall stand dissolved upon the appointment of the members of a Constituency Committee.

(12) The Board shall, within fourteen days after gazettelement of the members of a Constituency Committee inform the members of their appointment in writing.

(13) A member of a Constituency Committee who is appointed under section 43 (2) (b), (c), (d), (e) and (g) may at any time resign from office by giving notice, in writing, to the officer of the Board and a copy thereof to the Board.

Qualifications of
members of
Constituency
Committee

6. (1) Subject to the provisions of the Act, a person shall be qualified to be appointed to a Constituency Committee if that person—

(a) is a citizen of Kenya;

(b) is ordinarily a resident and a voter within the Constituency;

(c) is able to read and write and to communicate in English and Kiswahili;

(d) meets the requirements of Chapter Six of the Constitution, and

(e) is available to participate in the activities of a Constituency Committee.

(2) A person who has previously served in a Constituency Committees constituted under the Fund or served in a leadership position in the Community may be appointed to a Constituency Committee.

7. (1) The Officer of the Board seconded to the Constituency shall, in writing, convene the first meeting of a Constituency Committee in the manner provided for under section 43 (6) of the Act.

(2) A Constituency Committee shall elect the chairperson and secretary of A Constituency Committee during its first meeting and shall notify the Board of the appointment.

(3) A person shall qualify to be elected as Chairperson or Secretary to A Constituency Committee if that person is the holder of a Kenya Certificate of Secondary Education.

(3) The provisions of the Second Schedule to the Act shall, with necessary modifications, apply to the conduct of the business and affairs of A Constituency Committee.

(4) A Constituency Committee shall hold its meetings at its designated office, but may hold meetings at a different venue with the approval of the Board.

(5) During its first meeting, a Constituency Committee shall establish two sub-committees necessary for the proper performance of its functions in accordance with the guidelines issued by the Board.

(6) In establishing sub-committees under paragraph (5), a Constituency Committee shall ensure that there is equitable representation in the sub-committees.

(7) A Constituency Committee may invite any public officer or any expert who, in the opinion of a Constituency Committee has expert knowledge in matters relating to the functions of a Constituency Committee to attend any meeting of a Constituency Committees.

(8) The Secretary shall, at the beginning of every financial year, in consultation with the officer of the Board seconded to the Constituency, prepare and table before a Constituency Committee a schedule of the meetings to be held during the year.

(9) The minutes of Constituency Committee meetings shall be confirmed by the members and signed by the chairperson in the

subsequent meetings.

(10) Minutes that have been confirmed and signed shall be in the custody of the Officer of the Board.

(11) Copies of the minutes referred to in paragraph (9) shall be submitted to the Board within thirty days after the confirmation and execution of the minutes, in the manner prescribed by the Board.

Chairperson.

8.(1) There shall be a chairperson of a Constituency Committee who shall be elected by members from among the persons referred to in section 43 (2) (b), (c), or (d), of the Act, and subject to regulation 6(2) of these Regulations.

(2) The chairperson of a Constituency Committee shall—

- (a) provide overall leadership to a Constituency Committee;
- (b) approve the agenda of a Constituency Committee meetings;
- (c) preside over Constituency Committee meetings;
- (d) carry out consultations with the Officer of the Board seconded to the Constituency and other relevant stakeholders;
- (f) ensure members and staff of a Constituency Committee are properly trained;
- (g) encourage a culture of transparency and teamwork among the committee members;
- (h) be a signatory to the Constituency Fund Account; and
- (i) co-ordinate the compilation of project status reports every six months.

Secretary

9. (1) There shall be a secretary to a Constituency Committee who shall be elected by the members from amongst themselves, subject to regulation 6(2) of these Regulations

(2) The Secretary shall—

- (a) be responsible for—
 - (i) carrying into effect the decisions of a Constituency Committee;
 - (ii) the day to day administration and management of the affairs of a Constituency Committee; and
 - (iii) supervision of the staff of the Constituency Committee,
- (b) in consultation with the Chairperson and the officer of the Board seconded to the Constituency, convene Constituency Committee meetings,
- (c) circulate notices and the agenda of meetings;
- (d) accurately record the proceedings of every Constituency Committee meeting and after confirmation and execution of the minutes, transmit the minutes to the officer of the Board seconded to the Constituency for safe custody.
- (e) provide guidance to a Constituency Committee on management of meetings;
- (f) ensure minutes are readily available during subsequent meetings, and
- (g) ensure and facilitate effective communication amongst the members of a Constituency committee.

Removal of a
Constituency
Committee member

10. (1) The members of a Constituency Committee may remove a member in accordance with section 43 (13) and (14) of the Act upon receipt of a complaint against a member.

(2) A complaint against a member of a Constituency Committee shall be deposited with the officer of the Board seconded to the Constituency

(3) The complaint referred to in paragraph (2) shall clearly set out the particulars of the issues complained of.

(4) The Secretary shall convene a special meeting in accordance with these Regulations to deliberate on the complaint, but the member against whom the complaint is raised shall not participate in such a meeting

(5) If, at a meeting held pursuant to paragraph (4), members

determine that sufficient grounds exist requiring the member against whom the complaint is raised to respond to the issues complained of, the secretary shall by notice, require the member to respond to the issues received in the complaint within fourteen days of the date of the notice.

(6) A copy of the complaint and any other grounds of removal shall be attached to the notice issued under paragraph (5).

(7) The member against whom the complaint is raised shall be required to respond to the complaint in writing.

(8) The member against whom a complaint is raised shall, in addition to the written response in paragraph (7), have the right to be heard orally, and a Constituency Committee shall hear such member as the member may request.

(9) The member against whom a complaint is made may call witnesses

(10) If the member against whom a complaint is raised chooses not to attend the hearing, a Constituency Committee may proceed to determine the matter on the basis of the written explanations submitted.

(11) Notwithstanding paragraph (10), a Constituency Committee may summon the member against whom the complaint is made to clarify any issue, and such member shall attend the hearing.

(12) If the member against whom a complaint is made fails to respond to the complaint as may be directed by a Constituency Committee, the Committee may proceed and make a determination based on the evidence available.

(13) A Constituency Committee shall issue its decision on the complaint within seven days after the conclusion of the hearing.

(14) If a Constituency Committee resolves to remove the member against whom a complaint is made, the Secretary shall communicate the decision of a Constituency Committee to the Board within fourteen days of the decision.

(15) The communication to the Board under paragraph (14) shall include duly executed proceedings, together with all the supporting documents.

(16) The Board shall, within thirty days after receipt of the communication in paragraph (14), consider the matter and issue a final declaration which shall be binding on all parties.

(17) The member against whom a complaint is made shall not participate in the committee's deliberations of a Constituency Committee.

(18) If a member against whom a complaint is made responds to the allegations to the satisfaction of a Constituency Committee and the committee makes a determination in the favour such member, the member shall resume duties as a member of the Committee

(19) A Constituency Committee may remove the Chairperson or Secretary from their respective positions for failing to perform their functions, under regulations 8 and 9 respectively.

(20) A Constituency Committee shall inform the Chairperson or Secretary of the reasons for the proposed removal, and shall give the Chairperson or Secretary reasonable opportunity to be heard.

(21) A Chairperson or Secretary who is removed pursuant to paragraph (19) shall continue to discharge duties as a member of a Constituency Committee.

(22) At least two thirds of the total membership of a Constituency Committee shall be required to remove the Chairperson or Secretary from office.

(23) The procedure of removal of the Chairperson or Secretary shall be approved by the Board.

Functions of
Constituency
Committees

11.(1) The functions of a Constituency Committee shall be to—

- (a) build the capacity of project management committees and sensitize the Community on the operations of the Fund;
- (b) consider all project proposals from all wards in the Constituency and any other projects which a Constituency Committee considers beneficial to the Constituency;
- (c) ensure that all proposed projects that are approved for funding meet the requirements of section 24 of the Act;

- (d) ensure that project proposals submitted to the Board include detailed budget proposals, procurement plans and work plans;
- (e) in approving a project and before submitting the to the Board for consideration, satisfy itself and make a declaration to the effect that such project (works and services) fall within the functions of the National Government under the Constitution;
- (f) consult with relevant government departments to ensure that cost estimates for projects are realistic;
- (g) in considering joint projects, ensure that the participating constituencies enter into negotiations for effective implementation of such projects;
- (h) subject to the provisions of the Act and these Regulations, enter into a memorandum of understanding with collaborating partners, detailing all aspects of funding and implementation, before respective constituencies approve such a project for joint funding;
- (i) rank projects proposals in order of priority while ensuring that on-going projects take precedence;
- (j) ensure that all projects receive adequate funding and are completed within three years;
- (k) where a project involves purchase of a parcel of land or a building, ensure that the ownership thereof is duly verified and ownership documents authenticated with relevant government agencies;
- (l) ensure that projects proposed for funding fulfil the requirements provided in the Act and relevant circulars issued by the Board;
- (m) monitor the implementation of projects in accordance with the monitoring and evaluation framework prescribed by the Board,

- (n) ensure that project reports are prepared and submitted to the Board;
- (o) ensure formation of Project Management Committees, opening of project accounts, project implementation and closure of projects;
- (p) ensure that the principles of public finance as provided for under Chapter Twelve of the Constitution and the Public Finance Management legislation are observed in the management of the Fund;
- (q) submit financial statements to the Board within sixty days of the end of the financial year to enable the Board comply with section 39(4) of the Act;
- (r) collaborate with the officer of the Board seconded to the Constituency in the management of the Fund, including the keeping of proper records and maintenance of books of account in accordance with section 38(b) of the Act;
- (s) recommend to the Board the removal of a committee member in accordance with section 43(13) and (14) of the Act;
- (t) submit to the Board the report stipulated in section 5(5) of the Act, which report shall contain—
 - (i) a list of all the new projects commenced during the financial year and their completion status; and
 - (ii) a list of all projects approved, funded and commenced during previous financial years, and their completion status;
- (u) enter into performance contracting with the Board on an annual basis;
- (v) in exercising its discretion under section 32 of the Act, be guided by the principles of governance enshrined in Article 10 of the Constitution.

- (w) receive returns from project management committees in accordance with regulation 15;
- (x) maintain a database of project management committees and reports from the respective committees;
- (y) ensure that the reports referred to in paragraph (x) are received before funding is released for each phase of the project being implemented;
- (z) record the names of all the signatories of the accounts of a project management committee as communicated to a Constituency Committee by the project management committee upon assumption of office;
- (aa) receive and address all complaints concerning the implementation of projects and collectively respond to audit queries concerning the Fund at the Constituency level;
- (bb) ensure that the committee does not enter into commitments for which funding has not been allocated;
- (cc) ensure projects are labelled in accordance with the guidelines issued by the Board, and
- (ee) perform any other function assigned to it by the Board

Dissolution of
Constituency
Committees

12. (1) A person who presents a petition to the Board for the dissolution of a Constituency Committee under section 44 of the Act shall attach appropriate supporting documents to the petition.

(2) In making a determination on a petition presented against a Constituency Committee, the Board may call upon the petitioner to provide better particulars in support of the petition.

(3) The Board may summon a petitioner to give oral evidence and to substantiate issues alleged to have been committed

(4) Upon considering a petition, the Board may dissolve a Constituency Committee in accordance with section 44 (3) of the Act.

(5) The Board may, while a petition is under consideration, suspend a Constituency Committee for an initial period of thirty days, but for not more than sixty days.

(6) The Board shall, during the proceedings referred to in this regulation, ensure that the rules of natural justice and evidence are observed and adhered to by all parties.

Open forum
meetings

13. The Chairperson may, in consultation with local leaders convene open forum meetings under section 27 of the Act, and shall publicise such meetings so as to reach as many constituents as possible.

Submission of
project proposals

14. (1) Subject to section 28 of the Act, a Constituency Committee shall ensure that approved projects proposals are submitted to the Board within the specified period.

(2) If a Constituency Committee fails to submit the list of Constituency based projects proposals to the Board within the specified period the Chairperson of a Constituency Committee shall write to the Board, before the lapse of the stipulated time—

(a) explaining the circumstances that may lead to delayed submission of projects proposals; and

(b) indicating the time frame within which the list of Constituency based projects referred to under section 28(2) of the Act shall be submitted to the Board

(3) If the Chairperson fails to notify the Board as required in paragraph (2), such failure shall amount to gross misconduct and section 43 (13) and (14) of the Act shall apply.

(4) A Constituency Committee whose projects have not been approved by the Board in accordance with section 31(3) of the Act may resubmit such projects for reconsideration by the Board, subject to fulfilling conditions that may be specified by the Board

15.(1) There shall be appointed a project management committee for each project in a Constituency in accordance with section 36 of the Act which shall—

- (a) implement projects in consultation with the relevant departments of government;
- (b) maintain proper records of all minutes, accounting documents and other records in relation to projects being implemented;
- (c) open and maintain an independent bank account for each project;
- (d) prepare returns and file them with a Constituency Committee on a timely basis;
- (e) account for funds to a Constituency Committee; and
- (f) undertake project closure, labelling and handover upon completion.

(2) A project management committee shall prepare and submit hand over reports to a Constituency Committee.

(3) The Board shall provide guidelines on the format in which records of the project management committee, withdrawals from project management committee accounts and handover reports shall be kept.

(4) A project management committee shall prepare—

- (a) the requisite budgets and bills of quantities, assisted by relevant government officers; and
- (a) work plans showing how it intends to utilize the funds given to it for implementing the project,

which shall be approved by a Constituency Committee before the funds are released

(5) A project management committee shall account to a Constituency Committee for funds allocated to it.

(6) A Constituency Committee shall not convert itself into a

project management committee.

(7) Despite paragraph (6), a Constituency Committee may implement a project where the project involves—

(a) construction of a Constituency office; or

(b) procurement of equipment, including motor vehicles, for the exclusive use of a Constituency Committee.

(8) Any payments due in the course of the implementation of the projects referred to in paragraph (7) shall be made through the Constituency Account.

(9) A Constituency Committee shall maintain accurate records of every project being undertaken within a particular Constituency, whether such project is fully or partly funded

(10) The Officer of the Board seconded to the Constituency shall—

(a) keep a record of the bank accounts opened by a project management committee; and

(b) table a quarterly report to a Constituency Committee on the status of the project management committee accounts..

Appointment of
members of Project
Management
Committees

16. (1) The management committees of institutions in which Constituency Development Fund funded projects are undertaken shall serve as the project management committees for such institutions, and shall open separate bank accounts for the said funds.

(2) A Constituency Committee shall, upon approval of a proposed project by the Board, inform the relevant institution and community of the approval

(3) Where a project was not managed by a project management committee, the Constituency Committee shall require the

Community to form a project management committee, which shall—

- (a) consist of not more than five members;
- (b) have not more than two-thirds of the members being of the same gender; and
- (c) consist of members who meet the principles enshrined under Article 10 and Chapter Six of Constitution.

(4) Upon the formation of the management committee referred to in paragraph (2), the members of the management committee shall forward to a Constituency Committee, minutes documenting their election to the management committee, accompanied by copies of the registration certificate and the constitution of the management committee.

(5) The Officer of the Board seconded to the Constituency shall after receiving the documents referred to in paragraph (3), in writing inform the members of their duties and obligations under these Regulations, and various statutes and guidelines issued by the Board.

(6) The project management committee shall, within seven days of receipt of the communication referred to in paragraph (4), convene a meeting at which a chairperson, secretary and treasurer shall be elected by the members of the management committee.

(6) The officials elected pursuant to paragraph (5) shall be the signatories to the project's bank account.

Removal of
members of project
management
committees

17. (1) A Constituency Committee may remove a member or members of a project management committee for—

- (a) failure to maintain proper records of minutes of meetings, accounting documents and other records of a project;
- (b) failure to prepare and file returns with a Constituency Committee as required;
- (c) failure to account for funds when required by a Constituency Committee;

- (d) causing disharmony within the project management committee;
- (e) misappropriation of funds;
- (f) gross misconduct;
- (g) promotion of unethical practices; or
- (h) any other justifiable cause.

(2) The removal of a member or members of a project management committee may be initiated by a Constituency Committee, the relevant Community or other stakeholders.

(3) If a majority of the members of a project management committee are removed in accordance with paragraph (2) and there exist management committees of institutions in which Constituency Development Fund funded projects are being undertaken, the Constituency Committee may immediately suspend funding to such projects.

(4) The Officer of the Board seconded to Constituency shall report the suspension of funding under paragraph (3) to the authorities in charge of administering the institutions, and require the authorities to address the instances complained of before resumption of funding to the project.

(5) The removal of a member of a project management committee shall be based on evidence supporting the grounds specified in paragraph (1), and the accused member shall be afforded an opportunity for a fair hearing before removal.

(6) The removal of a member of a project management committee shall be subject to the approval of the Board.

18. (1) A Constituency Committee may engage staff in accordance with section 45 of the Act through a transparent and competitive process.

(2) In the performance of their duties under the Act and these

Constituency
Committee
employees

Regulations, the staff of a Constituency Committee shall be responsible to the Officer of the Board seconded to the Constituency.

(3) The Officer of the Board seconded to the Constituency shall regularly update the records of the staff of a Constituency Committee, and shall, whenever required, make such records available to the Board.

(4) The Officer of the Board seconded to the Constituency shall ensure that all employees are paid on time, and all statutory deductions are promptly remitted to the relevant authorities.

(5) A Constituency Committee shall observe the provisions of Article 27 (8) of the Constitution and section 45 of the Act when hiring staff.

(6) The Board may issue guidelines with regard to the hiring and retention of Constituency Committee staff to ensure smooth operations of a Constituency Committees.

(7) A Constituency Committee shall ensure that its staff discharge their duties effectively and efficiently.

Disbursements from
the Fund

19. (1) Where an account is established for the purpose of a joint project or joint procurement, the mandatory signatories to the account shall be—

(a) the Officer of the Board seconded to the Constituency from the respective Constituencies;

(c) the accountant in charge of the Fund, from each of the constituencies; and

(c) one signatory from each of a Constituency Committees undertaking the joint project.

(2) In the event of any dispute with regard to the signatories to the account, the Board shall specify the signatories and inform the Constituencies undertaking the joint project or joint procurement.

(3) The returns referred to in section 5(5) of the Act shall be made in the format prescribed by the Board.

Emergency reserve

20. (1) A Constituency Committee shall ensure that the emergency reserve is utilized in accordance with the provisions of sections 24, 25 and 48 of the Act.

(2) The utilization of the emergency reserve shall be reported to the Board within thirty days of the occurrence of the emergency, in the format prescribed by the Board.

Social security programmes under section 48 of the Act

21. (1) A Constituency Committee may support social security programmes in accordance with the provisions section 48 of the Act.

(2) The programmes referred to in paragraph (1) shall support constituents living within a Constituency but the support shall not include personal cash awards.

(3) A Constituency Committee shall vet all persons proposed to receive support in accordance with guidelines issued by the Board.

(4) A Constituency Committee shall, in supporting social security programmes under this regulation, consult with the relevant national government agencies.

Finances of the Board

22. The Board shall submit its annual budget to the Cabinet Secretary for approval as provided under Section 23 (1) of the Act, and a copy thereof to the National Treasury

Supervision of officer of the Board seconded to the Constituency

23. (1) In exercising administrative supervision over the Officer of the Board seconded to the Constituency under section 22 (2) of the Act, a Constituency Committee shall have due regard to the employment laws applicable to the contract of employment of the Officer of the Board.

(2) Whenever the Officer of the Board seconded to the Constituency intends to be absent from the Constituency, the Officer of the Board shall, in writing, inform the Chairperson of a Constituency Committee of such absence, and in the absence of the Chairperson shall,

inform the Secretary.

(3) Whenever the Officer of the Board is absent from the Constituency, the Officer of the Board shall ensure that a copy of the written communication in paragraph (2) is forwarded to—

- (a) the Board;
- (b) the Regional Coordinator; and
- (c) the Officer of the Board responsible for the Officers of the Board seconded to constituencies.

Handing over of
Constituency
Committees.

24. (1) The Officer of the Board seconded to the Constituency shall preside over the handover from one Constituency Committee to another, and shall submit a report on the handover to the Board within fourteen days from the date of the hand over.

(2) The handover referred to in paragraph (1) shall be in accordance with guidelines issued by the Board

Budgets,
procurement plans
and work plans

No 18 of 2012.

25. (1) The Officer of the Board seconded to the Constituency shall, in accordance with the provisions of Public Finance Management Act, 2012 and other written laws, prepare a detailed budget proposal, procurement plan and work plan for the Constituency Committee, and shall present them to a Constituency Committee for approval within the first quarter of a new financial year.

(2) A Constituency Committee shall not incur expenditure unless such expenditure is supported by an approved work plan, a procurement plan and a budget.

(3) The approved work plan, procurement plan and budget referred to in paragraph (2) shall be separate documents and not components of each other, thereby forming attachments to the minutes of the meeting where deliberations were made.

(4) A Constituency Committee may, under special

circumstances and after the second quarter of the financial year, revise the budget, procurement plan and work plan referred to in paragraph (1).

(5) The Officer of the Board seconded to the Constituency shall, at the end of every financial quarter, submit returns to the Board showing the utilization of funds referred to in paragraph (1), in a format prescribed by the Board.

Monitoring and
evaluation of
projects

26. (1) The Board shall issue guidelines for the monitoring and evaluation of projects pursuant to the provisions of the Act.

(2) A Constituency Committee shall carry out monitoring and evaluation of projects at regular intervals and shall submit reports on the monitoring and evaluation exercise in accordance with the guidelines issued under paragraph (1).

(3) A Constituency Committee shall put in place measures to ensure sustainability of projects funded under the Act.

Procurement by
Constituency
Committees and
Project Management
Committees

27. (1) The public procurement and disposal laws shall apply with respect to any procurement by a Constituency Committee or Project Management Committee

(2) The membership of the Tender Committee of the Fund shall be in accordance with the provisions of the public procurement laws.

(3) A Constituency Committee shall, in undertaking procurement activities, ensure that the process is fair, equitable, transparent, competitive and cost effective, in accordance with the provisions of Article 227 of the Constitution.

Constituency
Committee
Accounts

28. (1) Any accruing revenues, interest and liabilities from any Constituency account realized pursuant to section 12(9) of the Act, shall be declared and deposited in the Constituency bank account

(2) A Constituency Committee shall, upon realization of the funds referred to in paragraph (1), seek approval from the Board to utilize of the funds in the manner prescribed in the Act.

29. (1) A project management committee shall only open a bank account in accordance with a resolution of a Constituency Committee and upon official introduction to the Bank by the Officer of the Board.

(2) Any change of signatories of a bank account by the project management committee shall be recorded in the minutes with reasons thereof and forwarded to a Constituency Committee.

(3) A Constituency Committee shall ensure that the project management committee opens a bank account in an approved bank for each approved project.

(4) The project management committee shall, by a resolution recorded in the minutes of the committee, appoint signatories to its bank account.

(5) Every payment out of the project management committee accounts shall be —

(a) on the basis of a resolution recorded in the minutes of a meeting of the project management committee, and

(b) accompanied by a cheque or a payment confirmation schedule issued in accordance with the guidelines issued by the Board.

(6) Payment for all projects that are implemented directly by a Constituency Committee shall be made out of the Constituency Fund account opened in accordance with the provisions of the Act.

Communication

30. All communications of a Constituency Committee, other than the project submission forms, shall be originated by the Officer of the Board seconded to the Constituency or the chairperson of the Committee

Complaint and
dispute resolution

31. (1) A Constituency Committee shall establish and maintain a complaints register in respect of all complaints received with regard to the operations of the Fund in the Constituency, and shall forward a status report of the complaints to the Board at the end of each quarter in a financial year.

(2) A Constituency Committee shall address all complaints made to it before forwarding the complaints to the Board.

(3) A complainant shall, in forwarding a dispute to the Board for consideration, demonstrate efforts made to have the matter resolved at the Constituency level.

(4) A Constituency Committee shall, as much as possible, ensure and demonstrate the effort made towards resolving a complaint at the Constituency level

(5) A Constituency Committee shall maintain a clearly marked and secured complaints submission box in accordance with guidelines issued by the Board

(6) The Board shall issue guidelines to a Constituency Committees on mechanisms and procedures for handling complaints and litigation.

Constituency
Committee office

32. (1) A Constituency Committee shall have one designated office within the Constituency which shall be easily accessible to the public.

(2) An Officer of the Board seconded to the Constituency shall be the custodian of a Constituency Committee Office.

Allowances

33. The Cabinet Secretary shall, in accordance with the Act, issue guidelines on allowances payable to members of a Constituency Committees and other government officers involved in the management of the Fund.

34.(1) A Member of Parliament shall, upon appointing the members of the Constituency Oversight Committee, forward the particulars of the appointees to the officer of the Board seconded to the Constituency for the purposes of recording the same.

(2) A Constituency Oversight Committee established under section 53 of the Act shall perform its functions in the furtherance of community oversight over the Fund.

(3) A member of the Constituency Oversight Committee may attend meetings of a Constituency Committee and any views and recommendations expressed by such member shall be given due consideration by a Constituency Committee.

(4) The Constituency Office may facilitate the Constituency Oversight Committee in the performance of its activities.

(5) The Constituency Oversight Committee may request for information from a Constituency Committee in writing, specifying the reasons for which such information is sought.

Made on, 2016

YUSUF MBUNO,
Chief Executive Officer,
National Government Constituencies Development Fund Board.

LEGAL NOTICE NO.....

MERCHANT SHIPPING ACT, 2009

(No. 4 of 2009)

THE MERCHANT SHIPPING (TRAINING AND CERTIFICATION)
REGULATIONS, 2016

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*Paper laid by the
Majority Party Whip on
9/3/2016 (pud)*



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THE MERCHANT SHIPPING ACT, 2009
(NO. 4 of 2009)

IN EXERCISE of the powers conferred by section 450 of the Merchant Shipping Act, the Cabinet Secretary for Transport and Infrastructure makes the following Regulations –

THE MERCHANT SHIPPING (TRAINING AND CERTIFICATION) REGULATIONS, 2016

PART I-PRELIMINARY

Short title.

1. These Regulations may be cited as the Merchant Shipping (Training and Certification) Regulations, 2016

Interpretation

2. In these Regulations, unless the context otherwise requires-

” able seafarer deck” means a rating qualified in accordance with the provisions of regulation 34;

“able seafarer engine” means a rating qualified in accordance with the provisions of regulation 39;

“Act” means the Merchant Shipping Act, 2009;

“Administration” means the Government of the Party whose flag the ship is entitled to fly and, in respect of certificates, the competent authority authorized to issue certificate on behalf of the Party;

“approved course” means a course or training programme that has been approved by the Director-General, relating to maritime education and training by an approved training institution;

“approved” means approved by the Director-General in accordance with these Regulations;

“approved seagoing service”, or “qualifying seagoing service” means the seagoing service contemplated under regulation 94;

“assessor” means a person conducting in-service assessment of competence of a seafarer, either on board or ashore, and includes an examiner;

“audit” means a systematic, independent and documented process for obtaining audit evidence and evaluating it objectively to determine the extent to

which audit criteria are fulfilled;

“Authority” means the Kenya Maritime Authority;

“Cabinet Secretary” means the cabinet secretary for the time being in charge of shipping and maritime transport;

“Certificate” means a valid document, by whatever name called, issued by the Authority or an Administration recognised by the Authority or an Administration authorizing the holder to serve as stated in that document or as authorised by national regulations;

“certificate of competency” means a certificate issued and endorsed for masters, officers and GMDSS radio operators in accordance with the provisions of Parts II, III, IV or VII of these Regulations or those of the corresponding chapters of the annex to the STCW Convention and entitling the lawful holder thereof to serve in the capacity and perform the functions involved at the level of responsibility specified therein;

“certificate of proficiency” means a certificate, other than a certificate of competency issued to a seafarer, stating that the relevant requirements of training, competencies or seagoing service in the Regulations have been met;

“certificated” means properly holding a certificate;

“chemical tanker” means a ship constructed or adapted and used for the carriage in bulk of any liquid product listed in chapter 17 of the International Bulk Chemical Code;

12 “chief engineer officer” means the senior engineer officer responsible for the mechanical propulsion and the operation and maintenance of the mechanical and electrical installations of the ship;

“chief mate” means the officer next in rank to the master and upon whom the command of the ship will fall in the event of the incapacity of the master;

“Code of Seafarer Qualifications” means the standing instruction or information, as it may be amended, issued by the Authority, specifying the standards and other requirements relevant to the training and certification of seafarers.

“company” means the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the ship owner and who, on assuming such responsibility, has agreed to take over all the duties and responsibilities imposed on the company by these Regulations;

“Convention” means the STCW Convention;

“corrective action” means action to eliminate the cause of a finding;

“deck officer” means an officer qualified in accordance with the provisions of Part II of these Regulations;

“Director-General” means the Director-General of the Authority appointed under the Kenya Maritime Authority Act Chapter 370 of the Laws of Kenya;

“documentary evidence” means documentation, other than a certificate of competency or certificate of proficiency, used to establish that the relevant requirements of these Regulations have been met;

“e-learning” means learning through electronic media;

“electro-technical officer” means an officer qualified in accordance with the provisions of regulation 40;

“electro-technical rating” means a rating qualified in accordance with the provisions of regulation 41;

“endorsement attesting recognition of a certificate” means endorsement in accordance with regulation 10(4);

“engineer officer” means an officer qualified in accordance with the provisions of Part III of these Regulations;

“evaluation criteria” means the criteria specified in Part A of the Convention for the assessment of candidates by an assessor or examiner;

“examiner” means a person appointed under regulation 110 to conduct an oral examination;

“finding” means a situation where objective evidence indicates the non-compliance with a mandatory requirement contained in an IMO instrument or in the

audit standard;

“fishing vessel” means a vessel used for catching fish, whales, seals, walrus or other living resources of the sea;

“function” means a group of tasks, duties and responsibilities, as specified in the STCW Code, necessary for ship operation, safety of life at sea or protection of the marine environment specified in regulation 8;

“gazette notice” means a notice published in the Kenya Gazette by the Cabinet Secretary pursuant to the provisions of the Act;

“GMDSS” means the Global Maritime Distress and Safety System;

“GMDSS radio operator” means a person who is qualified in accordance with the provisions of Part IV of these Regulations;

“GT” in relation to a ship means its gross tonnage calculated in accordance with the International Tonnage Convention, 1969, as amended;

“ILO” means the International Labour Organization;

“independent evaluation” means an evaluation by a suitably qualified person, independent of, or external to, the Authority or activity being evaluated, to verify that the administrative and operational procedures at all levels are managed, organized, undertaken and monitored internally in order to ensure their fitness for purpose and achievement of stated objectives;

“inland water operations” means voyages restricted within the inland waters of Kenya; and ‘inland water service’ shall be construed accordingly;

“ISPS Code” means the International Ship and Port Facility Security (ISPS) Code adopted on 12 December 2002, by resolution 2 of the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea (SOLAS), 1974, as may be amended by the Organization;

“liquefied gas tanker” means a ship constructed or adapted and used for the carriage in bulk of any liquefied gas or other product listed in chapter 19 of the

International Gas Carrier Code,

“management level” means the level of responsibility associated with—

- (a) serving as master, chief mate, chief engineer officer or second engineer officer on board a seagoing ship; and
- (b) ensuring that all functions within the designated area of responsibility are properly performed,

“marine guidance notice” means an information note issued by the Authority to disseminate useful information and guidance in accordance with Section 170(5) of the Act;

“master” means the person having command of a ship;

“month” means a calendar month or 30 days made up of periods of less than one month;

“near-coastal voyage” means—

- (a) a voyage made exclusively within waters under Kenyan jurisdiction; and
- (b) the ship is for the entire voyage within fifty miles from a safe haven in Kenya; or
- (c) a voyage which by agreement between Kenya and another State is considered or treated as a near coastal voyage purposes of affording ships of either party to the agreement the benefits of near-coastal voyages provisions;

“officer” means a member of the crew, other than the master, qualified in accordance with the provisions of Part II or III of these Regulations or designated as such by any other provision of these Regulations;

“oil tanker” means a ship constructed and used for the carriage of petroleum and petroleum products in bulk;

“operational level” means the level of responsibility associated with—

- (a) serving as officer in charge of a navigational or engineering watch or as

designated duty engineer for periodically unmanned machinery spaces, electro-technical officer or as GMDSS radio operator on board a seagoing ship; and

- (b) maintaining direct control over the performance of all functions within the designated area of responsibility in accordance with proper procedures and under the direction of an individual serving in the management level for that area of responsibility;

“Organization” means the International Maritime Organization;

“Party” means a State for which the STCW Convention has entered into force;

“port operations” means voyages restricted to a port operations area; and ‘port operations service’ shall be construed accordingly;

“port operations area” means the sea area within a radius of 15 nautical miles measured outwards of the fairway buoy of a Kenyan port;

“port operations vessel” means a harbour tug, dredger, hopper, pilot boat, work boat, bunker barge, ferry, buoy tender, self-propelled floating crane or any other type ship restricted to operating within a port operations area;

“passenger ship” means a ship as defined in the Act;

“port state control regulations” means the Merchant Shipping (Port State Control) Regulations, 2011;

“propulsion power” means the total maximum continuous rated output power, in kilowatts, of all the ship’s main propulsion machinery which appears on the ship’s certificate of registry or other official document;

“radio duties” means, as the case may be, watchkeeping and technical maintenance and repairs conducted in accordance with the Radio Regulations, the Safety Convention and, at the discretion of each Authority, the relevant recommendations of the Organization;

“radio operator” means a person holding an appropriate certificate issued or recognized by the Director-General or an Administration under the provisions of the Radio

Regulations;

“radio Regulations” means the radio regulations for the time being in force, and includes the regulations made pursuant to the International Telecommunications Convention;

“rating” means a member of the ship’s crew other than the master or an officer;

“registration required” means as part of register or registers in accordance with regulation 12(2);

“responsible person” in relation to a training institution, means the owner or director, the principal or in the case of a university, the Vice-Chancellor or a senior member of the academic or management staff of the training institution;

“revalidation of a certificate” means establishing continued professional competence in accordance with regulation 15;

“ro-ro passenger ship” means a passenger ship with ro-ro spaces or special category spaces as defined in the Safety Convention;

“Safe Manning Regulations” means the relevant safe manning regulations made under the Act;

“safe haven” means a harbour or shelter of any kind which affords safe entry and protection from the force of weather;

“Safety Convention” means the International Convention for the Safety of Life at Sea, 1974, as amended;

“seafarer” means any person employed upon a vessel and includes the master, ships officers and ratings;

“seagoing” in relation to a vessel, means a vessel proceeding to sea beyond the internal waters of Kenya;

“seagoing service” means the time spent on board a seagoing ship, relevant to the issue or revalidation of a certificate or other qualification, and shall count from the time of engagement to the time of disengagement;

“seagoing ship” means a ship other than those which navigate exclusively in inland waters or in internal

waters, or closely adjacent to, sheltered waters or areas where port regulations apply;

“second engineer” officer means the engineer officer next in rank to the chief engineer officer and upon whom the responsibility for the mechanical propulsion and the operation and maintenance of the mechanical and electrical installations of the ship will fall in the event of the incapacity of the chief engineer officer;

“security duties” means all security tasks and duties on board ships as defined by chapter XI-2 of the Safety Convention and the International Ship and Port Facility Security (ISPS) Code;

“Secretary-General” means the Secretary-General of the International Maritime Organization;

“ship security officer” means the person on board the ship, accountable to the master, designated by the Company as responsible for the security of the ship including implementation and maintenance of the ship security plan and liaison with the company security officer and port facility security officers;

“standard of competence” means the level of proficiency to be achieved for the proper performance of functions on board ship in accordance with the internationally agreed criteria as set forth in these regulations and incorporating prescribed standards or levels of knowledge, understanding and demonstrated skill;

“STCW Code” means the Seafarers’ Training, Certification and Watchkeeping (STCW) Code as adopted by the 1995 Conference resolution 2, as it may be amended by the Organization;

“STCW Convention” means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as affected by any amendment made under Article XII of that Convention and “Convention” shall be construed accordingly;

“special types of ships” includes Floating Production Storage and Offloading (FPSO) vessels; Floating Storage Units (FSU); moored construction and support vessels; and Mobile Offshore Units on station in Dynamic Positioning (DP) mode or anchored; semi submersibles; jack ups with propulsion device; cable ships; mobile drilling ships; self-propelled MOUs; jack-

ups, dredgers; semi-submersibles on passage; salvage vessels; navigation aid tenders; cruising pilot vessels; custom launches and other specialised craft;

“support level” means the level of responsibility associated with performing assigned tasks, duties or responsibilities on board a seagoing ship under the direction of an individual serving in the operational or management level;

“syllabus” means an outline of the subjects in a training course developed or approved by the Authority and includes the IMO Model courses;

“tanker” means a chemical tanker, a liquefied gas tanker or an oil tanker;

“trainee” means a person under training, in a training institution or on board a ship, to become a deck officer or an engineer officer and designated as such by these Regulations;

“training course” means a series of lessons contained in an approved syllabus used to teach, whether theoretically or practically, the standards of competence required for certification, and “training programme” shall be construed accordingly;

“training institution” means a technical training institute, tertiary institution, a college, a university or any other organization duly accredited and licensed under the relevant law to conduct academic or vocational training and approved under these regulations to conduct a training course;

“trial” means an experiment or series of experiments, conducted over a limited period, which may involve the use of automated or integrated systems in order to evaluate alternative methods of performing specific duties or satisfying particular arrangements prescribed by these Regulations, which would provide at least the same degree of safety, security and pollution prevention as provided by these regulations;

“unlimited voyage” means a voyage other than a near-coastal voyage;

“Valid” in relation to a certificate or other document, means a certificate or document that—

(a) is current; and

(b) has not been suspended, revoked or cancelled; and

(c) for a certificate, bears the signature of the holder.

“Verification” means confirmation, through the provision of objective evidence, that specified requirements have been fulfilled; and

“watchkeeping service” means the time spent as the duty officer in full charge of a navigational watch for no less than 4 out of every 24 hours while the vessel is engaged on a voyage.

PART II-APPLICATION OF REGULATIONS, ETC

Application.

3. (1) Unless expressly provided otherwise, these regulations shall apply to seafarers serving on board Kenyan seagoing ships or on foreign ships in Kenyan ports except those serving on board—
- (a) warships, naval auxiliaries or other ships owned or operated by a Party and engaged only on governmental non-commercial service;
 - (b) Government ships as defined in the Act;
 - (c) fishing vessels, engaged in the catching of fish;
 - (d) pleasure yachts not engaged in trade; or
 - (e) wooden ships of primitive build, including junks.
- (2) The Authority may require seafarers serving on board ships referred to in sub-paragraphs (1)(b) to (e) to meet the requirements of these Regulations so far as is reasonable and practicable so as not to impair the operations or operational capabilities of such ships.
- (3) In complying with these Regulations, ship-owners, seafarers and training institutions shall take into account, to the greatest degree possible, the guidance and explanatory material contained in part B of the STCW Code and the guidance issued by the Authority in a Marine Guidance Notice.

Purpose of these regulations

4. These Regulations, for the purpose of Section 170 of the Act and Article I (1) of the STCW Convention—

- (a) give effect to the provisions of the STCW Convention and STCW Code;
- (b) prescribe the standards of competence to be attained and other conditions to be satisfied, subject to such exemptions as may be allowed by or under the Convention, for certification as master, officer, rating and other seafarer of any description employed on a Kenyan vessel;
- (c) prescribe the manner in which the attainment of any standard or the satisfaction of any other condition shall be evidenced;
- (d) prescribe the conduct of any examinations, the conditions for admission to such examinations and the appointment and remuneration of examiners; and
- (e) prescribe the issue, form and recording of certificates and other documents,

and different provisions may be made or enabled to be made for different circumstances.

Issuance of masters, officers or ratings certificates

5. (1) The Authority may, in accordance with these regulations—

- (a) issue a certificate; or
- (b) authorize the issuance of a certificate under its authority; or
- (c) issue an endorsement attesting to the recognition of a certificate issued by another Administration.

(2) Notwithstanding paragraph (1) (b), certificates of competency shall be issued only by the Authority following verification of the authenticity and validity of any necessary documentary evidence.

(3) Certificates for masters, officers or ratings shall be issued to those candidates who, to the satisfaction of the Authority, meet the requirements for service, age,

medical fitness, training, qualification and examinations in accordance with the appropriate provisions of these regulations.

- (4) Certificates issued in accordance with the provisions of regulations 45 to 49 to masters and officers on oil tankers, chemical tankers and on liquefied gas tankers shall only be issued by the Authority.
- (5) Kenyan certificates shall be in the English language.
- (6) Pursuant to paragraph (1) (b) and subject to sub-regulation (3), the Director-General may authorize a training institution to issue a certificate of proficiency on behalf of the Authority.
- (7) Candidates for certification shall provide satisfactory proof—
 - (a) of their identity;
 - (b) that their age is not less than that prescribed in the regulation relevant to the certificate applied for;
 - (c) that they meet the standards of medical fitness specified in the relevant medical examination and certification regulations;
 - (d) of having completed approved education and training meeting the vocational and academic standard;
 - (e) of having completed the seagoing service and any related compulsory training required by these regulations for the certificate applied for; and
 - (f) that they meet the standards of competence prescribed by these regulations for the capacities, functions and levels that are to be identified in the endorsement to the certificate. If applicable, pass an oral examination conducted by an examiner appointed by the Director-General.
- (8) Certificates shall be issued only to candidates who comply with the requirements of this regulation.
- (9) All certificates or documentary evidence described in the Convention which authorize the holder to serve in certain functions on board ships, including references

to the relevant regulations and the requirements for endorsement, registration and revalidation is as set out in the Code of Seafarer Qualification.

(10) The formats of certificates issued under these regulations are set forth in the First, Second and Third Schedules.

Certificates issued by other Parties.

6. The Authority shall, subject to the provisions of regulation 9, accept, in principle, certificates issued by or on behalf of the Parties identified and published by the Maritime Safety Committee of the Organization as Parties which have demonstrated that they give full and complete effect to the relevant provisions of the STCW Convention.

Certificates for radio operators.

7. The Authority shall issue appropriate certificates, as prescribed by the Radio Regulations, to radio operators serving on board ships described under regulation 42, and a separate certificate indicating that the holder has the additional knowledge required under regulations 43.

Functions specifying the standards of competence and the levels of responsibility.

8. A certificate of competency or a certificate of proficiency issued to a seafarer by the Authority shall state—

(a) the abilities specified in the standards of competence of the STCW Code, grouped as appropriate, under the following functions—

(i) function 1: navigation;

(ii) function 2: cargo handling and stowage;

(iii) function 3: controlling the operation of the ship and care for persons on board;

(iv) function 4: marine engineering;

(v) function 5: electrical, electronic and control engineering;

(vi) function 6: maintenance and repair; and

(vii) function 7: Radiocommunications.

(b) the levels of responsibility as follows—

- (i) management level, identified as "M";
- (ii) operational level, identified as "O";
and
- (iii) support level, identified as "S".

Recognition of certificates.

9. (1) In order to recognize, by endorsement in accordance with regulation 10(4), a certificate issued by or under the authority of an Administration to a master, officer or radio operator, the Authority shall—
- (a) confirm, through an evaluation of that Administration, which may include inspection of facilities and procedures, that the requirements of the Convention regarding standards of competence, training and certification and quality standards are fully complied with; and
 - (b) agree with the Administration concerned that prompt notification will be given of any significant change in the arrangements for training and certification provided in compliance with the Convention.
- (2) Seafarers who present to the Authority, for recognition, certificates issued under the provisions of regulations II/2, III/2 or III/3 or issued under regulation VII/1 of the STCW Convention at the management level shall be required to pass a written or oral examination intended to test their knowledge of Kenya's maritime legislation relevant to the functions they are permitted to perform. The written examination shall be administered in either paper or electronic format.
- (3) Information provided and measures agreed upon under this regulation shall be communicated to the Secretary-General in conformity with the requirements of regulation 22(2).
- (4) The Authority shall not recognize certificates issued by or under the authority of a non-Party, but the Authority may, when issuing its own certificate, accept seagoing service, education and training acquired under the authority of a non-Party, provided the Authority complies with regulation I/2 of the STCW Convention in issuing each such certificate and ensures that the requirements of the Convention relating to seagoing service, education, training and competence are complied with.

- (5) Notwithstanding the requirement of regulation 10(4), the Authority may, if circumstances require, subject to the provisions of sub-regulation (1), allow a seafarer to serve for a period not exceeding three months on board a Kenyan ship, while holding an appropriate and valid certificate issued and endorsed as required by an Administration for use on board ships entitled to fly the flag of that Administration but which has not yet been endorsed so as to render it appropriate for service on board Kenyan ships, in which case, the owner or master shall make readily available documentary proof that an application for an endorsement has been submitted to the Authority.
- (6) The Authority shall not use certificates or endorsements issued by an Administration under the provisions of regulation I/10 of the STCW Convention in recognition of, or attesting the recognition of, a certificate issued by another Party as the basis for further recognition.
- (7) Where the Authority, having recognized a certificate, withdraws its endorsement of recognition for disciplinary reasons, the Authority shall inform the Administration that issued the certificate of the circumstances.

Endorsements.

10. (1) Certificates for masters and officers issued in compliance with these Regulations shall be endorsed by the Authority, in the English language, in the form referred to in sub-regulation (3).
- (2) The endorsement required by sub-regulation (1) to attest the issuance of a certificate shall only be issued by the Authority if all the requirements of the Regulations have been complied with.
- (3) The form of endorsements used to attest the issue of a certificate shall be that set out in the Second Schedule.
- (4) The Authority, following recognition under regulation 9 of—
 - (a) a certificate of competency; or
 - (b) a certificate of proficiency issued to masters and officers in accordance with the provisions of regulations V/1-1 and V/1-2 of the annex to the STCW Convention,

shall endorse such certificate to attest its recognition only after ensuring the authenticity and validity of the certificate in accordance with regulation 12(6).

(5) The endorsement under sub-regulation (4) shall only be issued if the provisions of these Regulations have been complied with and shall be in the format set out in the Third Schedule.

(6) The endorsements referred to in sub-regulations (4) shall—

(a) only be issued by the Authority;

(b) each be assigned a unique number, except that endorsements attesting the issue of a certificate may be assigned the same number as the certificate concerned, provided that number is unique; and

(c) expire as soon as the certificate endorsed expires or is withdrawn, suspended or cancelled by the Authority or Administration which issued it and, in any case, not more than five years after their date of issue.

(7) The capacity in which the holder of a certificate is authorized to serve shall be identified in the form of endorsement in terms identical to those used in the Minimum Safe Manning Document issued under the relevant regulations.

Certificates to be kept on board the ship.

11. Subject to the provisions of regulation 9(5), any certificate required by these Regulations or the STCW Convention shall be kept available in its original form on board the ship, on which the holder is serving.

Information on the status of certificates, endorsements and dispensations.

12. (1) The Authority shall make available, in English, the information on the status of such certificates, endorsements and dispensations to other Administration and companies which request verification of the authenticity and validity of certificates produced to them by seafarers seeking recognition of their certificates or employment on board ship.

(2) Pursuant to sub-regulation (1), the Authority shall maintain a register or registers of all certificates and

endorsements for masters, officers, and ratings which are issued, have expired or have been revalidated, suspended, cancelled or reported lost or destroyed and of dispensations issued.

- (3) The Authority shall develop and maintain a database for certificate registration from which the register or registers contemplated under sub-regulation (2) shall be established, and which shall set out the details of each certificate in accordance with section A-I/2 of the STCW Code through printed or electronics means.
- (4) The Authority shall allow controlled electronic access to such register or registers to allow Administrations and companies to confirm—
 - (a) the name of the seafarer to whom such certificate, endorsement or other qualification was issued, its relevant number, date of issue and date of expiry;
 - (b) the capacity in which the holder may serve and any limitations attaching thereto; and
 - (c) the functions the holder may perform, the levels authorized and any limitations attached thereto.
- (5) Masters, officers and ratings holding Kenyan certificates shall be required to ensure the correct details of their certificates are held in the register described under sub-regulation (1).
- (6) The Authority shall request from other Administrations verification of the authenticity and validity of certificates produced to it by seafarers seeking recognition of their certificates or employment on board Kenyan ships.

Dispensation

13. (1) In circumstances of exceptional necessity, the Director-General may, if in his opinion this does not cause danger to persons, property or the environment, issue a dispensation permitting a specified seafarer to serve in a specified ship for a specified period not exceeding six months in a capacity, other than that of a radio officer or radiotelephone operator, except as provided by the Radio Regulations, for which he does not hold the appropriate certificate, provided that the person to whom the dispensation is issued shall be adequately qualified to fill the vacant post in

a safe manner, to the satisfaction of the Director-General.

- (2) Dispensations shall not be granted to a master or chief engineer officer except in circumstances of *force majeure* and then only for the shortest possible period.
- (3) Any dispensation granted under sub-regulation (1) shall be granted only to a person properly certificated to fill the post immediately below in respect of which the dispensation is given.
- (4) Where the certification referred in sub-regulation (2) is not required by the STCW Convention, a dispensation may be issued to a person whose qualification and experience are, in the opinion of the Director-General, of clear equivalence to the requirements for the post to be filled, provided that, if such a person holds no appropriate certificate, he shall be required to pass a written test or an oral examination conducted by the Administration, as demonstrating that such a dispensation may safely be issued.
- (5) The company shall ensure that the post for which a dispensation has been granted under sub-regulation (1) is filled by the holder of an appropriate certificate as soon as possible in accordance with the requirements of the Safe Manning regulations.
- (6) The Authority shall, as soon as possible after the 1st January of each year, send a report to the Secretary-General giving information of the total number of dispensations in respect of each capacity for which a certificate is required and has been issued during the year to seagoing ships, together with information as to the numbers of those ships above and below 1600 gross tonnage respectively.

Equivalents and equivalency of certificates.

14. (1) The Authority may adopt other educational and training arrangements, including those involving seagoing service and shipboard organization especially adapted to technical developments and to special types of ships and trades, provided that the level of seagoing service, knowledge and efficiency as regards navigational and technical handling of the ship and cargo ensures a degree of safety at sea and has a preventive effect against pollution equivalent as a minimum to the requirement of these regulations.

- (2) Details of such arrangements shall be reported as early as practicable to the Secretary-General who shall circulate such particulars to all Parties.

Revalidation of certificates.

15. (1) Every master, officer and radio operator holding a certificate issued under any Part of these regulations other than Part VII, who is serving at sea or intends to return to sea after a period ashore, shall be required to revalidate the certificate at intervals not exceeding five years.
- (2) For revalidation of a certificate the holder shall be required to—
- (a) meet the standards of medical fitness prescribed under the relevant regulations; and
 - (b) complete approved seagoing service performing functions appropriate to the certificate held, for a period of at least—
 - (i) twelve months in total during the preceding five years; or
 - (ii) three months in total during the preceding six months immediately prior to revalidating; or
 - (c) have performed functions considered by the Authority to be equivalent to the seagoing service required in paragraph (b); or
 - (d) pass an approved test which may be in the form of written or oral examination, simulator assessment or other appropriate means; or
 - (e) successfully complete an approved training course or courses relevant to the certificate; or
 - (f) have completed approved seagoing service, performing functions appropriate to the certificate held, for a period of not less than three months in a supernumerary capacity.
- (3) Every master and officer shall, for continuing seagoing service on board tankers, be required to

meet the requirements in sub-regulation (2) and, at intervals not exceeding five years, to—

- (a) have approved seagoing service, performing duties appropriate to the tanker certificate or endorsement held, for a period of at least three months in total during the preceding five years; or
 - (b) successfully complete an approved relevant tanker training course.
- (4) If an application for revalidation of a certificate of competency is made within six months before the expiry of the certificate, the certificate may be revalidated until the fifth anniversary of the date of validity, or extension of the validity as the case may be.
- (5) For revalidation of recognition endorsements issued in accordance with the provisions of regulation 10(4), the seafarer shall—
- (a) meet the standards of medical fitness prescribed under the relevant medical examination and certification regulations; and
 - (b) hold a valid certificate of competency or a certificate of proficiency issued in accordance with the provisions of regulations V/1-1 or V/1-2 of the STCW Convention.
- (6) If an application for revalidation of a recognition endorsement is made within six months before the expiry of endorsement, the endorsement may be revalidated until—
- (a) the fifth anniversary of the date of validity, or extension of the validity, of the endorsement; or
 - (b) the date the certificate endorsed expires;
- whichever is earlier.
- (7) Every master, officer and radio operator shall, for continuing seagoing service on board ships for which special training requirements have been internationally agreed upon, be required to successfully complete approved relevant training

(8) Seafarers holding certificates issued before the 5th of October, 2012 shall be required to undergo appropriate refresher and updating training programme or assessment described in Code of Seafarer Qualifications.

(9) The refresher and updating training programmes shall—

(a) be formulated in consultation with the Syllabus Committee established under regulation 78;

(b) approved by the Authority;

(c) include changes in relevant national and international regulations concerning safety of life at sea, security, and protection of the marine environment; and

(d) take account of any updating of the standard of competence concerned.

(10) The Authority shall make available on Kenyan ships texts of recent changes in national and international regulations concerning the safety of life at sea, security and the protection of the marine environment for the purpose of updating the knowledge of masters, officers and radio operators employed on such ships.

Near-coastal voyages

16. (1) The Authority shall not impose training, experience or certification requirements on the seafarers serving on board the ships entitled to fly the flag of another Party and engaged on near-coastal voyages in a manner resulting in more stringent requirements for such seafarers than for seafarers serving on board Kenyan ships.

(2) For the purposes of specifying the details of trading areas and other relevant conditions in respect of near coastal voyages described in sub-regulation (1), the Authority may enter into an undertaking in the form of a bilateral or multilateral agreement with a Party or Parties considering the provisions of regulation 17, in order to afford the ships of either Party or Parties the benefits of the near-coastal provisions of the STCW Convention

(3) With respect to Kenyan ships regularly engaged on

near-coastal voyages off the coast of another Party, the Authority shall prescribe training, experience and certification requirements for seafarers serving on such ships at least equal to those of the Party off whose coast the ship is engaged, provided that they do not exceed the requirements of the STCW Convention in respect of ships not engaged on near-coastal voyages.

(4) Seafarers serving on a ship which extends its voyage beyond what is defined as a near coastal voyage by the Authority, or by the undertaking provided in sub-regulation (2), and enters waters not covered by that definition shall fulfil the appropriate competency requirements of these Regulations.

(5) The Authority may—

(a) afford a Kenyan ship the benefits of the near-coastal voyage provisions of these Regulations when it is regularly engaged off the coast of a non-Party on near-coastal voyages as defined by the Authority; and

(b) accept the certificates of seafarers issued by a Party for the Party's defined near-coastal voyages limits for service in near-coastal voyages as defined by the Authority, provided the Authority and that Party enter into an undertaking provided in sub-regulation (2), specifying the details of involved trading areas and other relevant conditions thereof.

(6) Subject to the meaning assigned to near-coastal voyage under the Act—

(a) the safe havens from where the limits of a near-coastal voyage shall be determined are the ports of Lamu, Malindi, Kilifi, Mombasa and Shimoni, and

(b) the limits of near-coastal voyage shall be prescribed in the relevant certificate of competency

(7) Nothing in this regulation shall, in any way, limit the jurisdiction of the Republic of Kenya as a

coastal state.

Defining near-coastal
voyages

17. (1) Subject to sub-regulation 16(2), in defining near-coastal voyages, the Authority shall—

(a) take into account the effect on the safety and security of all ships and on the marine environment, in light of the-

- (i) type of ship and the trade in which it is engaged;
- (ii) gross tonnage of the ship and the propulsion power in kilowatts of the main machinery;
- (iii) nature and length of the voyages,
- (iv) maximum distance from a port of refuge;
- (v) adequacy of the coverage and accuracy of navigational position-fixing devices;
- (vi) weather conditions normally prevailing in the near-coastal voyages area;
- (vii) provision of shipboard and coastal communication facilities for search and rescue; and
- (viii) the availability of shore-based support, regarding especially technical maintenance on board.

(b) incorporate the near-coastal voyages limits in the endorsements issued pursuant to regulation 10.

(2) Kenyan ships engaged on near-coastal voyages shall not extend their voyages worldwide, on the ground that they are navigating constantly within the limits of designated near-coastal voyages of neighbouring Parties.

Control procedures

18. (1) Kenyan ships wherever they may be and foreign ships while in Kenyan ports, except those excluded by regulation 3, are subject to control by officers duly authorised by the Authority to verify that all seafarers serving on board who are required to be certificated

by these Regulations or by the STCW Convention are so certificated or hold an appropriate dispensation, and such certificates shall be accepted unless there are clear grounds for believing that a certificate has been fraudulently obtained or that the holder of a certificate is not the person to whom that certificate was originally issued.

- (2) In the event that any deficiencies are found under sub-regulation (1) or under the procedures specified in regulation 19 or in the Port State Control Regulations, the officer carrying out the control shall forthwith inform, in writing, the master of the ship and the Consul or, in his absence, the nearest diplomatic representative of the maritime authority of the State whose flag the ship is entitled to fly, so that appropriate action may be taken, which notification shall specify the details of the deficiencies found and the grounds on which the Authority determines that these deficiencies pose a danger to persons, property or the environment.
- (3) In exercising the control under sub-regulation (1), if, taking into account the size and type of the ship and the length and nature of the voyage, the deficiencies referred to in sub-regulation 19(2) are not corrected and it is determined that this fact poses a danger to persons, property or the environment, the Authority shall take steps to ensure that the ship will not sail unless and until these requirements are met to the extent that the danger has been removed.
- (4) When exercising control under this regulation, the Authority shall make all possible efforts to avoid the undue detention or delay of a ship.
- (5) This regulation shall be applied as may be necessary to ensure that no more favourable treatment is given to ships entitled to fly the flag of a non-Party than is given to Kenyan ships or ships entitled to fly the flag of a Party.

Limitation of control procedures, deficiencies and detention of a ship.

19. (1) The control procedures exercised by a duly authorized control officer under regulation 18 shall be limited to the following—
 - (a) verification that all seafarers serving on board who are required to be certificated in accordance with these Regulations or the STCW Convention hold an appropriate certificate or a valid

dispensation, or provide documentary proof that an application for an endorsement has been submitted to the Authority or an Administration in accordance with sub-regulation 9(5);

(b) verification that the numbers and certificates of the seafarers serving on board are in conformity with the requirements of the Safe Manning Regulations; and

(c) assessment, in accordance with sub-regulation 21(1), of the ability of the seafarers of the ship to maintain watchkeeping and security standards, as appropriate, as required by these Regulations or by the STCW Convention if there are clear grounds for believing that such standards are not being maintained because any of the following have occurred-

(i) the ship has been involved in a collision, grounding or stranding, or

(ii) there has been a discharge of substances from the ship when under way, at anchor or at berth which is illegal under any international convention, or

(iii) the ship has been manoeuvred in an erratic or unsafe manner whereby routing measures adopted by the Organization or safe navigation practices and procedures have not been followed, or

(iv) the ship is otherwise being operated in such a manner as to pose a danger to persons, property, the environment, or a compromise to security.

(2) Deficiencies which may be deemed to pose a danger to persons, property or the environment include the following-

- (a) failure of seafarers to hold a certificate, to have an appropriate certificate, to have a valid dispensation or to provide documentary proof that an application for an endorsement has been submitted to the Authority in accordance with regulation 9(5);
- (b) failure to comply with the requirements of the Safe Manning Regulations;
- (c) failure of navigational or engineering watch arrangements to conform to the requirements specified for the ship by the Authority;
- (d) absence in a watch of a person qualified to operate equipment essential to safe navigation, safety radiocommunications or the prevention of marine pollution; and
- (e) inability to provide, for the first watch at the commencement of a voyage and for subsequent relieving watches, persons who are sufficiently rested and otherwise fit for duty.

(3) Failure to correct any of the deficiencies referred to in sub-regulation (2), in so far as it has been determined by the Authority that they pose a danger to persons, property or the environment, shall be the only grounds under this regulation on which the Authority may detain a ship.

Assessment of the ability of the seafarers of the ship to maintain watchkeeping and security standards.

20. (1) The assessment procedure provided for in sub-regulation 19(1)(c), resulting from any of the occurrences mentioned therein shall take the form of a verification that members of the crew who are required to be competent do in fact possess the necessary skills related to the occurrence.
- (2) It shall be borne in mind when making this assessment that on-board procedures are relevant to the International Safety Management Code and that the provisions of these Regulations or the STCW Convention are confined to the competence to safely execute those procedures.
- (3) Control procedures under these Regulations or the

STCW Convention shall be confined to the standards of competence of the individual seafarers on board and their skills related to watchkeeping as defined in Part A of the STCW Code, and on-board assessment of competency shall commence with verification of the certificates of the seafarers.

- (4) Notwithstanding verification of the certificate, the assessment under sub-regulation 19(1) (c) can require the seafarer to demonstrate the related competency at the place of duty which may include verification that operational requirements in respect of watchkeeping standards have been met and that there is a proper response to emergency situations within the seafarer's level of competence
- (5) In the assessment, only the methods for demonstrating competence together with the criteria for its evaluation and the scope of the standards given in part A of the STCW Code shall be used.
- (6) Assessment of competency related to security shall be conducted for those seafarers with specific security duties only in case of clear grounds, as provided for in chapter XI/2 of the International Convention for the Safety of Life at Sea (SOLAS), and in all other cases, it shall be confined to the verification of the certificates or endorsements of the seafarers.

Impartial investigation,
withdrawal, suspension and
cancellation.

21. (1) The Authority shall conduct impartial investigation of any reported incompetency, act, omission or compromise to security that may pose a direct threat to safety of life or property at sea or to the marine environment by the holders of certificates or endorsements issued by the Authority in connection with their performance of duties related to their certificates.
- (2) The report of the investigation conducted under sub-regulation (1) may make a recommendation to the Director-General for the withdrawal, suspension or cancellation of such certificates for such cause and for the prevention of fraud.
- (3) The Authority may take and enforce any measures it deems necessary to prevent fraud and other unlawful practices involving certificates and endorsements issued.

Communication of information.

22. (1) The Director-General may communicate guidance in respect of these Regulations in a marine guidance notice.
- (2) Subject to the Treaty and Ratification Act 2012, the Authority shall communicate to the Secretary-General—
- (a) the information required under Article IV of the Convention within the time periods prescribed and in the format specified in section A-I/7 of the STCW Code; and
 - (b) such other information as may be required by the Code on other steps taken by the Authority to give the Convention full and complete effect.

Medical standards.

23. Every candidate for certification under these Regulations shall hold a valid Medical Certificate issued under the relevant medical examination and certification regulations.

Conduct of trials.

24. (1) Notwithstanding the provisions of these Regulations, the Authority may authorize a Kenyan ship to participate in trials.
- (2) The authorization under sub-regulation (1) shall be granted only when the Authority is satisfied that such trials are conducted in a manner that provides at least the same degree of safety, security and pollution prevention as provided by these regulations. In any case, such trials shall be conducted in accordance with guidelines provided by the Authority.

PART III

REQUIREMENTS FOR CERTIFICATION OF MASTER AND DECK DEPARTMENT PERSONNEL

Officer in charge of a navigational watch on ships of 500 gross tonnage or more.

(STCW Convention Regulation II/1)

25. (1) Every officer in charge of a navigational watch serving on a seagoing ship of 500 gross tonnage or more shall hold a certificate of competency.
- (2) Every candidate for certification under sub-regulation (1) shall be required to—
- (a) be not less than eighteen years of age;
 - (b) have approved seagoing service of not

less than twelve months as part of an approved training programme which includes on-board training which meets the requirements of section A-II/1 of the STCW Code and is documented in an approved training record book, or otherwise have approved seagoing service of not less than thirty-six months;

- (c) have performed, during the required seagoing service, bridge watchkeeping duties under the supervision of the master or a qualified officer for a period of not less than six months;
- (d) meet the applicable requirements of Part IV, as appropriate, for performing designated radio duties in accordance with the Radio Regulations;
- (e) have completed approved education and training and meet the standard of competence specified in section A-II/1 of the STCW Code; and
- (f) meet the standard competence specified in section A-VI/1, paragraph 2, section A-VI/2, paragraphs 1 to 4, section A VI/3, paragraphs 1 to 4 and section A-VI/4, paragraphs 1 to 3 of the STCW Code.

Master and chief mate on ships of 500 gross tonnage or more.

(STCW Convention Regulation II/2)

26. (1) Every master and chief mate on a seagoing ship of 3,000 gross tonnage or more shall hold a certificate of competency.
- (2) Every candidate for certification under sub-regulation (1) shall—
- (a) meet the requirements for certification as an officer in charge of a navigational watch on ships of 500 gross tonnage or more and have approved seagoing service in that capacity for—
 - (i) not less than twelve months for certification as chief mate; and
 - (ii) not less than thirty-six-months

for certification as master;

Provided that the period may be reduced to not less than twenty-four months where twelve or more months of such seagoing service has been served as chief mate; and

- (b) have completed approved education and training;
- (c) meet the standard of competence specified in section A-II/2 of the STCW Code for masters and chief mates on ships of 3,000 gross tonnage or more.

Master and chief mate on ships of between 500 and 3,000 gross tonnage.

(STCW Convention Regulation II/2)

27. (1) Every master and chief mate on a seagoing ship of between 500 and 3,000 gross tonnage shall be required to be the holder of a certificate of competency.

(2) Every candidate for certification under sub-regulation (1) shall—

- (a) for certification as chief mate, be required to meet the requirements of an officer in charge of a navigational watch on ships of 500 gross tonnage or more;
- (b) for certification as master, be required to meet the requirements of an officer in charge of a navigational watch on ships of 500 gross tonnage or more and have approved seagoing service of not less than 36 months in that capacity; and
- (c) be required to have completed approved training and meet the standard of competence specified in section A-II/2 of the STCW Code for masters and chief mates on ships of between 500 and 3,000 gross tonnage.

Restriction of certificate to near-coastal voyages.

28. (1) The Authority may issue a restricted certificate of competency to master, chief mate and officer in charge of a navigational watch serving on board ships of more than 500 gross tonnage engaged exclusively on near-coastal voyages bearing in mind

the effect on the safety of all ships which may be operating in the same waters

- (2) Candidates for certification under sub-regulation (1) shall meet the requirements set out in the Section A-II/1 and A-II/2 of the STCW Code.

Officer in charge of a navigational watch and of master on ships of less than 500 gross tonnage not engaged on near-coastal voyages.

(STCW Convention Regulation II/3)

Officer in charge of a navigational watch on ships of less than 500 gross tonnage engaged on near-coastal voyages

(STCW Convention Regulation II/3)

- 29. (1) Every officer in charge of a navigational watch serving on a seagoing ship of less than 500 gross tonnage not engaged on near-coastal voyages shall be required to be the holder of a certificate of competency for ships of 500 gross tonnage or more.

- (2) Every master serving on a seagoing ship of less than 500 gross tonnage not engaged on near-coastal voyages shall be required to be the holder of a certificate of competency for service as master on ships of between 500 and 3,000 gross tonnage.

- 30. (1) Every officer in charge of a navigational watch on a seagoing ship of less than 500 gross tonnage engaged on near-coastal voyages shall be required to be the holder of a certificate of competency.

- (2) Every candidate for certification as officer in charge of a navigational watch on a seagoing ship of less than 500 gross tonnage engaged on near-coastal voyages shall be required to-

- (a) be not less than eighteen years of age,

- (b) have completed-

- (i) special training contemplated in section A-II/3 of the STCW Code, including an approved seagoing service of not less than twelve months on board a ship of not less than 100 gross tonnage; or

- (ii) approved seagoing service as a rating in the deck department of not less than thirty-six months,

- (c) meet the applicable requirements of Part V, as appropriate, for performing designated radio duties in accordance with the Radio Regulations;

- (d) have completed approved education and training and meet the standard of competence specified in section A-II/3 of the STCW Code for officers in charge of a navigational watch on ships of less than 500 gross tonnage engaged on near-coastal voyages; and
- (e) meet the standard of competence specified in section A-VI/1, paragraph 2, section A-VI/2, paragraphs 1 to 4, section A-VI/3, paragraphs 1 to 4 and section A-VI/4, paragraphs 1 to 3 of the STCW Code.

Master on ships of less than 500 gross tonnage engaged on near-coastal voyages.

(STCW Convention Regulation II/3)

31. (1) Every master serving on a seagoing ship of less than 500 gross tonnage engaged on near-coastal voyages shall be required to be the holder of a certificate of competency.

(2) Every candidate for certification as master on a seagoing ship of less than 500 gross tonnage engaged on near-coastal voyages shall be required to—

- (a) be not less than twenty years of age;
- (b) have approved seagoing service of not less than 12 months as officer in charge of a navigational watch;
- (c) have completed approved education and training and meet the standard of competence specified in section A-II/3 of the STCW Code for masters on ships of less than 500 gross tonnage engaged on near-coastal voyages; and
- (d) meet the standard of competence specified in section A-VI/1, paragraph 2, section A-VI/2, paragraphs 1 to 4, section A-VI/3, paragraphs 1 to 4 and section A-VI/4, paragraphs 1 to 3 of the STCW Code.

Exemptions due to size of ship and conditions of voyage.

32. The Authority, if it considers that a ship's size and the conditions of its voyage are such as to render the application of the full requirements of regulations 30, 31 and 32 and section A-II/3 of the STCW Code unreasonable or impracticable, may to that extent exempt

the master and the officer in charge of a navigational watch on such a ship or class of ships from some of the requirements, bearing in mind the safety of all ships which may be operating in the same waters.

Rating forming part of a navigational watch.

(STCW Convention Regulation II/4)

33. (1) Every rating forming part of a navigational watch on a seagoing ship of 500 gross tonnage or more, other than ratings under training and ratings whose duties while on watch are of an unskilled nature, shall be required to be duly certificated to perform such duties.
- (2) Every candidate for certification under sub-regulation (1) shall be required to—
- (a) be not less than eighteen years of age;
 - (b) have completed—
 - (i) approved seagoing service, including not less than six (6) months of training and experience, or
 - (ii) special training, either pre-sea or on board ship, including an approved period of seagoing service which shall not be less than two (2) months, and
 - (c) meet the standard of competence specified in section A-II/4 of the STCW Code.
- (3) The seagoing service, training and experience required by paragraph (2)(b) shall be associated with navigational watchkeeping functions and involve the performance of duties carried out under the direct supervision of the master, the officer in charge of the navigational watch or a qualified rating.
- (4) The requirements of this regulation are not those for certification of Able Seamen as contained in the ILO Certification of Able Seamen Convention, 1946, or any subsequent convention.

Able seafarer deck.

(STCW Convention Regulation II/5)

34. (1) Every able seafarer deck serving on a seagoing ship of 500 gross tonnage or more shall be duly certificated.
- (2) Every candidate for certification under sub-regulation (1) shall be required to—

- (a) be not less than eighteen years of age;
 - (b) meet the requirements for certification as a rating forming part of a navigational watch;
 - (c) while qualified to serve as a rating forming part of a navigational watch, have approved seagoing service in the deck department of-
 - (i) not less than eighteen months, or
 - (ii) not less than twelve months, and
 - (iii) have completed approved training; and
 - (d) meet the standard of competence specified in section A-II/5 of the STCW Code.
- (3) Able Seamen holding certificates issued before the 5th October 2012 shall be required to undergo updating training described in the Code of Seafarer Qualifications
- (4) Seafarers shall be considered by the Authority to have met the requirements of this regulation if they have served in a relevant capacity in the deck department for a period of not less than twelve months within 1st January 2007 to 1st January 2012.

PART IV

REQUIREMENTS FOR CERTIFICATION OF ENGINE DEPARTMENT PERSONNEL

Officer in charge of an engineering watch in a manned engine-room or designated duty engineers in a periodically unmanned engine-room.

(STCW Convention Regulation III/1)

35. (1) Every officer in charge of an engineering watch in a manned engine-room or designated duty engineer officer in a periodically unmanned engine-room on a seagoing ship powered by main propulsion machinery of 750 kW propulsion power or more shall hold a certificate of competency.
- (2) Every candidate for certification under sub-regulation (1) shall-
- (a) be required to be not less than eighteen

years of age;

- (b) have completed combined workshop skills training and an approved seagoing service of not less than twelve months as part of an approved training programme which includes on board training that meets the requirements of section A-III/1 of the STCW Code and is documented in an approved training record book, or otherwise have completed combined workshop skills training and an approved seagoing service of not less than thirty-six months of which not less than thirty months shall be seagoing service in the engine department,
- (c) have performed, during the required seagoing service, engine-room watchkeeping duties under the supervision of the chief engineer officer or a qualified engineer officer for a period of not less than six months;
- (d) have completed approved education and training and meet the standard of competence specified in section A-III/1 of the STCW Code; and
- (e) meet the standard of competence specified in section A-VI/1, paragraph 2, section A-VI/2, paragraphs 1 to 4, section A-VI/3, paragraphs 1 to 4 and section A-VI/4, paragraphs 1 to 3 of the STCW Code.

Chief engineer officer and second engineer officer on ships powered by main propulsion machinery of 3,000 kW propulsion power or more.

36. (1) Every chief engineer officer and second engineer officer on a seagoing ship powered by main propulsion machinery of 3,000 kW propulsion power or more shall be required to be a holder of a certificate of competency.

(STCW Convention Regulation III/2)

(2) Every candidate for certification under sub-regulation (1) shall—

- (a) meet the requirements for certification as an officer in charge of an engineering watch on seagoing ships powered by main propulsion machinery of 750 kW propulsion power or more and have approved seagoing service in

that capacity-

- (i) for certification as second engineer officer, have not less than twelve months as qualified officer in charge of an engineering watch; and
- (ii) for certification as chief engineer officer, have not less than thirty-six months; however, this period may be reduced to not less than twenty-four months if twelve or more months of such seagoing service have been served as second engineer officer; and

(b) have completed approved education and training and meet the standard of competence specified in section A-III/2 of the STCW Code.

Chief engineer officer and second engineer officer on ships powered by main propulsion machinery of between 750 kW and 3,000 kW propulsion power.

(STCW Convention Regulation III/3)

37. (1) Every chief engineer officer and second engineer officer on a seagoing ship powered by main propulsion machinery of between 750 kW and 3,000 kW propulsion power shall hold a certificate of competency.

(2) Every candidate for certification shall be required to-

(a) meet the requirements for certification as an officer in charge of an engineering watch and-

(i) for certification as second engineer officer, have not less than twelve months of approved seagoing service as cadet officer or engineer officer, and

(ii) for certification as chief engineer officer, have not less than twenty-four months of approved seagoing service of which not less than twelve months shall be served while qualified to serve as second engineer officer; and

(b) have completed approved education and training and meet the standard of

competence specified in section A-III/3 of the STCW Code.

- (3) Every engineer officer who is qualified to serve as second engineer officer on ships powered by main propulsion machinery of 3,000 kW propulsion power or more, may serve as chief engineer officer on ships powered by main propulsion machinery of less than 3,000 kW propulsion power, provided the certificate is so endorsed.

Rating forming part of a watch in a manned engine-room or designated to perform duties in a periodically unmanned engine room.

(STCW Convention Regulation III/4)

38. (1) Every rating forming part of an engine-room watch or designated to perform duties in a periodically unmanned engine-room on a seagoing ship powered by main propulsion machinery of 750 kW propulsion power or more, other than ratings under training and ratings whose duties are of an unskilled nature, shall be required to be duly certificated to perform such duties.

- (2) Every candidate for certification under sub-regulation (1) shall be required to—

(a) be not less than eighteen years of age;

(b) have completed-

(i) approved seagoing service including not less than six months of training and experience, or

(ii) special training, either pre-sea or on board ship, including an approved period of seagoing service of not less than two (2) months; and

(c) meet the standard of competence specified in section A-III/4 of the STCW Code

- (3) The seagoing service, training and experience required by paragraph 2(b) shall be associated with engine-room watchkeeping functions and involve the performance of duties carried out under the direct supervision of a qualified engineer officer or a qualified rating.

Able seafarer engine in a manned engine room or designated to perform duties in a periodically unmanned

39. (1) Every able seafarer engine serving on a seagoing ship powered by main propulsion machinery of 750 kW propulsion power or more shall be required to be duly certificated.

engine-room.

(STCW Convention
Regulation III/5)

(2) Every candidate for certification under sub-regulation
(1) shall be required to—

- (a) be not less than eighteen years of age;
- (b) meet the requirements for certification as a rating forming part of a watch in a manned engine-room or designated to perform duties in a periodically unmanned engine-room;
- (c) while qualified to serve as a rating forming part of an engineering watch, have approved seagoing service in the engine department of:
 - (i) not less than twelve months,
or
 - (ii) not less than six months and have completed approved training; and
- (d) meet the standard of competence specified in section A-III/5 of the STCW Code.

(3) Seafarers shall be considered by the Authority to have met the requirements of this regulation if they have served in a relevant capacity in the engine department for a period of not less than twelve months within 1st January 2007 to 1st January 2012.

Electro-technical officer.

(STCW Convention
Regulation III/6)

40. (1) Every electro-technical officer serving on a seagoing ship powered by main propulsion machinery of 750 kW propulsion power or more shall hold a certificate of competency.

(2) Every candidate for certification shall be required to—

- (a) be not less than eighteen years of age;
- (b) have completed not less than twelve months of combined workshop skills training and approved seagoing service of which not less than six months shall be seagoing service as part of an approved training programme which meets the requirements of section A-III/6 of the

STCW Code and is documented in an approved training record book, or otherwise not less than thirty six months of combined workshop skills training and approved seagoing service of which not less than thirty months shall be seagoing service in the engine department;

- (c) have completed approved education and training and meet the standard of competence specified in section A-III/6 of the STCW Code; and
 - (d) meet the standard of competence specified in section A-VI/1, paragraph 2, section A-VI/2, paragraphs 1 to 4, section A-VI/3, paragraphs 1 to 4 and section A-VI/4, paragraphs 1 to 3 of the STCW Code.
- (3) Seafarers may be considered by the Authority to have met the requirements of this regulation if they have served in a relevant capacity on-board ship for a period of not less than twelve months within 1st January 2007 to 1st January 2012 and meet the standard of competence specified in section A-III/6 of the STCW Code
- (4) Notwithstanding the requirements of sub-regulations (1), (2) and (3), a suitably qualified person may be considered by the Authority to be able to perform certain functions of section A-III/6.

Electro technical rating.

(STCW Convention
Regulation III/7)

41. (1) Every electro-technical rating serving on a seagoing ship powered by main propulsion machinery of 750 kW propulsion power or more shall be required to be duly certificated.
- (2) Every candidate for certification under sub-regulation (1) shall be required to—
- (a) be not less than eighteen years of age;
 - (b) have-
 - (i) completed approved seagoing service including not less than twelve months training and experience, or

(ii) completed approved training, including an approved period of seagoing service which shall not be less than six months, or

(iii) qualifications that meet the technical competences in table A-III/7 and an approved period of seagoing service, which shall not be less than three months; and

(c) meet the standard of competence specified in section A-III/7 of the STCW Code.

(3) Seafarers may be considered by the Authority to have met the requirements of this regulation if they have served in a relevant capacity on-board ship for a period of not less than twelve months within 1st January 2007 to 1st January 2012 and meet the standard of competence specified in section A-III/7 of the STCW Code.

(4) Notwithstanding the above requirements of sub-regulation (2), a suitably qualified person may be considered by a Party to be able to perform certain functions of section A-III/7.

PART V

CERTIFICATION REQUIREMENTS FOR RADIOCOMMUNICATION AND RADIO OPERATORS

Application of this Part.

42. (1) This Part shall not apply to radio operators on ships not required to comply with the provisions of GMDSS in Chapter IV of the Safety Convention, who shall, nevertheless, required to comply with the Radio Regulations.

(2) The Authority shall issue appropriate certificates as prescribed by the Radio Regulations in respect of such radio operators or recognize such certificates.

GMDSS radio operators certificate.

(STCW Convention Regulation IV/2)

43. (1) Every person in charge of or performing radio duties on a ship to which this Part applies shall be required to be the holder of an appropriate certificate related to the GMDSS issued or recognized by the Authority subject to the provisions of the Radio Regulations.

(2) In addition to the requirements of sub-regulation (1), every candidate for certification of competency under this regulation for service on a ship, which is required by the Safety Convention to have a radio installation, shall be required to—

(a) be not less than 18 years of age; and

(b) have completed approved education and training and meet the standard of competence specified in section A-IV/2 of the STCW Code.

PART VI

CERTIFICATION REQUIREMENTS FOR PERSONNEL ON CERTAIN TYPES OF SHIPS

Certificates and endorsements issued to masters, officers and ratings on certain types of ship.

44. The Authority shall—

(a) issue certificates of proficiency to seafarers who are qualified in accordance with the provisions of regulations 46 to 50, or duly endorse an existing certificate of competency or certificates of proficiency.

(b) ensure that certificate is issued to every person found qualified under the provisions of regulations 52 to 55.

A - Masters, officers and ratings on oil and chemical tankers

Basic training for oil and chemical tanker cargo operations for masters, officers and ratings on oil and chemical tankers

45. (1) Officers and ratings assigned specific duties and responsibilities related to cargo or cargo equipment on oil or chemical tankers shall hold a certificate in basic training for oil and chemical tanker cargo operations.

(2) Every candidate for a certificate in basic training for oil and chemical tanker cargo operations shall have completed basic training in accordance with provisions of section A-VI/1 of the STCW Code and shall be required to have completed—

(a) at least three months of approved seagoing service on oil or chemical tankers and meet the standard of competence specified in section A-V/1-1, paragraph 1 of the STCW Code; or

(b) an approved basic training for oil and chemical tanker cargo operations and meet

the standard of competence specified in section A-V/1-1, paragraph 1 of the STCW Code.

Advanced training for oil tanker cargo operations.

46. (1) Masters, chief engineer officers, chief mates, second engineer officers and any person with immediate responsibility for loading, discharging, care in transit, handling of cargo, tank cleaning or other cargo-related operations on oil tankers shall hold a certificate in advanced training for oil tanker cargo operations.
- (2) Every candidate for a certificate in advanced training for oil tanker cargo operations shall—
- (a) meet the requirements for certification in basic training for oil and chemical tanker cargo operations; and
 - (b) while qualified for certification in basic training for oil and chemical tanker cargo operations, have:
 - (i) at least three months of approved seagoing service on oil tankers, or
 - (ii) at least one month of approved on board training on oil tankers, in a supernumerary capacity, which includes at least three loading and three unloading operations and is documented in an approved training record book; and
 - (c) have completed approved advanced training for oil tanker cargo operations and meet the standard of competence specified in section A-V/1-1, paragraph 2 of the STCW Code.

Advanced training for chemical tanker cargo operations.

(STCW Convention Regulation V/1-1)

47. (1) Masters, chief engineer officers, chief mates, second engineer officers and any person with immediate responsibility for loading, discharging, care in transit, handling of cargo, tank cleaning or other cargo-related operations on chemical tankers shall be required to be holders of a certificate in advanced training for chemical tanker cargo operations.
- (2) Every candidate for a certificate in advanced training for chemical tanker cargo operations shall be required

to-

- (a) meet the requirements for certification in basic training for oil and chemical tanker cargo operations, and
- (b) while qualified for certification in basic training for oil and chemical tanker cargo operations, have:
 - (i) at least three months of approved seagoing service on chemical tankers, or
 - (ii) at least one month of approved on board training on chemical tankers, in a supernumerary capacity, which includes at least three loading and three unloading operations and is documented in an approved training record book; and
 - (iii) completed approved advanced training for chemical tanker cargo operations and meet the standard of competence specified in section A-V/1-1, paragraph 3 of the STCW Code.

B - Masters, officers and ratings on liquefied gas tankers

Basic training for liquefied gas tanker cargo operations for masters, officers and ratings on liquefied gas tankers.

(STCW Convention Regulation V/1-2)

48. (1) Officers and ratings assigned specific duties and responsibilities related to cargo or cargo equipment on liquefied gas tankers shall be required to hold a certificate in basic training for liquefied gas tanker cargo operations.
- (2) Every candidate for a certificate in basic training for liquefied gas tanker cargo operations shall be required to have completed basic training in accordance with provisions of section A-VI/1 of the STCW Code and-
- (a) at least three months of approved seagoing service on liquefied gas tankers and meet the standard of competence specified in section A-V/1-2, paragraph 1 of the STCW Code; or
 - (b) an approved basic training for liquefied gas tanker cargo operations and meet

the standard of competence specified in section A-V/1-2, paragraph 1 of the STCW Code.

Advanced training for liquefied gas tanker cargo operations.

49. (1) Masters, chief engineer officers, chief mates, second engineer officers and any person with immediate responsibility for loading, discharging, care in transit, handling of cargo, tank cleaning or other cargo-related operations on liquefied gas tankers shall hold a certificate in advanced training for liquefied gas tanker cargo operations.
- (2) Every candidate for a certificate in advanced training for liquefied gas tanker cargo operations shall be required to—
- (a) meet the requirements for certification in basic training for liquefied gas tanker cargo operations; and
 - (b) while qualified for certification in basic training for liquefied gas tanker cargo operations, have:
 - (i) at least three months of approved seagoing service on liquefied gas tankers. or
 - (ii) at least one month of approved on-board training on liquefied gas tankers, in a supernumerary capacity, which includes at least three loading and three unloading operations, and is documented in an approved training record book; and
 - (c) have completed approved advanced training for liquefied gas tanker cargo operations and meet the standard of competence specified in section A-V/1-2, paragraph 2 of the STCW Code.

C - Masters, officers, ratings and other personnel on passenger ships

- Application of this division. 50. (1) This division shall apply to masters, officers, ratings and other personnel serving on board passenger ships engaged on international voyages.
- (2) Prior to being assigned shipboard duties on board passenger ships, seafarers shall be required to have completed the training required by regulations 53 to

55 in accordance with their capacity, duties and responsibilities.

- (3) The Authority shall determine the applicability of these requirements to personnel serving on passenger ships engaged on domestic voyages.

Crowd management training.

(STCW Convention Regulation V/2)

Safety training.

(STCW Convention Regulation V/2)

Crisis management and human behaviour training.

(STCW Convention Regulation V/2)

Passenger safety, cargo safety and hull integrity training.

(STCW Convention Regulation V/2)

Refresher training.

51. Masters, officers and other personnel designated on muster lists to assist passengers in emergency situations on board passenger ships shall have completed training in crowd management as specified in section A-V/2, paragraph 1 of the STCW Code.
52. Personnel providing direct service to passengers in passenger spaces on board passenger ships shall have completed the safety training specified in section A-V/2, paragraph 2 of the STCW Code.
53. Masters, chief engineer officers, chief mates, second engineer officers and any person designated on muster lists as having responsibility for the safety of passengers in emergency situations on board passenger ships shall be required to have completed approved training in crisis management and human behaviour as specified in section A-V/2, paragraph 3 of the STCW Code.
54. Masters, chief engineer officers, chief mates, second engineer officers and every person assigned immediate responsibility for embarking and disembarking passengers, loading, discharging or securing cargo, or closing hull openings on board ro-ro passenger ships shall be required to have completed approved training in passenger safety, cargo safety and hull integrity as specified in section A-V/2, paragraph 4 of the STCW Code.
55. Seafarers who are required to be trained in accordance with regulations 52, 53 and 54 shall, at intervals not exceeding five years—
- (a) undertake appropriate refresher training described in Code of Seafarer Qualifications; or
 - (b) have approved seagoing service of not less than six months on board passenger ships within the previous five years.

PART VII

CERTIFICATION REQUIREMENTS REGARDING EMERGENCY, OCCUPATIONAL SAFETY, SECURITY, MEDICAL CARE AND SURVIVAL FUNCTIONS

Basic safety training and
instruction for all seafarers.

(STCW Regulation VI/1)

56. (1) Seafarers shall receive basic training or instruction in accordance with section A-VI/1 of the STCW Code and shall meet the appropriate standard of competence specified therein.
- (2) Where basic training is not included in the qualification for the certificate to be issued, the Authority shall issue a certificate of proficiency, indicating that the holder has attended the course in basic training.
- (3) Seafarers qualified in basic training in accordance with sub-regulation (1) shall be required, every five years, to undertake appropriate refresher training described in Code of Seafarer Qualifications.

Proficiency in survival craft,
rescue boats and fast rescue
boats.

(STCW Convention
Regulation VI/2)

57. (1) Every candidate for a certificate of proficiency in survival craft and rescue boats other than fast rescue boats shall be required to—
- (a) be not less than eighteen years of age;
 - (b) have approved seagoing service of not less than twelve months or have attended an approved training course and have approved seagoing service of not less than six months; and
 - (c) meet the standard of competence for certificates of proficiency in survival craft and rescue boats, set out in section A-VI/2, paragraphs 1 to 4 of the STCW Code.
- (2) Seafarers qualified in accordance with sub-regulation (1) in survival craft and rescue boats other than fast rescue boats shall be required, every five years, to undertake appropriate refresher training as described in the Code of Seafarer Qualifications.
- (3) Every candidate for a certificate of proficiency in fast rescue boats shall be required to—
- (a) be the holder of a certificate rescue boats;
 - (b) have attended an approved training course;

and

(c) meet the standard of competence for certificates of proficiency in fast rescue boats, as set out in section A-VI/2, paragraphs 7 to 10 of the STCW Code.

(4) Seafarers qualified in accordance with sub-regulation (3) in fast rescue boats shall be required, every five years, to undertake appropriate refresher training described in Code of Seafarer Qualifications.

Advanced fire fighting.

(STCW Convention
Regulation VI/3)

58. (1) Seafarers designated to control fire-fighting operations shall be required to have successfully completed advanced training in techniques for fighting fire, with particular emphasis on organization, tactics and command, in accordance with the provisions of section A-VI/3, paragraphs 1 to 4 of the STCW Code, and shall meet the standard of competence specified therein.

(2) Where training in advanced fire-fighting is not included in the qualifications for the certificate to be issued, the Authority shall issue a certificate of proficiency indicating that the holder has attended a course of training in advanced fire fighting.

(3) Seafarers qualified in accordance with sub-regulation (1) in advanced fire fighting shall be required, every five years, to undertake appropriate refresher training described in Code of Seafarer Qualifications.

Medical First Aid and
Medical Care.

(STCW Convention
Regulation VI/4)

59. (1) Seafarers designated to provide medical first aid on board ship shall meet the standard of competence in medical first aid specified in section A-VI/4, paragraphs 1 to 3 of the STCW Code.

(2) Seafarers designated to take charge of medical care on board ship shall meet the standard of competence in medical care on board ships specified in section A-VI/4, paragraphs 4 to 6 of the STCW Code.

(3) Where training in medical first aid or medical care is not included in the qualifications for the certificate to be issued, the Authority shall issue a certificate of proficiency indicating that the holder has attended a course of training in medical first aid or in medical care.

Ship Security Officers.

(STCW Convention

60. (1) The Authority shall issue a certificate of proficiency to every person found qualified under the provisions of this regulation.

Regulation VI/5)

(2) Every candidate for a certificate of proficiency as ship security officer shall—

- (a) have approved seagoing service of not less than twelve months or appropriate seagoing service and knowledge of ship operations; and
- (b) meet the standard of competence for certification of proficiency as ship security officer, set out in section A-VI/5, paragraphs 1 to 4 of the STCW Code.

Security related familiarisation training

(STCW Convention Regulation VI/6)

61. Before being assigned to shipboard duties, all persons employed or engaged on a seagoing ship which is required to comply with the provisions of the ISPS Code, other than passengers, shall receive approved security-related familiarization training to be able to—

- (a) report a security incident, including a piracy or armed robbery threat or attack;
- (b) know the procedures to follow when they recognize a security threat; and
- (c) take part in security-related emergency and contingency procedures

Security awareness training.

(STCW Convention Regulation VI/6)

62. (1) Seafarers shall receive security awareness training or instruction in accordance with section A-VI/6, paragraphs 1 to 4 of the STCW Code and shall meet the appropriate standard of competence specified therein.

(2) Where security awareness is not included in the qualification for the certificate to be issued, the Authority shall issue a certificate of proficiency indicating that the holder has attended a course in security awareness training.

Seafarers with designated security duties.

(STCW Convention Regulation VI/6)

63. (1) Seafarers with designated security duties shall meet the standard of competence specified in section A-VI/6, paragraphs 6 to 8 of the STCW Code.

(2) Where training in designated security duties is not included in the qualifications for the certificate to be issued, a certificate of proficiency shall be issued indicating that the holder has attended a course of training for designated security duties.

- (3) Seafarers who hold certificates or other documented qualifications required of seafarers with designated security duties issued before the 5th October 2012 shall be required to undergo updating training described in the Code of Seafarer Qualifications.

PART VIII

ALTERNATIVE CERTIFICATION

Issue of alternative certificates.

64. (1) Notwithstanding the requirements for certification laid down in Parts II and III of these regulations, the Authority may issue or authorize the issue of certificates other than those mentioned in the regulations of those parts, provided that—
- (a) the associated functions and levels of responsibility to be stated on the certificates and in the endorsements shall be selected from and identical to those appearing in sections A-II/1, A-II/2, A-II/3, A-II/4, A-II/5, A-III/1, A-III/2, III/3, A-III/4, A-III/5 and A-IV/2 of the STCW Code;
 - (b) the candidates shall be required to have completed approved education and training and meet the requirements for standards of competence, prescribed in the relevant sections of the STCW Code and as set forth in section A-VII/1 of the said Code, for the functions and levels that are to be stated in the certificates and in the endorsements;
 - (c) the candidates shall be required to have completed approved seagoing service appropriate to the performance of the functions and levels that are to be stated on the certificate, for a minimum period equivalent to the duration of seagoing service prescribed in Parts II and III. But not less than the period prescribed in section A-VII/2 of the STCW Code,
 - (d) the candidates for certification who are to perform the function of navigation at the operational level shall be required to meet the applicable requirements of Part IV, as appropriate, for performing designated radio duties in accordance

with the Radio Regulations; and

(e) the certificates shall be issued in accordance with the requirements of regulation 5 and the provisions of chapter VII of the STCW Code.

(2) The Authority shall communicate information in respect of certificates issued under this Part in accordance with sub-regulation 22(2).

Certification of seafarers.

65. (1) Every seafarer who performs any function or group of functions specified in tables A-II/1, A-II/2, A-II/3, A-II/4 or A-II/5 of chapter II or in tables A-III/1, A-III/2, III/3, A-III/4 or A-III/5 of chapter III or A-IV/2 of chapter IV of the STCW Code shall be required to be a holder of a certificate of competency or certificate of proficiency, as applicable.

(2) The abilities specified in the standards of competence which are grouped, as appropriate, and stated under regulation 8, shall clarify the linkage between the alternative certification provisions of this part and the certification provisions of parts II, III and IV.

Principles governing the issue of alternative certificates

66. (1) In issuing or authorizing the issue of alternative certificates, the Authority shall observe the following principles—

(a) no alternative certification system shall be implemented unless it ensures a degree of safety at sea and has a preventive effect as regards pollution at least equivalent to that provided under the STCW Code; and

(b) any arrangement for alternative certification issued under this part shall provide for the interchangeability of certificates with those issued under the other chapters.

(2) The principles of interchangeability in sub-regulation (1) shall ensure that—

(a) seafarers certificated under the arrangements of Parts II or III of these Regulations and those certificated under this Part are able to serve on ships which have either traditional or other forms of

shipboard organization; and

(b) seafarers are not trained for specific shipboard arrangements in such a way as would impair their ability to take their skills elsewhere.

(3) In issuing any certificate under the provisions of this Part, the Authority shall take into account the following principles—

(a) the issue of alternative certificates shall not be used so as to—

(i) reduce the number of crew on board,

(ii) lower the integrity of the profession or downgrade the skills seafarers, or

(iii) justify the assignment of the combined duties of the engine and deck watchkeeping officers to a single certificate holder during any particular watch; and

(b) the person in command shall be designated as the master;

(c) the legal position and authority of the master and others shall not be adversely affected by the implementation of any arrangement for alternative certification.

The principles contained in sub-regulations (1) and (2) shall ensure that the competency of both deck and engineer officers is maintained

PART IX

CERTIFICATION REQUIREMENTS FOR NON-STCW CERTIFICATES

Application of this part.

67. This Part shall apply to seafarers working on board ships of less than 100 gross tonnage licensed under Section 57 of the Act engaged on port operations service or inland water service.

Boat operator.

68. A candidate for certification as a boat operator shall be required to—

(a) be eighteen years of age;

- (b) have successfully completed approved education and training and passed a theory examination;
- (c) passed a practical examination;
- (d) been assessed at level 3.

Coxswain (grade) 3.

69. A candidate for certification as a coxswain grade 3 shall be required to be at least eighteen years of age and to have-

- (a) successfully completed approved education and training and passed a theory examination;
- (b) passed a practical examination; and
- (c) been assessed at level 3.

Coxswain (grade) 2.

70. A candidate for certification as a coxswain grade 2 shall be required to be at least eighteen years of age and shall have-

(a) completed at least twelve months' sea or port operations service, as the case may be, in a deck capacity on any of the following ships of 25 GT or more-

- (i) merchant ships;
- (ii) fishing vessels;
- (iii) small ships and yachts;
- (iv) port operations vessels; or
- (v) naval ships; or

(b) be a holder of a Coxswain grade 3 certificate of proficiency for a period of at least five years;

(c) successfully completed approved education and training at a training institution and passed a theory and practical examination, and

(d) been assessed at level 3.

Coxswain (grade) 1.

71. A candidate for certification as a coxswain grade 1 shall be required to be at least 18 years of age and to have-

(a) completed at least twenty-four months' sea or port operations service on vessels of more than 25 gross tonnage while holding Coxswain grade 2 or 3 certificate of proficiency;

(b) successfully completed approved education and training at a training institution and have passed a theoretical and practical examination; and

(c) been assessed at level 3.

Master (port operations).

72. (1) A candidate for the certificate of competency as master (port operations) shall be required to be at least eighteen years of age and to have-

(a) completed-

(i) at least twelve months' port operations service as officer in charge of a navigational watch on port operations vessels of 100 GT or more while holding, as a minimum, a certificate of proficiency as Coxswain 1 (Port Operations)

(ii) at least twelve months' approved sea service as an officer in charge of a navigational watch on ships of 100 GT or more on unlimited or near-coastal voyages while holding, as a minimum, a certificate of competency as Mate (Coastal);

(b) successfully completed approved education and training at a training institution and have passed a theory examination; and

(c) been assessed at level 3.

(2) Where the port operations service contemplated in sub-paragraph (1) (a) (i) has been gained on ships restricted to operating within the confines of the breakwaters of a port, the certificate shall be limited accordingly on the basis of documentary evidence of service.

Second class engine officer
(Port Operations).

73. (1) A candidate for the certificate of competency shall be required to be at least eighteen years of age and to have-

(a) completed at least six months' approved sea service or port operations service as assistant engineer officer on ships of 750 kW propulsion power or more under the supervision of an engineer officer;

(b) successfully completed approved education and training at a training institution and have completed an approved training programme consisting either of-

(i) of at least thirty months, consisting of practical workshop training; and at least six months' approved sea service or port operations service;

(ii) an approved trade as an artisan in an engineering discipline; and

(c) been assessed at levels 1, 2 and 3.

(2) Where the port operations service contemplated in paragraph (1) (a) has been gained on ships restricted to operating within the confines of the breakwaters of a port, the certificate shall be limited accordingly

First class engine officer
(port operations).

74. (1) A candidate for the certificate of competency as First class engine officer (Port Operations) shall-

(a) meet the requirements for the certificate of competency as Second Engineer Officer (Port Operations);

(b) be required to have completed, while holding, as a minimum a certificate of competency as Second Engineer Officer (Port Operations)-

(i) at least twelve months' approved sea service as officer in charge of an engineering watch on ships of 750 kW propulsion power or more; or

(ii) at least twelve months' port operations service as officer in

charge of an engineering watch on ships of 1 500 kW propulsion power or more.

(c) have successfully completed approved education and training at a training institution and passed a theoretical examination; and

(d) have been assessed at level 3.

(2) Where the port operations service contemplated in sub-paragraph (1) (b) (ii) has been gained on ships restricted to operating within the confines of the breakwaters of a port, the certificate shall be limited accordingly.

Engine Rating (Port Operations).

75. (1) Every Engine Rating (Port Operations) shall be required to be a holder of a certificate of Proficiency.

(2) Every candidate for certification under sub-regulation (1) shall be required to-

(a) be not less than sixteen years of age;

(b) have completed-

(i) approved seagoing service, including not less than six months of training and experience, or

(ii) special training, either pre-sea or on board ship, including an approved period of port operations service which shall not be less than two (2) months; and

(c) meet the standard of competence specified in Code of Seafarer Qualifications.

(3) The seagoing service, training and experience required by subparagraphs (2) (a)(i) and (ii) shall be associated with engine-room watch keeping functions and involve the performance of duties carried out under the direct supervision of a qualified engineer officer or a qualified rating.

Able seafarer engine (Port operations)

76. (1) Every Able Seafarer Engine (Port Operations) serving on a ship powered by main propulsion

machinery of less than 750 kW propulsion power but more than 100 kW shall be required to be holder of a Certificate of Proficiency.

- (2) Every candidate for certification sub-regulation (1) shall be required to-
- (a) be not less than eighteen years of age;
 - (b) meet the requirements for certification as Engine Rating (Port Operations);
 - (c) while qualified to serve as a as Engine Rating (Port Operations), have approved port operations service in the engine department of-
 - (i) not less than eighteen months, or
 - (ii) not less than twelve months, and have completed approved training; and
 - (d) meet the standard of competence specified in the Code of Seafarer Qualifications.
- (3) Seafarers may be considered by the Authority to have met the requirements of this regulation if they have served in a relevant capacity in the engine department for a period of not less than twelve months within the sixty months immediately preceding the entry into force of this Regulation.

PART X

QUALITY STANDARDS, TRAINING AND ASSESSMENT OF COMPETENCE

A-General

Head of seafarer training, examination and certification.

77. (1) The functions of the head of seafarer training, examination and certification shall be to-
- (a) initiate review of the Act and these regulations;
 - (b) prepare the information required to be communicated to the Secretary-General and the information to be issued in a marine notice or marine guidance note;

- (c) promote technical cooperation;
- (d) as the chief examiner, administer examinations and assessments;
- (e) issue certificates and endorsements;
- (f) revalidate certificates;
- (g) conduct the evaluation required for recognition of certificates issued by other Administrations;
- (h) issue dispensations;
- (i) approve equivalent educational and training arrangements;
- (j) undertake control procedures;
- (k) authorize ships to participate in trials;
- (l) maintain a register or registers of all certificates and endorsements;
- (m) prepare and make available information on the status of certificates of competency and proficiency, including the matters affecting them;
- (n) initiate and implement agreements on near-coastal voyages;
- (o) implement recommendations on the impartial investigation of any reported incompetency, act, omission or compromise to security that may pose a direct threat to safety of life or property at sea or to the marine environment by the holders of certificates or endorsements issued by the Authority in connection with their performance of duties related to their certificates,
- (p) undertake any enforcement measures including penalties or disciplinary measures and cooperation;
- (q) undertake administration, supervision and monitoring of training and assessment;
- (r) verify the qualification and authorize those

responsible for training and assessment;

- (s) implement the Quality Standards System including undertaking regular inspections and periodical evaluation/audit of training and assessment conducted by training institutions;
- (t) approve medical practitioners;
- (u) chair the Syllabus Committee;
- (v) formulate or promote the formulation of refresher and updating training or assessment;
- (w) authorize the issue of alternative certificates; and
- (x) to perform any other functions incidental to those the foregoing.

(2) The head of seafarer training, examination and certification—

- (a) shall perform his functions in accordance with the quality standards system established pursuant to regulation 79; and
- (b) may delegate to any other officer the performance of any of functions described under sub-regulation (1).

Syllabus committee.

78. (1) The Director-General shall establish a syllabus committee composed of fifteen members as follows—

- (a) the head of seafarer training, examination and certification, who shall be the chairperson;
- (b) a senior examiner;
- (c) a representative each from one-
 - (i) the Ministry responsible for shipping and maritime transport;
 - (ii) the Kenya National Examination Council;
 - (iii) the Kenya Institute of Curriculum Development;

- (iv) the Kenya National Qualifications Authority;
- (v) the Technical and Vocational Education and Training Authority;
- (vi) approved training institutions;
- (vii) seafarer recruitment and placement agencies,
- (viii) the shipping industry; and
- (ix) organized workers' union in the shipping industry;

- (2) The Committee shall appoint a Secretary.
- (3) The quorum for the conduct of the business of the Committee shall be seven members.
- (4) The functions of the Committee shall be to—
 - (a) review these regulations and other instruments relating to maritime education and training and recommend relevant changes;
 - (b) adopt strategies for the full and timely implementation of these regulations;
 - (c) propose modes of delivery, monitoring and evaluation of the impact and effectiveness of the training courses;
 - (d) formulate a standard for refresher and updating courses;
 - (e) undertake any other functions as may be assigned to it by the Director-General.

- (5) Minutes of the Committee's meetings and any report made thereof shall be submitted to the Director-General not more than five working days following a meeting.

Quality Standards System.

- 79. (1) All training, assessment of competence, certification, including medical certification, endorsement and revalidation activities shall be continuously monitored through a Quality Standards System to ensure achievement of defined objectives, including

those concerning the qualifications and experience of instructors and assessors.

- (2) The Director-General shall establish and review, as appropriate, the quality standards system referred to in sub-regulation (1).
- (3) With regards to national objectives and quality standards—
 - (a) the education and training objectives and related standards of competence to be achieved shall be clearly defined;
 - (b) the levels of knowledge, understanding and skills appropriate to the examinations and assessments required under the Convention shall be identified.
 - (c) the objectives and related quality standards may be specified separately for different courses and training programmes and shall cover the administration of the certification system.
- (4) The field of application of the quality standards shall cover—
 - (a) the administration of the certification system;
 - (b) approval and monitoring of training institutions and all training courses and programmes;
 - (c) examinations and assessments carried out by the Authority or by persons authorized for that purpose; and
 - (d) the qualifications and experience required of instructors and assessors, having regard to the policies, systems, controls and internal quality assurance reviews established to ensure achievement of the defined objectives.
- (5) The quality standards system required under sub-regulation (2) shall establish among others, procedures for—
 - (a) approval of training institutions to conduct a

course leading to certification under these regulations;

- (b) approval of training course and programmes;
 - (c) monitoring approved training courses and programmes;
 - (d) conducting competency assessment and issuance of certificates;
 - (e) issuance of certificates of proficiency;
 - (f) defining limits of near coastal voyages;
 - (g) recognition of certificates issued by another Administration;
 - (h) issuance of recognition endorsement;
 - (i) issuance of dispensations;
 - (j) revalidation of certificates and endorsements;
 - (k) renewal of certificates and endorsements;
 - (l) implementing international instruments covering seafarers' training and certification;
 - (m) conducting independent evaluation and reporting; and
 - (n) issuance of seafarers' continuous discharge certificate and record book.
- (6) A training institution shall have a quality standards system which shall, at a minimum, provide for—
- (a) the mission statement of the institution;
 - (b) details of academic and training strategies in use;
 - (c) the quality-management functions that determine and implement the quality policy and include the academic and administrative organizational structure and responsibilities;

- (d) staff and student information;
- (e) a description of the training facilities and equipment;
- (f) internal quality-assurance processes and reviews and arrangements for periodic external quality evaluations;
- (g) an outline of the policies and procedures on-
 - (i) student admission;
 - (ii) the development of new courses and review of existing ones;
 - (iii) the examination system including appeals and resits;
 - (iv) staff recruitment, training, development, appraisal and promotion;
 - (v) feedback from students and industry; and
 - (vi) staff involvement in research and development.

Independent evaluation

80. (1) The Director-General shall initiate a periodic independent evaluation by qualified persons who are not themselves involved in the activities concerned in accordance with the provisions of section A-I/8 of the STCW Code;
- (2) The evaluation under sub regulation (1) shall include all changes to national regulations and procedures in compliance with the amendments to the STCW Convention and Code;
- (3) The independent evaluation of the knowledge, understanding, skills and competence acquisition and assessment activities, and of the administration of the certification system, required under sub-regulation (1) shall be conducted at intervals of not more than five years in order to verify that-
- (a) all applicable provisions of the Convention and STCW Code, including their amendments, are covered by the quality standards system;

(b) all internal management control and monitoring measures and follow-up actions comply with planned arrangements and documented procedures and are effective in ensuring achievement of the defined objectives;

(c) the results of each independent evaluation are documented and brought to the attention of those responsible for the area evaluated; and

(d) timely action is taken to correct deficiencies.

(4) The Director-General shall communicate to the Secretary-General the report containing the results of the evaluation in accordance with regulation 22.

Inspection and audit of training institutions.

81. (1) The Authority shall conduct inspection of a training institution for the purposes of—

(a) the initial verification of the suitability of the training facilities and resources proposed by a training institution which applies for approval to conduct a course; or

(b) quality assurance, whenever deemed necessary by the Director-General and as the case may require, to verify that an approved course is being conducted in accordance with the quality standards system of the training institution; or

(c) renewal of the certificate of approval issued under regulation 87(1).

(2) The Authority shall conduct annual verification audits of approved training institutions and the conduct of an approved course in accordance with the following criteria—

(a) course title;

(b) lesson plan;

(c) course duration;

(d) facilities, teaching aids and equipment,

(e) staff qualifications and experience;

- (f) examination and assessment procedures;
 - (g) monitoring of entry requirements,
 - (h) issue, control, authentication and recording of certification; and
 - (i) quality management systems and procedures.
- (3) The Director-General or a person authorized by the Director-General may visit the training institution, at a reasonable time, for the purposes of conducting any of the inspections or audit described under sub-regulations (1) and (2)
- (4) The Director-General may authorize a person with appropriate qualifications and experience to conduct the audits referred to in sub-regulation (2).
- (5) A report of the inspection or audit, including any recommendations, shall be submitted to the Director-General not more than five working days from the date of completion and shall—
- (a) include brief background information about the institution or training programme;
 - (b) be full, fair and accurate;
 - (c) highlight the strengths and weaknesses of the institution;
 - (d) describe the evaluation procedure followed;
 - (e) cover the various elements identified in audit criteria;
 - (f) indicate the extent of compliance or non-compliance with the conditions for approval and the effectiveness of the quality standards in ensuring the achievement of defined aims and objectives;
 - (g) spell out areas found to be deficient; and
 - (h) make recommendations to the Director-General as necessary.

- (6) The Responsible Person of a training institution shall undertake, within thirty working days, any corrective action that may be required.
- (7) The audit report may recommend to the Director-General to refuse approval of a training institution or vary, suspend or revoke approval issued to a training institution.
- (8) An approved training institution shall undertake periodic internal and external quality evaluations of its training activities.

B-Requirements for training and assessment

Supervision and monitoring of training.

82. (1) Any training course or programme leading to certification under these regulations shall be taught using an approved syllabus.
- (2) Training institutions shall ensure that training and assessment is administered, supervised and monitored in accordance with the quality standards system required under regulation 79(6).
- (3) An approved training institution shall—
- (a) furnish the Authority the particulars of students or course participants;
 - (b) require experienced seafarers to obtain a letter of eligibility from the Authority before they are enrolled into a course;
 - (c) make available to the Director-General the course commencement and completion dates, and the examination dates;
 - (d) inform the Director-General, within five working days, of any change of instructor, supervisor or assessor in respect of a training course being conducted;
 - (e) when required to do so—
 - (i) make available proposed examination question papers and their marking schemes and marked scripts of an examination;

- (ii) furnish the Authority with the verified results of examination conducted by the training institution in respect of every course;
 - (f) inform the Authority, without delay, of any situation or circumstance with the potential to cause delay or disruption of the training; and
 - (g) submit to the Authority any changes to the course structure or syllabus.
- (4) The Authority shall require a training institution to ensure classroom attendance rate of at least—
- (a) eighty percent for approved training courses leading to issuance of certificates of competency or certificates of proficiency under Parts III, IV, V and VIII; and
 - (b) one hundred percent for courses leading to issuance of certificates of proficiency under Parts VI and VII.

Training and assessment.

83. (1) All training and assessment of seafarers for certification under these regulations shall be—
- (a) structured in accordance with the approved syllabus, including such methods and media of delivery, procedures, and course material as are necessary to achieve the prescribed standard of competence; and
 - (b) structured in accordance with the Code of Seafarer Qualifications; and
 - (c) conducted, monitored, evaluated and supported by persons qualified in accordance with regulation 85.
- (2) Persons conducting in-service training or assessment to on board ship shall only do so when such training or assessment is not likely to adversely affect the normal operation of the ship and they can dedicate their time and attention to training or assessment.
- (3) The training institution shall provide a certificate of course completion signed by an authorized person

and indicating the written examination and—

- (a) the candidate's full name and student number;
- (b) the course or courses successfully completed;
- (c) for each subject, the subject mark, marks obtained in the final examination (if applicable), final marks and result; and
- (d) the duration of the course or courses.

Approval of instructors,
supervisors and assessors.

- 84.** (1) No person shall be employed by a training institution as an instructor, supervisor or assessor unless that person possesses a valid letter of approval issued by the Authority.
- (2) It shall be the responsibility of the Responsible Person of a training institution to ensure any person employed as an instructor, supervisor or assessor is duly approved by the Authority.

Qualifications of instructors,
supervisors and assessors.

- 85.** (1) Persons responsible for the training and assessment of competence of seafarers, as required under these Regulations, shall be required to be appropriately qualified in accordance with sub-regulations (3), (4) and (5) for the type and level of training or assessment involved.
- (2) Instructors, supervisors and assessors shall be required to be suitably qualified and experienced for the particular types and levels of training or assessment of competence of seafarers either on board or ashore in accordance with the provisions of this regulation
- (3) Subject to sub-regulations (4), (5) and (6), the appropriate qualification and experience required under sub-regulation (2) shall be specified in a gazette notice.
- (4) Any person conducting in-service training of a seafarer, either on board or ashore, which is intended to be used in qualifying for certification under these Regulations shall be required to—
- (a) have an appreciation of the training programme and an understanding of the specific training objectives for the particular type of training being conducted;

- (b) be qualified in the task for which training is being conducted; and
 - (c) if conducting training using a simulator to—
 - (i) have received appropriate guidance in instructional techniques involving the use of simulators; and
 - (ii) have gained practical operational experience on the particular type of simulator being used.
- (5) Any person responsible for the supervision of in-service training of a seafarer intended to be used in qualifying for certification under these Regulations shall have a full understanding of the training programme and the specific objectives for each type of training being conducted.
- (6) Any person conducting in-service assessment of competence of a seafarer, either on board or ashore, which is intended to be used in qualifying for certification under these Regulations shall—
- (a) have an appropriate level of knowledge and understanding of the competence to be assessed;
 - (b) have appropriate training in instructional techniques, and training and assessment methods and practice;
 - (c) be qualified in the task for which the assessment is being made;
 - (d) have received appropriate guidance in assessment methods and practice;
 - (e) have gained practical assessment experience; and
 - (f) if conducting assessment involving the use of simulators, have gained practical assessment experience on the particular type of simulator under the supervision and to the satisfaction of an experienced assessor.

C- Approval of courses and training institutions

Approval of training course
or syllabus

86. (1) Education and training courses or programmes, including all refresher or updating courses, leading to the issuance of Certificates of Competency or Certificates of Proficiency under these regulations shall be required to be approved by the Authority.
- (2) Only the course syllabus approved by the Authority shall be used for teaching and instruction of a particular course
- (3) Where an approved training institution develops a particular course, refresher course or updating course leading to certification under these regulations, the institution shall seek approval of the course from the Authority, and the syllabus for such a course or programme shall meet the specific competence requirements set out by these regulations.
- (4) The Authority shall inform an approved training institution of any changes to the STCW Convention or Code that is likely to affect the syllabus, and the respective training institution shall provide details in writing of how it intends to incorporate such changes into the approved course.
- (5) The Authority, may if satisfied through verification that the changes proposed under sub regulation (4) are appropriately incorporated, will re-issue an approval letter.

Approval of training
institutions.

87. (1) All training institutions conducting or intending to conduct a training course leading to certification under these Regulations shall hold a certificate of approval to conduct a specified course issued by the Authority.
- (2) The certificate issued under sub-regulation (1) shall be—
- (a) valid for a period of four years; and
- (b) renewed by the Authority subject to the inspection specified in regulation 81(1)(c).
- (3) The format of the certificate of approval issued under sub-regulation (1) shall be as set out in the Fourth Schedule.
- (4) The Director-General may, on application by a

training institution, grant approval to the institution to—

- (a) conduct the course or courses specified in the application;
 - (b) act as an approved examination centre for examination of the course or courses so specified; and
 - (c) issue certificates to candidates of proficiency who successfully complete the courses so specified.
- (5) Where an application is made for the approval of more than one course or training programme, each shall be considered separately.
- (6) An application contemplated in sub-regulation (4) shall be made in writing and shall be accompanied by the following particulars—
- (a) name and physical address of the training institution;
 - (b) any relevant statutory accreditation or licensing;
 - (c) relevant approvals, where applicable, for training facilities and equipment;
 - (d) description of the course, and of its content, referenced to the relevant approved syllabus together with lecturers' study plans;
 - (e) name of course instructor(s), assessor(s), supervisor(s) with a brief description of their qualifications and experience;
 - (f) examination and assessment procedure with respect to each course,
 - (g) training and assessment equipment and facilities with respect to each course;
 - (h) a certified copy of an approved quality standards system prescribed under regulation 79 applicable to the training activities of the institution; and
 - (i) any other requirement that may be

specified by the Authority.

(7) For the purposes of the inspections and audit required under regulation 81(1), the Responsible Person of a training institution shall, on receipt of reasonable notice, make available—

(a) for inspection, the equipment and training facilities in respect of each course; and

(b) for interview and as may be required, course instructor(s), assessor(s) or supervisor(s).

(8) The Director-General may refuse approval or renewal, or vary, suspend or revoke the certificate of approval issued under sub-regulation (1) to a training institution if—

(a) the training institution fails to take corrective action following an inspection or audit; or

(b) the Director-General otherwise has reasonable grounds to refuse approval or vary, suspend or revoke such approval.

(9) Where the Director-General intends to vary, suspend or revoke approval under sub-regulation (8), he shall inform the training institution concerned accordingly.

Distance learning and e-learning.

88. (1) Any distance learning and e-learning programme shall—

(a) be provided by a training institution that is approved by the Authority;

(b) be suitable for the selected objectives and training tasks to meet the competence level for the subject covered;

(c) have clear and unambiguous instructions for the trainees to understand how the programme operates;

(d) provide learning outcomes that meet all the requirements to provide the underpinning knowledge and proficiency of the subject;

(e) be structured in a way that enables the trainee to systematically reflect on what has been learnt through both self-

assessment and tutor-marked assignments;
and

- (f) provide professional tutorial support through telephone, facsimile or e-mail communications.
- (2) Companies shall ensure that a safe learning environment is provided and that there has been sufficient time provided to enable the trainee to study.
 - (3) Where e-learning is provided, common information formats such as XML (Extensible Markup Language), which is a flexible way to share both the format and the data on the World Wide Web, intranets, and elsewhere, may be used.
 - (4) The e-learning system shall be secured from tampering and attempts to hack into the system.
 - (5) The training institution shall ensure that approved assessment procedures are provided for any distance learning and e-learning programme, including—
 - (a) clear information to the trainees on the way that tests and examinations are conducted and how the results are communicated;
 - (b) have test questions that are comprehensive and will adequately assess a trainee's competence and are appropriate to the level being examined;
 - (c) procedures in place to ensure questions are kept up to date;
 - (d) the conditions where the examinations can take place and the procedures for invigilation to be conducted;
 - (e) secure procedures for the examination system so that it will prevent cheating; and
 - (f) secure validation procedures to record results for the benefit of the Authority.

Register of approved training institutions, courses and programmes.

89. The Authority shall—

- (a) maintain a register of approved training institutions, courses or programmes; and

- (b) make available such a register to public, companies and other Administrations.

D-Training and assessment within an institution

Written examinations

90. (1) Written examinations shall be conducted by approved training institutions or where required, by the Authority, and shall cover the subjects required for each certificate or endorsement as specified in the course syllabus and the STCW Code so as to ensure that candidates have attained the standard of theoretical knowledge, understanding and proficiency.

(2) The Authority shall designate examiners who shall-

- (a) moderate examination question papers and their marking schemes and memoranda not less than ninety days before the appointed examination date;

- (b) mark any written examinations conducted by the Authority; and

- (c) re-mark examination scripts at the request of an approved training institution.

(3) Candidates for a certificate of competency shall be required to obtain a final aggregate pass-mark in written examinations as follows-

- (a) for master and deck officer certificates of competency, not less than sixty percent in-

- (i) navigation; and

- (ii) ship stability and construction;

- (b) for engineer officer certificate of competency, not less than sixty percent in-

- (i) marine engineering;

- (ii) electrical, electronic and control engineering, and

- (iii) ship stability and construction.

- (4) Where a candidate requests review of examination results in respect of examinations conducted by the Authority, the Chief Examiner's decision shall be final.

Levels of assessment.

91. (1) Candidates for the issue of a certificate or an endorsement shall be assessed to verify that they meet the standards of competence set out in the STCW Code.

- (2) The assessment required by sub-regulation (1) shall be at one or more of the following levels—

(a) level 1 assessment carried out—

(i) during qualifying seagoing service on board a ship and recorded in a training record book;

(ii) during training at an approved training institution in a workshop and recorded in a workshop skills training record book;

(b) level 2 assessment, carried out ashore which may take the form of written examination, the use of simulator or other appropriate means.

(c) level 3 assessment, being oral examination conducted by an examiner.

- (3) Only the master, designated shipboard training officer or relevant officer may sign off a unit of competency in a candidate's shipboard training record book when the candidate is considered to be ready for the next level of assessment and has successfully demonstrated competency in the unit as specified in the STCW Code.

- (4) A candidate who is required to complete more than one level of assessment shall not be assessed at a higher level until he or she has demonstrated competency at the lower level, nor shall such a candidate be assessed at level 3 until all the relevant units of competency have been signed off at the lower levels of assessment by an assessor.

E-Shipboard training and qualifying seagoing service

Shipboard training record book and workshop skills training record book.

92. (1) Cadet officers performing qualifying seagoing service on board a ship or undertaking approved workshop skills training ashore shall have an approved training record book or an approved workshop skills training record book.
- (2) Ratings performing qualifying sea service required for issuance of a certificate of competency shall have—
- (i) a shipboard training record book; and
 - (ii) for engine room ratings, a workshop skills training record book.
- (3) Deck and engine trainee ratings, including ratings seeking to qualify as able seafarer deck or engine, shall have a shipboard training record book to provide evidence of shipboard training and experience.
- (4) A shipboard training record book shall be—
- (a) used to document training tasks performed during approved qualifying seagoing service;
 - (b) signed off and initialized by the designated Shipboard Training Officer and Master;
 - (c) completed in full all relevant training tasks successfully completed and duly signed off upon assessment at Level 1;
 - (d) submitted to the Authority when applying for a notice of eligibility; and
 - (e) laid out in such a way that it provides detailed information about the tasks and duties that should be undertaken, and about the progress towards their completion;
- (5) A workshop skills training book shall be—
- (a) used to document training tasks performed during approved workshop training;
 - (b) signed off and initialized by an assessor;

- (c) completed in full all relevant training tasks successfully completed and duly signed off upon assessment at Level 1;
 - (d) submitted to the Authority when applying for a notice of eligibility; and
 - (e) laid out in such a way that it provides detailed information about the tasks and duties that should be undertaken, and about the progress towards their completion;
- (6) Any shipboard training record book or workshop skills training book found to have been completed fraudulently shall result in its holder having to complete an additional twelve months' qualifying seagoing service;
- (7) Only a shipboard training record book or a workshop training record book approved by the Director-General shall be used.

Shipboard training.

93. (1) The company shall designate a Shipboard Training Officer who may be--
- (a) the Master or Chief Mate in the case of deck department; or
 - (b) the Chief Engineer or Second Engineer in the case of engine department.
- (2) The Shipboard Training Officer shall be required to be qualified in accordance with regulation 85(6).
- (3) Every designated Shipboard Training Officer shall ensure that--
- (a) appropriate periods are set aside for completion of the programme of on-board training within the normal operational requirements of the ship;
 - (b) at the beginning of the programme and at the start of each voyage on a different ship, trainees are given comprehensive information and guidance as to what is expected of them and how the training programme is to be conducted;
 - (c) ship's officers who are responsible for training and assessment know and

Removal of "coastal"
limitation.

- (i) period of service;
- (ii) type of propulsion machinery and propulsion power (kilowatts) of the ship;
- (iv) nature of duties performed;
- (v) leave of absence while still on articles; and
- (vi) number of days ship is laid up in port, dock or under construction or an anchorage.

97. (1) The holder of a certificate limited to near-coastal voyages may apply for the removal of that limitation—

(a) after completing-

- (i) the qualifying seagoing service required for the certificate desired;
- (ii) the units of competency required for the certificate desired;
- (iii) any training courses not required for the certificate held but required for the certificate desired;

(b) at the conclusion of the required qualifying seagoing service, and having been assessed at Level 3; and

(2) An applicant under sub-regulation (1) shall submit to the assessor-

- (a) satisfactory proof of having gained the qualifying seagoing service contemplated in sub-paragraph (1)(a)(i);
- (b) a certificate of pass from an approved institution for the additional units of competency contemplated in sub-paragraph (1)(a)(ii);
- (c) a duly completed shipboard training record book covering the period of service and the training contemplated in sub-paragraphs (1)(a)(i) and (ii) respectively; and

- (c) completed in full all relevant training tasks successfully completed and duly signed off upon assessment at Level 1;
 - (d) submitted to the Authority when applying for a notice of eligibility; and
 - (e) laid out in such a way that it provides detailed information about the tasks and duties that should be undertaken, and about the progress towards their completion;
- (6) Any shipboard training record book or workshop skills training book found to have been completed fraudulently shall result in its holder having to complete an additional twelve months' qualifying seagoing service;
- (7) Only a shipboard training record book or a workshop training record book approved by the Director-General shall be used.

Shipboard training.

93. (1) The company shall designate a Shipboard Training Officer who may be--
- (a) the Master or Chief Mate in the case of deck department; or
 - (b) the Chief Engineer or Second Engineer in the case of engine department.
- (2) The Shipboard Training Officer shall be required to be qualified in accordance with regulation 85(6).
- (3) Every designated Shipboard Training Officer shall ensure that--
- (a) appropriate periods are set aside for completion of the programme of on-board training within the normal operational requirements of the ship;
 - (b) at the beginning of the programme and at the start of each voyage on a different ship, trainees are given comprehensive information and guidance as to what is expected of them and how the training programme is to be conducted;
 - (c) ship's officers who are responsible for training and assessment know and

understand their duties and responsibilities regarding training;

- (d) during the required period of qualifying seagoing service, a trainee receives systematic practical training and experience in the tasks, duties and responsibilities relevant to the certificate desired, with due regard to the competencies specified in the STCW Code;
- (e) assessments of a trainee are conducted, without undue delay, when the trainee is considered ready for assessment;
- (f) the on-board training forms an integral part of the overall training plan;
- (g) a comprehensive record is kept of all training conducted;
- (h) guidance is given, when necessary, and ensure that the overall shipboard training programme is properly administered and conducted;
- (i) the trainee's progress throughout such programme is monitored;
- (j) the programme of practical training at sea is properly organized;
- (k) the training record books are properly maintained and that all other requirements are met; and
- (l) ensure so far as practicable, that the time the candidate spends on board is as useful as possible in terms of training and experience, and is consistent with the objectives of the training programme and the progress of training.

(4) A master's responsibilities shall be to—

- (a) provide the link between the ship's officers responsible for training and the training officer ashore;
- (b) designate, in writing, the ship's officers who are to be responsible for organizing and supervising on-board training for each

voyage;

(c) ensure continuity in the case of any change of ship's officers during voyages; and

(d) ensure that all personnel concerned carry out effectively the on-board training programme.

(5) Every trainee shall—

(a) follow the programme of training,

(b) utilize fully the opportunities presented, both during and outside working hours; and

(c) keep his or her shipboard training record book up-to-date and available for inspection at all reasonable times.

Approved seagoing service.

94. (1) The qualifying seagoing service required by these Regulations shall be required to be relevant to the qualification being applied for, bearing in mind that, apart from the initial familiarization with service in seagoing ships, the purpose of such service is to allow the seafarer to be instructed in and to practice, under appropriate supervision, those safe and proper seagoing practices, procedures and routines which are relevant to the qualification applied for.

(2) Subject to the functions specified in regulation 8, the qualifying seagoing service required shall—

(a) for Master or deck officer certification, be relevant to the functions carried out by a Master or a deck officer;

(b) for an engineer officer certification, be relevant to the functions carried out by officers associated with the engine department;

(c) for a deck or engine rating certification, be relevant to the functions carried out by deck or engine room ratings; and

(d) for the purpose of alternative certification, be relevant to:

(i) the functions contemplated in paragraphs (a) and (b); or

(ii) the combined functions contemplated in paragraph (c).

(3) At least six months of the qualifying seagoing service shall be required to have been performed within the five years preceding the date of application for certification, and shall include service performed on a ship not registered in Kenya.

(4) Seagoing service performed on special types of ships shall be as specified in Code of Seafarer Qualifications.

Calculating qualifying service.

95. (1) Qualifying seagoing service shall—

(a) be calculated from the date of engagement on a ship to the date of discharge from the ship; and

(b) be calculated by taking the actual days between the days of engagement and discharge, both inclusive, excepting any days spent on leave of absence during engagement, and reckoning 30 days to a month, twelve months to a year.

(2) Service on board ships laid up in port, dock or under construction or an anchorage may be counted in part towards qualifying seagoing service, and claims in this respect shall be supported by statements signed by the master of the vessels served on, certifying that the duties carried out were appropriate to be counted towards seagoing service.

(3) Qualifying seagoing service claimed under sub-regulation (2) may not exceed three months.

Sea service testimonials and proof of watchkeeping service.

96. (1) Candidates applying for a first or subsequent certificate of competency shall be required to—

(a) make a declaration of qualifying seagoing service;

(b) produce duly completed Seafarer's Continuous Discharge Certificate and Record Book; and

(c) produce a testimonial of the qualifying sea service being claimed

- (2) Candidates for certificates other than first certificates of competency issued under regulations 25, 30 and 35 shall produce documentary evidence of watchkeeping service signed by the Master or Chief Engineer of the ships in which the service has been performed, and in the case of service as Master or Chief Engineer, the documentary evidence shall be signed by a responsible official of the company concerned.
- (3) The testimonial required under paragraph (1)(c) and the documentary evidence of watchkeeping required under sub-regulation (2) shall—

(a) for deck officers, contain at least—

- (i) a statement from the Master, stating that the applicant performed bridge watchkeeping duties under his supervision or that of a qualified officer for at least 8 hours in every 24 hours' service;
- (ii) period of service;
- (iii) nature of voyage;
- (iv) Ship particulars;
- (v) nature of duties performed;
- (vi) leave of absence while still on articles; and
- (vii) number of days ship is laid up in port, dock, under construction or in anchorage;

(b) for engine officers, contain at least—

- (i) a statement from the Chief Engineer, stating that the applicant performed engine watchkeeping duties under his supervision or that of a qualified officer for eight hours in every 24 hours' service claimed on ships having a continuously manned engine room; or 24 hours in every 72 hours' service claimed on ships having a periodically unmanned engine room,

Removal of "coastal"
limitation.

- (ii) period of service;
- (iii) type of propulsion machinery and propulsion power (kilowatts) of the ship;
- (iv) nature of duties performed;
- (v) leave of absence while still on articles; and
- (vi) number of days ship is laid up in port, dock or under construction or an anchorage.

97. (1) The holder of a certificate limited to near-coastal voyages may apply for the removal of that limitation—

(a) after completing—

- (i) the qualifying seagoing service required for the certificate desired;
- (ii) the units of competency required for the certificate desired;
- (iii) any training courses not required for the certificate held but required for the certificate desired;

(b) at the conclusion of the required qualifying seagoing service, and having been assessed at Level 3; and

(2) An applicant under sub-regulation (1) shall submit to the assessor—

- (a) satisfactory proof of having gained the qualifying seagoing service contemplated in sub-paragraph (1)(a)(i);
- (b) a certificate of pass from an approved institution for the additional units of competency contemplated in sub-paragraph (1)(a)(ii);
- (c) a duly completed shipboard training record book covering the period of service and the training contemplated in sub-paragraphs (1)(a)(i) and (ii) respectively; and

(d) a valid seafarer's medical certificate.

Removal of tonnage limitation.

98. The holder of a certificate limited to a certain tonnage may apply for the removal of that limitation after completing-

(a) the qualifying seagoing service required for each certificate leading up to the certificate desired; and

(b) an assessment at level 3.

Removal of propulsion power limitation.

99. The holder of a certificate limited to a certain propulsion power may apply for the removal of that limitation shall have completed-

(a) the qualifying seagoing service required for each certificate leading up to the certificate desired; and

(b) an assessment at Level 3.

Recognition of seagoing service performed on board Kenya Navy ships.

100. (1) Subject to sub-regulation (4), the Authority may, for the purpose of certification under these regulations, recognize seagoing service performed on board Kenya Navy ships by-

(a) officers of the deck department performing navigational duties; or

(b) officers of the engine department; or

(c) ratings performing either deck or engine duties.

(2) The seagoing service recognized under sub-regulation (1) shall, subject to regulation 94(3)-

(a) Be reckoned as half of the seagoing service required for certification; and

(b) be not less than 36 months;

(3) A candidate for certification claiming seagoing service recognized under sub-regulation (1) shall-

(a) perform the remainder of the required seagoing service on an appropriate merchant ship; and

(b) meet the other requirements for

certification specified for the relevant certificate.

- (4) The Authority shall only recognize seagoing service performed on Kenya Navy ships subject to an agreement with the Kenya Navy.

Novel craft.

101. Documentary evidence of service on dynamically supported craft or other novel craft shall be submitted to a senior examiner for consideration.

F- Use of simulators

Compliance with performance standards.

102. This division shall apply in respect of—

- (a) all mandatory simulator-based training;
- (b) any assessment of competency required by Part A of the STCW Code which is carried out by means of a simulator; and
- (c) any demonstration, by means of a simulator, of continued proficiency required by Part A of the STCW Code.

Performance standards for simulators used in training and simulators used in assessment of competence.

103. (1) Any simulator used for mandatory simulator-based training shall be required to—

- (a) be suitable for the selected objectives and training tasks;
- (b) be capable of simulating the operating capabilities of shipboard equipment concerned, to a level of physical realism appropriate to training objectives, and include the capabilities, limitations and possible errors of such equipment;
- (c) have sufficient behavioural realism to allow a trainee to acquire the skills appropriate to the training objectives;
- (d) provide a controlled operating environment, capable of producing a variety of conditions, which may include emergency, hazardous or unusual situations relevant to the training objectives;
- (e) provide an interface through which a trainee can interact with the equipment, the simulated environment and, as appropriate, the instructor; and

- (f) permit an instructor to control, monitor and record exercises for the effective debriefing of trainees.
- (2) Any simulator used for the assessment of competence required under these Regulations or for any demonstration of continued proficiency so required shall be required to—
- (a) be capable of satisfying the specified assessment objectives;
 - (b) be capable of simulating the operational capabilities of the shipboard equipment concerned to a level of physical realism appropriate to the assessment objectives, and include the capabilities, limitations and possible errors of such equipment;
 - (c) have sufficient behavioural realism to allow a candidate to exhibit the skills appropriate to the assessment objectives;
 - (d) provide an interface through which a candidate can interact with the equipment and simulated environment;
 - (e) provide a controlled operating environment, capable of producing a variety of conditions, which may include emergency, hazardous or unusual situations relevant to assessment objectives; and
 - (f) permit an assessor to control, monitor and record exercises for the effective assessment of the performance of candidates.
- (3) In addition to meeting the basic requirements set out in this regulation, simulation equipment to which these Regulations apply shall meet additional performance standards given in regulations 104 and 105 in accordance with their specific type.

Radar simulation.

104. Radar simulation equipment shall be capable of simulating the operational capabilities of navigational radar equipment which meets all applicable performance standards adopted by the Organization and incorporate facilities to—

- (a) operate in the stabilized relative motion mode and sea- and ground stabilized true

motion modes;

- (b) model weather, tidal streams, current, shadow sectors, spurious echoes and other propagation effects, and generate coastlines, navigational buoys and search and rescue transponders; and
- (c) create a real-time operating environment incorporating at least two own-ship stations with ability to change own ship's course and speed, and include parameters for at least twenty target ships and appropriate communication facilities.

Automatic Radar Plotting
Aid (ARPA) simulation.

105. ARPA simulation equipment shall be capable of simulating the operational capabilities of ARPAs which meet all applicable performance standards adopted by the Organization, and shall incorporate the facilities for-

- (a) manual and automatic target acquisition,
 - (b) past track information;
 - (c) use of exclusion areas;
 - (d) vector/graphic time-scale and data display;
- and

(e) trial manoeuvres.

Simulator training
objectives.

106. Training institutions conducting simulator-based training shall ensure that the aims and objectives of such training are defined within an overall training programme and that specific training objectives and tasks are selected so as to relate as closely as possible to shipboard tasks and practices.

Training procedures.

107. In conducting mandatory simulator-based training, instructors shall ensure that-

- (a) trainees are adequately briefed beforehand on the exercise objectives and tasks and are given sufficient planning time before the exercise starts;
- (b) trainees have adequate familiarization time on the simulator and with its equipment before any training or assessment exercise commences;
- (c) guidance given and exercise stimuli are appropriate to the selected exercise objectives and tasks and to the level of

trainee experience;

- (d) exercises are effectively monitored, supported as appropriate by audio and visual observation of trainee activity and pre- and post-exercise evaluation reports;
- (e) trainees are effectively debriefed to ensure that training objectives have been met and that operational skills demonstrated are of an acceptable standard;
- (f) the use of peer assessment during debriefing is encouraged; and
- (g) simulator exercises are designed and tested so as to ensure their suitability for the specified training objectives.

Assessment procedures.

108. Where simulators are used to assess the ability of candidates to demonstrate levels of competency, assessors shall ensure that—

- (a) performance criteria are identified clearly and explicitly and are valid and available to the candidates;
- (b) assessment criteria are established clearly and are explicit to ensure reliability and uniformity of assessment and to optimize objective measurement and evaluation, so that subjective judgements are kept to the minimum;
- (c) candidates are briefed clearly on the tasks and/or skills to be assessed and on the tasks and performance criteria by which their competency will be determined;
- (d) assessment of performance takes into account normal operating procedures and any behavioural interaction with other candidates on the simulator or with simulator staff;
- (e) scoring or grading methods to assess performance are used with caution until they have been validated; and
- (f) the prime criterion is that a candidate

demonstrates the ability to carry out a task safely and effectively to the satisfaction of the assessor.

Qualifications of simulator instructors and assessors.

- 109.** Simulator instructors and assessors shall be appropriately qualified and experienced for the particular types and levels of training and corresponding assessment of competence as specified in regulation 85.

G-Oral examination

Appointment of examiners.

- 110.** The Director-General shall—

- (a) appoint examiners to conduct oral examinations;
- (b) designate a senior examiner deck and engine, respectively; and
- (c) designate a chief examiner from amongst the appointed examiners.

Oral examination.

- 111.** (1) The purpose of an oral examination shall be to ascertain a candidate's competency in the practical aspects of an officer's duties and shall be conducted by an examiner appointed under regulation 110.

- (2) Candidates for the issue of Kenyan certificates of competency shall—

- (a) make an application for an oral examination to the Authority; and
- (b) be required to demonstrate, through the oral examination, the standards of competence described in the relevant tables of standards of competency given in chapters II, III and IV of the STCW Code.

- (3) A candidate shall not take the oral examination unless he has passed in the written examination.

- (4) Every candidate for an oral examination shall be required to obtain from the Authority a letter of eligibility to sit for an oral examination which a letter shall be issued only upon verifying the authenticity and validity of the documentary evidence provided as proof of the following with respect to the candidate—

- (a) identity and age;

- (b) successful completion of an approved education and training programme;
 - (c) medical fitness;
 - (d) relevant qualifying seagoing service together with seagoing service testimonials; and
 - (e) successful completion of the mandatory and ancillary training required for a particular certificate.
- (5) The letter of eligibility under sub regulation (4) shall—
- (a) specify the place of examination;
 - (b) include other additional requirements, if any, to be met by the candidate;
 - (c) be valid for a period of 3 years.
- (6) A candidate may, during an oral examination, be required to complete a calculation or to elaborate upon a section of the syllabus applicable to the certificate or endorsement for which he is being examined.
- (7) A candidate who fails an oral examination may re-sit examination at the following intervals—
- (a) second attempt, at least two weeks after the initial examination;
 - (b) third attempt, at least two weeks after the second attempt; and
 - (c) subsequent attempts, at least three weeks after the previous attempt.
- (8) The examiner may reduce time periods between oral examination re-sits.
- (9) Where a candidate exhibits a lack of basic competency across the syllabus or makes fundamental errors in areas of safety, the examiner may impose a seagoing service penalty not exceeding six months, which the candidate must complete before re-sitting the examination.

(10) A candidate who without reasonable excuse fails to appear for an oral examination at the appointed time and place may be deemed to have failed the examination.

Proof of identity

112. Every candidate for a certificate or an endorsement shall furnish proof of his identity to the satisfaction of the Chief Examiner, in the form of a valid Kenyan identity card or passport or, in the case of a foreign citizen or resident, a valid passport or a Kenyan alien identity document.

Fraudulent Conduct

113. A candidate who has been convicted of fraudulent conduct in relation to certificates as a seafarer or upon whom a penalty for fraud has been imposed under the Penal Code shall not be admitted to any examination for a certificate or endorsement before a period of at least 24 months has elapsed since the date of such conviction or the date of imposition of such penalty, as the case may be.

PART XI

ENFORCEMENT

Offences, penalties and defences.

114. (1) Any—

- (a) company or a master who has engaged a person not holding a certificate as required by these regulations;
- (b) master who has allowed any function or service in any capacity required by these regulations to be performed by a person not holding the required certificate, a valid dispensation or having the documentary proof required by regulation 11;
- (c) person has obtained by fraud or forged documents an engagement to perform any function or serve in any capacity required by these regulations to be performed or filled by a person holding a certificate or dispensation; or
- (d) person who fails to comply with any of the provisions of these Regulations or the Code in respect of ships or of seafarers duly certificated by the Authority;

commits an offence and shall be liable on, conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a period not exceeding twelve months,

or both.

- (2) In proceedings for an offence in terms of this regulation, it is a defence to prove that the accused took reasonable precautions and exercised due diligence to avoid committing the offence.
- (3) In proceedings for an offence in terms of regulation consisting of a failure to comply with a duty or requirement to do something so far as is reasonably practicable, it shall be for the accused to prove that it was not reasonably practicable to do more than what was in fact done to satisfy the duty or requirement.
- (4) Nothing in this regulation shall prevent the allocation of tasks for training under supervision or in cases of *force majeure*.

Extension of all co-operation possible to any Party.

115. The Authority shall extend all co-operation possible to any Party which advises it of its intention to initiate proceedings, under its jurisdiction, against any company or any person stationed in Kenya who is believed on clear grounds to have been responsible for, or to have knowledge of, any apparent non-compliance with the corresponding regulations in that Party.

Director-General may impose penalty upon admission of guilt.

116. (1) If any person—
- (a) admits to the Director-General that he or she has contravened any provision of these regulations, or that he has failed to comply with any such provision with which it was his duty to comply; and
 - (b) agrees to abide by the decision of the Director-General; and
 - (c) deposits with the Authority such sum as may be required of him, but not exceeding the maximum fine which may be imposed upon a conviction for the contravention or failure in question,

the Director-General may, after such enquiry as he deems necessary, determine the matter summarily and may, without legal proceedings, order by way of penalty the whole or any part of the said deposit to be forfeited.

- (2) The imposition of a penalty under sub-regulation (1) shall be deemed to be a conviction of a criminal offence, but no prosecution for the relative offence

shall thereafter be competent.

PART XII

TRANSITIONAL ARRANGEMENTS, SAVINGS AND REPEAL OF REGULATIONS

Transitional provisions and savings.

- 117.** (1) Until 1st January 2017, the Authority may continue to—
- (a) continue to issue, recognize and endorse certificates in accordance with the provisions of the Convention which applied immediately prior to 1st January 2012 in respect of those seafarers who commenced approved seagoing service, an approved education and training programme or an approved training course before 1st July 2013; and
 - (b) renew and revalidate certificates and endorsements in accordance with the provisions of the Convention which applied immediately prior to 1st January 2012.
- (2) Any certificates in force at the commencement of these regulations which were issued under—
- (a) the Merchant Shipping Act 1967 (repealed); or
 - (b) the Harbours Regulation, 1970; or
 - (c) the Kenya Ports Authority Act Chapter 389 of the Laws of Kenya.

shall be valid until 1st of January 2017 and the holders of such certificates shall be required thereafter to obtain certification under these regulations.

- (3) Notwithstanding regulation 118, certificates issued under the L.N. 115/2012 shall continue to be valid until they expire and shall thereafter be renewed under these regulations.

Repeal of L.N. 115/2012

- 118.** The Merchant Shipping (Training and Certification) Regulations, 2012, are revoked.

FIRST SCHEDULE **(R. 5(10))**
FORMAT OF CERTIFICATES ISSUED UNDER THESE REGULATIONS

1. Format of Certificates of Competency issued under Parts III and IV

(Official Seal)
REPUBLIC OF KENYA
Merchant Shipping Act 2009
Merchant Shipping (Training and Certification) Regulations

Certificate of Competency: _____
Certificate No.

This is to certify that has been found duly qualified to hold this Certificate of Competency..... and is entitled under the Merchant Shipping Act (CAP 389) to serve onboard a merchant ship in any capacity requiring a certificate of competency of this class unless the holder is required to have additional training and sea service in accordance with the above Regulations.

Date of issue.....

Signature of Orals Examiner
.....
Name of Orals Examiner

(Official Seal)
Signature of Registrar of Seafarers
.....
Name of Registrar of Seafarers

Particulars of holder
ID/Passport no.....
Country of birth

Date of birth.....
Qualifying conditions met on.....
Signature of holder of certificate.....

Photograph of holder of
the certificate

Limits of Near Coastal Voyages

The original of this certificate must be kept onboard while serving on a ship

4 Format of Certificate of Proficiency issued under Parts III, IV, VI and VII

(Official Seal)
REPUBLIC OF KENYA

Certificate of Proficiency: _____

Certificate No. _____

.....

This is to certify that has been found duly qualified
in/as* in accordance with the provisions of the International Convention on
Standards of Training, Certification and Watchkeeping for seafarers, 1978, as amended and has also met the
criteria applicable to the issue of the certificate.

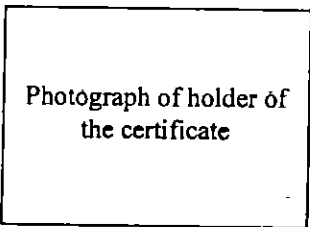
Date of issue

This certificate is valid until.....

.....
Signature of duly authorized official

.....
Name of duly authorized official

(Official Seal)



**delete as appropriate*

Particulars of holder

ID/Passport no.....

Country of birth

Date of birth.....

Qualifying conditions met on.....

Signature of the holder of the certificate.

The validity of this certificate is hereby extended until.....	
(Official Seal) <i>Signature of duly authorized official</i>
Date of revalidation..... <i>Name of duly authorized official</i>

The original of this certificate must be kept onboard while serving on a ship

SECOND SCHEDULE

(R. 10(3))

Format of Endorsement used to attest the issue of a certificate of competency (Regulation 10(3))

ENDORSEMENT ATTESTING THE ISSUE OF A CERTIFICATE UNDER THE PROVISIONS OF THE INTERNATIONAL CONVENTION ON STANDARDS OF TRAINING, CERTIFICATION AND WATCHKEEPING FOR SEAFARERS, 1978, AS AMENDED

Endorsement No.
 The Government of Kenya certifies that certificate of competency no has been issued to who has been found duly qualified in accordance with the provisions of regulation of the above Convention, as amended, and has been found competent to perform the following functions, at the levels specified, subject to any limitations indicated until or until the date of expiry of any extension of the validity of this endorsement issued by Kenya Maritime Authority as may be shown overleaf:

FUNCTION	LEVEL	LIMITATIONS APPLYING (IF ANY)

The lawful holder of this endorsement may serve in the following capacity or capacities specified in the applicable safe manning requirements of the Administration:

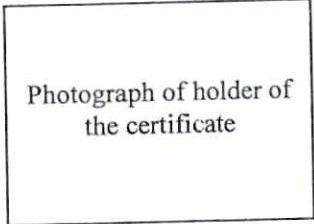
CAPACITY	LIMITATIONS APPLYING (IF ANY)

Date of issue.....

(Official Seal)

Signature of duly authorized official

Name of duly authorized official



Particulars of holder

ID/Passport no.....
 Country of birth
 Date of birth.....
 Qualifying conditions met on.....
 Signature of the holder of the certificate.....

The validity of this endorsement is hereby extended until.....	
<i>(Official Seal)</i>	<i>Signature of duly authorized official</i>
Date of revalidation.....	<i>Name of duly authorized official</i>
The validity of this endorsement is hereby extended until.....	
<i>(Official Seal)</i>	<i>Signature of the authorized official</i>
Date of revalidation.....	<i>Name of duly authorized official</i>

The original of this endorsement must be kept onboard while serving on a ship

THIRD SCHEDULE

(R. 10(4))

Format of endorsement attesting to the recognition of a certificate (Regulation (10(4)))

(Official Seal)

REPUBLIC OF KENYA

ENDORSEMENT ATTESTING THE RECOGNITION OF A CERTIFICATE UNDER THE PROVISIONS OF THE INTERNATIONAL CONVENTION ON STANDARDS OF TRAINING, CERTIFICATION AND WATCHKEEPING FOR SEAFARERS, 1978, AS AMENDED

Endorsement No.

The Government of Kenya certifies that certificate No issued toby or on behalf of the Government ofis duly recognized in accordance with the provisions of regulation I/10 of the above Convention, as amended, and the lawful holder is authorized to perform the following functions, at the levels specified, subject to any limitations indicated until: or until the date of expiry of any extension of the validity of this certificate as may be shown overleaf:

FUNCTION	LEVEL	LIMITATIONS APPLYING (IF ANY)

The lawful holder of this endorsement may serve in the following capacity or capacities :

CAPACITY	LIMITATIONS APPLYING (IF ANY)

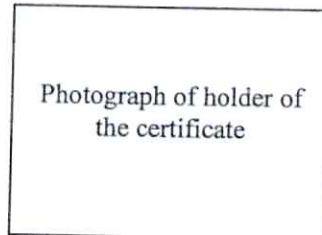
Date of issue.....

This certificate is valid until.....

(Official Seal)

Signature of duly authorized official

Name of duly authorized official



Particulars of holder

ID/Passport no.....

Country of birth

Date of birth.....

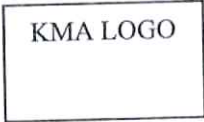
Qualifying conditions met on.....

Signature of the holder of the certificate.....

The validity of this endorsement is hereby extended until.....	
<i>(Official Seal)</i> <i>Signature of duly authorized official</i>
Date of revalidation..... <i>Name of duly authorized official</i>
The validity of this endorsement is hereby extended until.....	
<i>(Official Seal)</i> <i>Signature of the authorized official</i>
Date of revalidation..... <i>Name of duly authorized official</i>

The original of this endorsement must be kept onboard while serving on a ship

Certificate number



CERTIFICATE OF APPROVAL TO CONDUCT A COURSE
(Regulation 87)

this is to certify that:

.....(name of institution).....

having been assessed and found to comply with the requirements for approval in terms of Regulation 87 of the Merchant Shipping (Training and Certification) Regulations, 2016, is hereby approved to conduct(name of course).....

This approval is valid for four (4) years from(dd-mm-yyyy)..... to(dd-mm-yyyy)..... and may be renewed in accordance with the regulations.

-----SIGN-----

-----NAME-----
DIRECTOR-GENERAL



Dated the 22ND FEBRUARY 2016.

A handwritten signature in black ink, consisting of several overlapping, slanted strokes that form a stylized, somewhat abstract representation of the name James Macharia.

JAMES MACHARIA,
Cabinet Secretary for Transport and Infrastructure.

THE STATUTORY INSTRUMENTS ACT, Act No. 23 of 2013
(SCHEDULE s. 8)

EXPLANATORY MEMORANDUM TO THE MERCHANT SHIPPING (TRAINING
AND CERTIFICATION) REGULATIONS, 2016

Year No. 2016

PART I

Name of the Statutory Instrument:

Merchant Shipping (Training and Certification) Regulations, 2016 (the Regulations)

Name of the Parent Act:

Merchant Shipping Act, Revised Edition 2012 (2009)

Enacted Pursuant to:

Sections 170 of the Merchant Shipping Act, Revised Edition 2012 (2009)

Name of the Ministry/ Department:

Ministry of Transport and Infrastructure

Gazetted on:

Tabled on:.....

PART II

1. Purpose of the Statutory instrument:

- 1.1 The purpose of the Regulations is to establish a legal framework for the training and certification of seafarers, including the accreditation of maritime training institutions in Kenya.

Secondly, the Regulations domesticate as part of Kenya's national law, the International Convention on Standards of Training, Certification and Watch-keeping for Seafarers, 1978, which entered into force in 1984. Kenya ratified the STCW Convention on 15th December 1992 and the convention entered into force in Kenya on 15 March 1993. The STCW Convention establishes basic requirements on training, certification and watch-keeping for seafarers on an international level. The STCW Convention prescribes minimum standards relating to training, certification and watch-keeping for seafarers which countries are obliged to meet or exceed. Only seafarers with STCW certifications are eligible for employment as part of a ship's crew. The regulations thus provide for the legal framework for the training and certification of seafarers thus ensuring that seafarers trained in Kenya are eligible for employment on the global merchant fleet.

2. Legislative Context

- 2.1 The regulations are intended to domesticate in Kenya the international standards for the training and certification for seafarers for qualification to be engaged to work as seafarers on the global merchant fleet.

These Regulations serve to revoke and replace the Merchant Shipping (Training and Certification) Regulations, 2012 and incorporate the 2006 and 2010 mandatory amendments to the STCW Convention and Code.

3. Policy Background

- 3.1 Section 12.4 of the Integrated National Transport Policy identifies, as a critical issue, the lack of a comprehensive maritime education policy and in this regard a need to develop curricula for maritime education and training of deftest identified. These

regulations provide the basis for the implementation of the seafarers' education and training in Kenya.

3.2 Consolidation: The Regulations consolidate the Merchant Shipping (Training and Certification) Regulations, 2012 with the Manila amendments to the International Convention on the Standards for Training, Certification and Watch-keeping for Seafarers, 1978, as amended, which came into effect in January, 2014. The Manila amendments were a major review of the International Convention on the Standards for Training, Certification and Watch-keeping for Seafarers, 1978, as amended, and hence the need to amend the regulations to align the same with the applicable international standards.

4. Consultation outcome

4.1 The Regulations were discussed with the accredited maritime training institutions in Kenya.

5. Guidance

5.1 The implementing agency, the Kenya Maritime Authority, with technical support from the International Maritime Organization held a stakeholder's sensitization and awareness creation workshop for the relevant stakeholders on the Regulations.

6. Impact

6.1 The impact on Fundamental Rights and Freedoms: The provisions of the Regulations do not in any way violate the provisions of Chapter 4 of the Constitution.

(a) The impact on the Private Sector: The regulations do not introduce any additional financial obligations on aspiring seafarers or maritime training institutions, the standards set out in the Regulations are a continuing on the ship-owners to employ as part of the ship's crew of duly qualified seafarers. Up till January, 2017, there shall be continued issuance, recognition and endorsement of certificates in accordance with the provisions of the Convention which applied immediately prior to 1st January 2012 in respect of those seafarers who commenced approved seagoing service, an approved education and training programme or an approved training course before 1st July 2013. There shall also be renewal and revalidation of certificates and endorsements in

accordance with the provisions of the Convention which applied immediately prior to 1st January 2012.

6.2 The impact on the public sector: The Regulations provide a legal basis for effective implementation and enforcement of international regulations on the training and certification of persons wishing to be engaged as part of crew on ships.

6.3 An impact assessment is attached to this memorandum or an impact assessment has not been prepared for this statutory instrument

An impact assessment has not been prepared for this statutory instrument because the regulations do not have a direct, or a substantial effect on business, neither do the Regulations in any way restrict competition.

7. Monitoring and review

7.1 The Regulations will be reviewed whenever the International Maritime Organization undertakes a significant review of the International Convention on the Standards for the Training, Certification and Watch-keeping for Seafarers, 1978, as amended. Such review is always based on evolution of shipping practice and thus one cannot correctly predict the exact date of review. However, monitoring of the application of the Regulations will be conducted through regular inspection of ships to ensure their compliance with the Regulations.

8. Contact

In the event there is a need for clarification of any provisions of the regulations to which this Memorandum relate, please contact-

The Director-General

Kenya Maritime Authority

P.O. Box 95076-80104

White House, Off MSC Plaza

Mombasa

Tel No: 041-2318398/9/0724-319344, 0733-221322

Email Address: info@kma.go.ke

Prepared By:



JAMES MACHARIA

Gov **CABINET SECRETARY FOR TRANSPORT AND INFRASTRUCTURE**

This 7th Day of March, 2016

LEGAL NOTICE NO

THE MERCHANT SHIPPING ACT, 2009
(No. 4 of 2009)

**MERCHANT SHIPPING (SEAFARER MEDICAL EXAMINATION AND
CERTIFICATION) REGULATIONS, 2016**

ARRANGEMENT OF REGULATIONS

1. Short title and commencement.
2. Interpretation.
3. Application.
4. Purpose of these Regulations.
5. Evidence of medical fitness.
6. Application and issue of a seafarer medical certificate.
7. Standards of medical fitness for seafarers.
8. Limitations or restrictions.
9. Validity of a medical certificate.
10. Cancellation or suspension of a medical certificate.
11. Further examination.
12. Conduct of medical fitness examination.
13. Privacy and confidentiality of medical examinations and independence of medical practitioners.
14. Appealing against the decision of recognized medical practitioner.
15. Replacement certificates.
16. Recognition and authorization of medical practitioners.
17. Variation, suspension, cancellation or revocation of recognition.
18. Medical certificates issued by other Parties.
19. Quality standards system.
20. Use of spectacles or contact lenses.
21. Inspection and detention of foreign ships.
22. Inspection and detention of Kenyan ships.
23. Seafarers' Medical records.

*Paper laid
the Majority
Whip on 9/3/2016 (pw)*



- 24 Offences, penalties and defences.
25. Transitional arrangements.
- 26 Revocation of L N.of 2012

accordance with regulation 16 of these regulation to assess the medical fitness of seafarers;

“Party” means a State identified and published by the Maritime Safety Committee of the Organization as having demonstrated that they give full and complete effect to the relevant provisions of the Convention,

“seafarer” means any person employed upon a vessel and includes the master, ships officers and ratings;

“the Board” means the Kenya Medical Practitioners and Dentists Board,

“Training and Certification Regulations” means the Merchant Shipping (Training and Certification) Regulations, 2015 made under the Act, relating to the qualifications and certification of seafarers as may from time to time be amended;

“the Guidelines” means the Guidelines on Medical Examinations of Seafarers set out in IMO circular STCW.7/Circ.19 of 9 January 2013 as may from time to time be amended;

“STCW Code” means the Seafarers’ Training, Certification and Watchkeeping (STCW) Code as adopted by the 1995 Conference resolution 2, as it may be amended by the Organization;

“STCW Convention” means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as affected by any amendment made under Article XII of that Convention and “Convention” shall be construed accordingly;

“valid” in relation to a certificate or other document, means a certificate or document that is current and that has not been cancelled, suspended, revoked or expired.

Application

3. (1) These Regulations shall apply to seafarers serving on board seagoing Kenyan ships wherever they may be or on foreign ships when they are in a Kenyan port or in Kenyan waters;
- (2) These Regulations shall not apply to—
 - (a) warships, naval auxiliaries;
 - (b) Ships owned or operated by a Party and engaged only on governmental non-commercial service;
 - (c) Government ships as defined in the Act;
 - (d) fishing vessels;

- (e) pleasure yachts not engaged in trade;
- (f) wooden ships of primitive build, including junks; or
- (g) any person whose work is not part of the routine business of the ship and whose principal place of work is ashore;
- (h) offshore installations whilst on their working stations; and

(3) The Authority may require seafarers serving on board ships referred to in paragraph (2)(b) to (e) to meet the requirements of these regulations so far as is reasonable and practicable so as not to impair the operations or operational capabilities of such ships.

Purpose of these Regulations

4. The purpose of regulations is to give effect to the provisions of—
- (a) Regulation I/9 of the STCW Convention and Section A-I/9 of the STCW Code; and
 - (b) Regulation 1.2 and Standard A1.2 of the Maritime Labour Convention, 2006.

Evidence of medical fitness

5. (1) Subject to sub-regulations 9(2) and (3), no person may work as a seafarer on a ship to which these Regulations apply unless that person holds a valid seafarer medical certificate.
- (2) A seafarer who has been issued with a medical certificate shall carry that certificate on board during the term of employment on a ship to which these Regulations apply.
- (3) A company shall—
- (a) ensure that every seafarer serving on board its ships holds a valid medical certificate;
 - (b) in respect of a Kenyan ship, inform the Authority when the medical certificate of a seafarer expires in the course of a voyage, and
 - (c) make an application to the Authority, on behalf of the concerned seafarer, for the permission required under sub-regulation 9(3)

Application and issue of a seafarer medical certificate

6. (1) The Authority—
- (a) shall issue medical certificates on the recommendation of the examining recognized medical practitioner, or
 - (b) may authorize a recognized medical practitioner to issue

medical certificates on its behalf

- (2) Every applicant for certification shall—
 - (a) be not less than 16 years of age,
 - (b) provide satisfactory proof of his or her identity;
 - (c) meet the applicable medical fitness standards established under regulation 7; and
 - (d) surrender to the recognized medical practitioner his or her medical certificate, where one was issued previously.
- (3) A recognized medical practitioner shall, while issuing or when recommending to the Authority the issuance a medical certificate, be guided by the procedures for the issue of medical certificates established in these Regulations.
- (4) A seafarer's medical certificate shall be in the English language and in the format set out in the First Schedule.

Standards of medical fitness for seafarers

7. (1) The examining medical practitioner shall recommend to the Authority the issuance of a medical certificate to a seafarer in accordance with the standards of medical fitness for seafarers established in the Guidelines.
- (2) The established physical and medical standards are—
 - (a) vision standards;
 - (b) hearing standards;
 - (c) eyesight standards;
 - (d) physical capability requirements;
 - (e) fitness criteria for medication use; and
 - (f) fitness criteria for common medical conditions.
- (3) Notwithstanding sub-regulation (2)(a), the minimum in-service eyesight standards for seafarers shall be as set out in the Second Schedule
- (4) Notwithstanding the Guidelines, a medical practitioner conducting seafarer medical examination may exercise professional discretion and judgement considering the special requirements of seafaring life and the different duties of seafarers.

Provided that in the case of paragraphs (2)(a) and (c)-

- (i) no discretion shall be exercised in relation to the minimum eyesight standards for distance vision aided, near/immediate vision and colour vision as specified in the Second Schedule for seafarers in the deck department required to undertake lookout duties;
- (ii) discretion shall only be exercised in respect of seafarers in the engine department where their combined vision fulfils the requirements specified in the Second Schedule.

Limitations or restrictions

8. (1) The recognized medical practitioner shall specify any limitation or restriction on medical certificate issued under regulation 6
- (2) The limitations or restrictions may concern—
- (a) the job the seafarer is expected to perform;
 - (b) the trade area;
 - (c) the time limit, or
 - (d) any other necessary considerations
- (3) No person may work as a seafarer on a ship to which these Regulations apply—
- (a) in a capacity of sea service or in a geographical area precluded by any restriction in that person's medical certificate, or
 - (b) in breach of a condition of that person's medical certificate
- (4) No person may employ a person as a seafarer in a ship to which these Regulations apply—
- (a) in a capacity of sea service or in a geographical area precluded by any restriction in that person's medical certificate; or
 - (b) in such a way as to breach a condition of the person's medical certificate

Validity of a medical certificate

9. (1) A seafarer's medical certificate shall be valid for a maximum period of two years from the date of issue, unless the seafarer is under the age of eighteen, in which case the maximum period of

validity shall be one year.

- (2) If the period of validity of a seafarer's medical certificate expires in the course of a voyage, the medical certificate shall continue to be in force—
 - (a) until the next port of call, where the seafarer shall obtain a medical certificate from a medical practitioner recognized by the Authority; or
 - (b) until the expiry of three months from the date of the expiry of the certificate.
- (3) In urgent cases, the Authority may, on application by a Company, permit a seafarer to work without a valid medical certificate until the next port of call where the seafarer shall obtain a medical certificate from a recognised medical practitioner, provided that—
 - (a) the seafarer concerned is in possession of medical certificate which has expired no earlier than one month before the date on which he joined the ship; and
 - (b) the period of such permission shall not exceed three months.

Cancellation or suspension of a medical certificate.

10. (1) A medical certificate may be cancelled or suspended if a medical practitioner has reasonable grounds for believing that—
 - (a) there has been a significant change in the medical fitness of a person during the period of validity of the medical certificate;
 - (b) a person is not complying with the terms of a condition to which the medical certificate is subject;
 - (c) when the medical certificate was issued to a person, had a medical practitioner been in possession of full details of that person's condition, the medical practitioner could not reasonably have considered that the person was fit, having regard to the medical standards specified in regulation 7; or
 - (d) the medical certificate was issued to a person otherwise than in accordance with these Regulations.
- (2) Where sub-regulation (1) applies, the medical practitioner shall—
 - (a) suspend the validity of that medical certificate until the person to whom the certificate was issued has undergone

further medical examination;

(b) suspend the validity of the medical certificate for such period as the medical practitioner considers the person to whom the certificate was issued will remain unfit to perform the duties that person will carry out at sea; or

(c) cancel the medical certificate if he considers that the person to whom the certificate was issued is likely to remain permanently unfit to perform the duties that person will carry out at sea and must notify the person concerned accordingly.

(3) The medical practitioner shall require that a person surrenders a medical certificate which has been suspended or cancelled pursuant to sub-regulation (2), in such manner as he may direct.

(4) In this regulation, a significant change in the medical fitness of a person means a condition which affects or would be reasonably likely to affect that person's ability to carry out their duties, including their ability to undertake emergency duties.

Further examination.

11. A seafarer who is the holder of a valid medical certificate may at any time be required by the owner or master of a ship, or by the Authority, to obtain a new medical certificate where as a result of illness, injury or other cause it is believed the seafarer may no longer be medically fit.

Conduct of medical fitness examination.

12. (1) A recognized medical practitioner carrying out seafarer medical examination shall adhere to the standards of medical fitness for seafarers established in regulation 7.

(2) A medical practitioner shall in accordance with the Guidelines conduct such examinations, tests and interviews and make such enquiries in relation to an applicant as may be necessary to determine whether the applicant is medically fit to perform the intended duties as a seafarer.

(3) An applicant shall disclose to the medical practitioner all pre-existing medical conditions that are known to the applicant and that are likely to affect the determination of the applicant's medical fitness.

(4) A recognized medical practitioner may at his own cost refer, the seafarer to undertake specialized medical examination at another facility.

(5) A recognized medical practitioner shall—

(a) adhered to the Guidelines while conducting medical

fitness examinations.

- (6) The format for recording medical examinations of seafarers shall be that provided in the Guidelines.
- (7) An examining medical practitioner may refer any medical problems found, when appropriate, for further investigation and treatment, whether or not a seafarer is issued with a medical certificate.

Privacy and confidentiality of medical examinations and independence of medical practitioners.

- 13. (1) Medical practitioners shall in examining seafarers for the purpose of these Regulations, be deemed to be acting on behalf of the Authority, and shall avoid or resolve any conflict of interest.
- (2) All persons involved in the conduct of medical examinations, including those who come into contact with medical examination forms, laboratory results and other medical information, shall ensure the right to privacy of the examinee.
- (3) Medical examination reports shall be marked as confidential and shall be so treated, and all medical data collected from a seafarer shall be protected.
- (4) Medical records shall only be used for determining the fitness of the seafarer for work and for enhancing health care and they shall not be disclosed to other persons without prior written informed consent from the seafarer.
- (5) Personal medical information shall not be included on medical certificates or other documents made available to other persons following the medical examination.
- (6) The seafarer shall have the right of access to and receipt of a copy of his or her personal medical data.
- (7) A recognized medical practitioner shall enjoy professional independence from ship-owners, seafarers, and their representatives in exercising their medical judgement under of these Regulations.

Appealing against the decision of recognized medical practitioner.

- 14. (1) A person who is aggrieved by—
 - (a) the refusal a medical practitioner to issue or recommend to the Authority the issuance of issue a medical certificate in accordance with regulation 6;
 - (b) any restriction imposed on his or her medical certificate; or

- (c) the suspension or cancellation of his or her medical certificate by a medical practitioner pursuant to regulation 10;

may apply to the Authority for the matter to be reviewed, at his own cost, by another recognized medical practitioner.

- (2) A matter which is the subject of an application under subregulation (1) shall be reviewed if the application—
 - (a) Is lodged with the Authority within one month of the date on which the applicant was given notice of refusal, imposition of a restriction, suspension or cancellation;
 - (b) includes a consent for the medical practitioner responsible for the refusal, imposition of a restriction, suspension or cancellation to provide a report to the medical referee; and
 - (c) specifies the name and address of that practitioner.
- (3) If an application is made after the time prescribed in subregulation (2)(a), the Authority may, upon consideration of any reasons for the lateness of the application, decide that the matter is nonetheless to be reviewed.
- (4) If requested by the applicant, the medical practitioner shall provide to the applicant a copy of the report of the medical practitioner and any other evidence provided by the medical practitioner or the medical referee.
- (5) In a case within sub-regulation (1)(a) or (c), if in light of the medical evidence, and having regard to the medical standards specified in regulation 7, the medical referee considers that the applicant is fit to perform the duties to be carried out at sea, the medical referee shall issue to or recommend to the Authority to issue the applicant a medical certificate in, or terminate the suspension of the applicant's medical certificate, as the case may be.
- (6) In a case within sub-regulation (1)(a), (b) or (c), and having regard to the medical standards specified by regulation 7, if in the light of the medical evidence the medical referee considers that restrictions as to capacity of sea service or geographical areas should be imposed on a medical certificate issued to the applicant, or that any restriction so imposed by a medical practitioner should be deleted or varied, the medical referee shall issue or recommend to the Authority to issue the applicant a medical certificate which records any restrictions as so imposed or varied, and the former certificate shall cease to have

effect.

- (7) If in the light of the medical evidence, and having regard to the medical standards specified by regulation 7, the medical referee considers that the applicant is unfit to perform the duties that person will carry out at sea, the medical referee shall notify the applicant of the period during which the medical referee considers that the applicant remains unfit to go to sea.
- (8) In this regulation "medical referee" means the recognized medical practitioner to whom a matter is referred by an applicant who is aggrieved by a medical report.

Replacement
certificates.

15. (1) Unless a medical certificate has been surrendered under regulation 10(3), if a person who was issued with a medical certificate which is still valid is no longer in possession of that certificate, then upon—
 - (a) application being made by that person or that person's employer to the medical practitioner or referee who issued the certificate; and
 - (b) payment of the administrative costs of issuing the replacement,

the medical practitioner or referee who issued that certificate may issue to that person a replacement medical certificate.

- (2) A replacement medical certificate issued under this regulation expires on the expiration date of the original medical certificate which it replaces.
- (3) At no time shall a seafarer hold more than one valid medical certificate.

Recognition and
authorization of
medical practitioners.

16. (1) Examination of seafarers for medical fitness shall be conducted by medical practitioners recognized by the Authority in accordance with this regulation.
- (2) A medical practitioner wishing to be recognized under sub-regulation (1) shall make a written application to the Authority and submit documentary evidence of—
 - (a) appropriate academic qualification;
 - (b) valid registration and licensing by the Board;
 - (c) experience of not less than 4 years practising general medicine;

- (d) appropriate qualifications and at least two years' experience-
 - (i) in occupational health or maritime health;
 - (ii) working as a ship's doctor or a shipping company doctor; or
 - (iii) working under the supervision of someone with the aforementioned qualifications or experience; and
 - (e) the registered premises where seafarer medical fitness examinations shall be conducted.
- (3) The premises required under paragraph (2)(e) shall-
- (a) have the facilities and equipment required to carry out medical fitness examination of seafarers;
 - (b) be conveniently situated for easy access by seafarers; and
 - (c) be sufficient, adequate and readily available.
- (4) The Authority shall verify the authenticity and validity of the documentary evidence submitted in support of the application under sub-regulation (2) and-
- (a) may require the medical practitioner to provide additional information; and
 - (b) conduct inspection of the premises and facilities to verify their suitability in respect of the requirements of sub-regulation (3).
- (5) The Authority shall, in addition to the requirements of sub-regulations (2), (3) and (4), take into consideration any other factors it may deem relevant to the application for recognition and shall not be bound to recognize a medical practitioner only on the basis of such a medical practitioner satisfying the requirements of those sub-regulations.
- (6) The recognition of a medical practitioner by the Authority shall be issued in writing and-
- (a) be valid for a period of 36 months; and
 - (b) specify any conditions applying to it.

- (7) The recognition issued to a medical practitioner—
- (a) shall be deemed to constitute a recognition of the registered medical premises or facility where the seafarer medical fitness examinations will be conducted,
 - (b) a recognized medical practitioner transferring or relocating his or her practise to a different premises or facility—
 - (i) shall inform the Authority, within five working days, of such change and comply with the requirements of paragraph (2)(e); and
 - (ii) the Authority shall conduct the verification described under sub-regulation (4) and where appropriate, re-issue a recognition to that medical practitioner.
- (8) The Authority shall maintain and make available to other Parties, companies and seafarers, on request—
- (a) a register of medical practitioners recognized by it; and
 - (b) a list of the Parties whose medical certificates are recognized by the Authority in accordance with regulation 18.

Variation, suspension, cancellation or revocation of recognition

17. The recognition of a medical practitioner—
- (a) shall stand revoked, forthwith, when the recognized medical practitioner's registration or license is invalidated or revoked by the Board, and
 - (b) may be varied, suspended, cancelled or revoked, in writing, by the Director-General-
 - (i) following a recommendation in an investigation report or audit report for such variation, suspension, cancellation or revocation; or
 - (ii) when a recognized medical practitioner transfers or relocates his/her medical practice to a different premise or facility; or
 - (iii) when, in the Director-General's opinion, the circumstances warrant such variation, suspension, cancellation or revocation.

- Medical certificates issued by other Parties.
18. The Authority shall accept, in principle, medical certificates issued by or on behalf of the Parties identified and published by the Maritime Safety Committee of the Organization as Parties which have demonstrated that they give full and complete effect to the relevant provisions of the STCW Convention.
- Quality standards system.
19. (1) Medical certification activity shall be continuously monitored through the Quality Standards System established by the Director-General.
- (2) The quality standards system shall establish, at a minimum, procedures for—
- (a) issuance of medical certificates;
 - (b) recognition of a medical practitioner; and
 - (c) appealing the decision of a recognized medical practitioner;
- Use of spectacles or contact lenses.
20. (1). Any need for a seafarer to wear visual aids to meet the required standards shall be recorded by the recognized medical practitioner on the medical certificate issued.
- (2). A person whose medical certificate indicates that an aid to vision or hearing was used for the purpose of being found fit shall—
- (a) use the aid when performing duties as a seafarer; and
 - (b) in the case of an aid to vision, keep at least two such aids while performing duties as a seafarer.
- Inspection and detection of foreign ships.
21. (1) An inspector duly authorized by the Director-General may inspect any foreign ship to which these Regulations apply when the ship is in a Kenyan port, and where he is satisfied that any seafarer is unable to produce a valid medical certificate he may—
- (a) send a report to the government of the country in which the ship is registered, and a copy thereof to the Secretary-General of the International Maritime Organization; and
 - (b) subject to sub-regulation (2), where he is satisfied that conditions on board are hazardous to safety or health—
 - i) take such measures as are necessary to rectify those conditions; and
 - ii) detain the ship.

- (2) Measures referred to in sub-regulation (1) (b) may be taken only when the ship has called at a Kenyan port in the normal course of business or for operational reasons.
- (3) Where the inspector takes either of the measures specified in sub-regulation (1) (b) he shall forthwith notify the nearest maritime, consular or diplomatic representative of the flag state of the ship.
- (4) Sections 435 and 436 of the Act shall have effect in relation to a ship detained under these Regulations
- Inspection and detention of Kenyan ships** **22.** (1) An inspector duly authorized by the Director-General may inspect any Kenyan ship to which these Regulations apply and may detain the ship where upon inspection the inspector is satisfied that—
- (a) any seafarer whose employer is required by regulation 5 to ensure that he is the holder of a valid medical certificate is unable to produce such a certificate; and
- (b) the state of his health is such that the ship could not sail without serious risk to the safety and health of those on board
- (2) The inspector shall not in the exercise of these powers detain or delay the ship unreasonably.
- Seafarers' Medical records** **23.** (1) A copy of the seafarers' medical certificates shall be kept in the files of the health institution in which it was issued.
- (2) The medical examination records should be clearly marked as confidential and retained, according to national regulations, in the custody of the health institution where the medical certificate was issued. The file should be kept confidential and should not be used for any purpose other than facilitating the treatment of seafarers and should be made available only to persons duly authorized in accordance with national data protection laws.
- (3) Medical records shall only be used for determining the fitness of the seafarer for work and for enhancing health care they shall not be disclosed to others without prior written informed consent from the seafarer.
- Offences, penalties and defences** **24.** (1) Any person who contravenes the requirements of Regulations 5, 8(3) and 8(4) and 16(1) commits an offence.
- (2) A person who commits an offence in terms of sub-regulation (1) shall be liable on conviction to a fine not exceeding two

hundred thousand Kenya shillings or to imprisonment for a period not exceeding six months or both such fine and imprisonment.

- (3) If a person—
- (a) admits to the Director-General that he has failed to comply with the requirements of these Regulations, or that he has failed to comply with any such requirement with which it was his/her duty to comply; and
 - (b) agrees to abide by the decision of the Director-General; and
 - (c) deposits with the Authority such sum as may be required of his, but not exceeding the maximum fine which may be imposed upon a conviction for failure to comply,

the Director General shall, after such enquiry as deems necessary, determine the matter summarily and may, without legal proceedings, order by way of penalty the whole or any part of the said deposit to be forfeited.

- (4) No prosecution shall be instituted for an offence for which penalty is imposed under this Regulation.
- (5) Nothing in these regulations shall affect liability to forfeiture of ships, shares therein or goods.

Revocation of
L.N.of 2012.

25. The Merchant Shipping (Eyesight and Medical Examination) Regulations 2012 are revoked.

Transitional
arrangements.

26. (1) Notwithstanding regulations 25-

- (a) subject to regulation 17, every recognized medical practitioner who was, immediately before the commencement of these regulations, a recognized medical practitioner within the meaning of these regulations shall continue to be a recognized medical practitioner for the purpose of these Regulations for the period specified in the instrument of approval or recognition;
- (b) medical certificates issued immediately prior to the commencement of these Regulations shall be deemed issued under these Regulations and shall continue to be valid for the period specified in them.

FIRST SCHEDULE

(R.6(4))

FORM OF SEAFARER'S MEDICAL CERTIFICATE
(Regulation 6)

<div style="border: 1px solid black; display: inline-block; padding: 2px 10px;">COAT OF ARMS</div>	
KENYA MARITIME AUTHORITY SEAFARER MEDICAL CERTIFICATE <i>Issued under Regulation 6 of the Merchant Shipping (Seafarer Medical Examinations and Certification) Regulations, 2016</i>	
Certificate No: <input style="width: 100px;" type="text"/>	
Seafarer Information:	
Last name: _____	First name: _____
Middle name(s): _____	
Nationality: _____ Passport No: _____ Date of Birth: <u> </u> / <u> </u> / <u> </u> / <u> </u> Discharge book No: _____	
Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female	Rank/Job: _____ Department: _____

has been examined in accordance with the Seafarers' medical fitness standards and This is to certify that above named seafare certification requirements established in accordance with the provisions of the STCW Convention, 1978, amended, regulation I/9 ventionand Maritime Labour Con, 2006, ionregulat1.2 .found to be fit for service at sea, subject to any limitations indicated and

DECLARATION OF THE RECOGNIZED MEDICAL PRACTITIONER		
	Yes	No
1. Confirmation that identification documents were checked at the point of examination	<input type="checkbox"/>	<input type="checkbox"/>
2. Hearing meets the standards in STCW Code Section A-I/9? Date of test (dd/mm/yyyy): <u> </u> / <u> </u> / <u> </u>	<input type="checkbox"/>	<input type="checkbox"/>
3. Unaided hearing satisfactory?	<input type="checkbox"/>	<input type="checkbox"/>
4. Visual acuity meets standards in section A-I/9? - Visual aids (if worn): <input type="checkbox"/> Spectacles <input type="checkbox"/> Contact lenses <input type="checkbox"/> None	<input type="checkbox"/>	<input type="checkbox"/>
5. Colour vision meets standards in section A-I/9? - Date of last colour vision test:(dd/mm/yyyy): <u> </u> / <u> </u> / <u> </u>	<input type="checkbox"/>	<input type="checkbox"/>
6. Fit for look-out duties? (Deck and Engine Dept. only)	<input type="checkbox"/>	<input type="checkbox"/>
7. Limitations or restrictions on fitness?	<input type="checkbox"/>	<input type="checkbox"/>
If "Yes", specify limitations or restrictions:	Examination form No: _____	
8. Is the seafarer free from any medical condition likely to be aggravated by service at sea or to render the seafarer unfit for such service or to endanger the health of other persons on board?	<input type="checkbox"/>	<input type="checkbox"/>
Date of Issue(dd/mm/yyyy): <u> </u> / <u> </u> / <u> </u>	*Expiry date of certificate(dd/mm/yyyy): <u> </u> / <u> </u> / <u> </u>	

RECOGNIZED MEDICAL PRACTITIONER Sign: _____ Name (print): _____ Place of Examination: _____ Seal/Stamp: _____	REGISTRAR OF KENYAN SEAFARERS Sign: _____ Name (print): _____ Place of issue: _____ Seal/Stamp: _____
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Seafarer's Declaration

I hereby confirm that I have been informed about the content of this certificate and my right to appeal in accordance with the Merchant Shipping (Seafarer Medical Examinations and Certification) Regulations, 2016.

Signature of the seafarer: _____

**Valid for a maximum period of two years unless the seafarer is under the age of 18, in which case the maximum period of validity shall be one year.*

SECOND SCHEDULE **(R.7)**
MINIMUM IN-SERVICE EYESIGHT STANDARDS FOR SEAFARERS

STCW Convention regulation	Category of seafarer	Distance vision Aided ¹		Near/immediate vision	Colour vision ³	Visual fields ⁴	Night blindness ⁴	Diplopia (double vision) ⁴
		One eye	Other eye	Both eyes together, aided or unaided				
I/11 II/1 II/2 II/3 II/4 II/5 VII/2	Masters, deck officers and ratings required to undertake look-out duties	0.5 ²	0.5	Vision required for ship's navigation (e.g., chart and nautical publication reference, use of bridge instrumentation and equipment, and identification of aids to navigation)	See Note 6	Normal Visual fields	Vision required to perform all necessary functions in darkness without compromise	No significant condition evident
I/11 III/1 III/2 III/3 III/4 III/5 III/6 III/7 VII/2	All engineer officers, electro-technical officers, electro-technical ratings and ratings or others forming part of an engine-room watch	0.4 ⁵	0.4 (see Note 5)	Vision required to read instruments in close proximity, to operate equipment, and to identify systems/components as necessary	See Note 7	Sufficient visual fields	Vision required to perform all necessary functions in darkness without compromise	No significant condition evident
I/11 IV/2	GMDSS Radio operators	0.4	0.4	Vision required to read instruments in close proximity, to operate equipment, and to identify systems/components as necessary	See Note 7	Sufficient visual fields	Vision required to perform all necessary functions in darkness without compromise	No significant condition evident

Notes:

1. Values given in Snellen decimal notation.
2. A value of at least 0.7 in one eye is recommended to reduce the risk of undetected underlying eye disease.
3. As defined in the *International Recommendations for Colour Vision Requirements for Transport* by the Commission Internationale de l'Eclairage (CIE-143-2001 including any subsequent versions).
4. Subject to assessment by a clinical vision specialist where indicated by initial examination findings.
5. Engine department personnel shall have a combined eyesight vision of at least 0.4.
6. CIE colour vision standard 1 or 2. Other equivalent confirmatory test methods currently recognized by the Board may continue to be used.
7. CIE colour vision standard 1, 2 or 3. Other equivalent confirmatory test methods currently recognized by the Board may continue to be used.

Dated the 22ND FEBRUARY....., 2016

A handwritten signature in black ink, consisting of several overlapping, sweeping strokes that form a stylized, somewhat abstract representation of the name James Macharia.

JAMES MACHARIA,
Cabinet Secretary for Transport and Infrastructure.

THE STATUTORY INSTRUMENTS ACT, Act No. 23 of 2013
(SCHEDULE s. 8)

**EXPLANATORY MEMORANDUM TO THE MERCHANT SHIPPING (SEAFARER
MEDICAL EXAMINATION AND CERTIFICATION) REGULATIONS, 2016**
REGULATIONS, 2016

Year No. 2016

PART I

Name of the Statutory Instrument:

Merchant Shipping (Seafarers Medical Examination and Certification) Regulations, 2016 (the Regulations)

Name of the Parent Act:

Merchant Shipping Act, Revised Edition 2012 (2009)

Enacted Pursuant to:

Sections 378 read together with Section 450 of the Merchant Shipping Act, 2012 (2009)

Name of the Ministry/ Department:

Ministry of Transport and Infrastructure

Gazetted on:

Tabled on:

PART II

1. Purpose of the statutory instrument:

This Regulation is put in place in order to ensure that seafarers do not work on a ship unless they are certified as medically fit to perform their duties. It serves to give effect to Regulation 1/9 of the STCW Convention and Section A- 1/9 of the STCW Code; and

also Regulation 1.2 and Standard A1.2 of the Maritime Labour Convention, 2006, both of which Kenya has ratified.

2. Legislative Context

2.1 IMO's mandate to ensure safety at sea and the general well-being of seafarers. This is the basis upon which guidelines as to Seafarers' medical examination and certification were formulated.

The guidelines are to the effect that Seafarers are required to undergo medical examinations for the safe operation of the ship, to reduce risks to other crew members and to safeguard their personal health and safety. This is effected by the guidelines giving the specific details or information to be recorded which indicate specific aspects of fitness which ought to be assessed.

These Guidelines have been developed in order to reduce the differences in the application of medical requirements and examination procedures and to provide maritime administrations with an internationally recognized set of criteria set out either directly or as a basis for framing consistent national medical examination standards. This also ensures that the medical certificates which are issued to seafarers are a valid indicator of their medical fitness for the duties they will perform.

Ultimately, the aim of the Guidelines is to contribute to health and safety at sea hence the need for concerted effort by maritime nations to adopt the requisite guidelines in their legislations to ensure safety and well-being of seafarers at sea. Kenya is a maritime nation with a large workforce of seafarers and effecting these Regulations will go a long way towards giving Kenyan seafarers a level ground as Seafarers from other nations hence able to access employment internationally.

Kenya had, pursuant to its international obligations enacted the Merchant Shipping (Medical Examination and Certification) Regulations, 2012 (the former Regulations). These regulations serve to incorporate the 2006 and 2010 mandatory amendments to the STCW Convention and Code that provide guidelines that further enhance safety at sea.

3. Policy Background

3.1 Under section 6.14.2 (a) of the Kenya Integrated National Transport Policy, 2009 the policy maker undertakes, among other things, to expedite enactment of appropriate legislation to deal with maritime safety. The Regulation is one of the measures adopted by the Government to fulfill this policy objective and to ensure that conventions and legislations that Kenya is party to are effected owing to the fact that the constitution recognizes the importance of International conventions.

3.2 **Consolidation:** The Regulations are a revision of the former Regulations.

4. Consultation outcome

4.1 The obligation to implement the Regulations lies solely with the Government. As a result, the relevant government agencies, being the Kenya Maritime Authority, the Kenya Ports Authority, Doctors approved in previous Regulations, the syllabus committee and others have worked together in the development of these Regulations.

5. Guidance

5.1 Any developments and changes in the maritime regulations are notified to the shipping community by way of marine notices.

6. Impact

6.1 **The impact on Fundamental Rights and Freedoms:** The provisions of the Regulations do not in any way violate the provisions of Chapter 4 of the Constitution.

6.2 **The impact on the Private Sector:** The implementation of the Regulations do not impose any obligations on the private sector apart from vessel owners or employers who have to ensure that members of their crew have valid certificates. Crew members will also have individual responsibility to ensure that they undergo the prescribed tests and acquire the relevant certification. The shipping community will also be better off with a legal framework to implement these guidelines.

6.3 **The impact on the public sector:** The Regulations provides a legal basis for implementation of the Seafarer Medical Examination and Certification guidelines which will ensure general safety at sea.

6.4 An impact assessment is attached to this memorandum or an impact assessment has not been prepared for this statutory instrument

An impact assessment has not been prepared for this statutory instrument because the regulations do not have a direct, or a substantial effect on business and neither do the regulations in any way restrict competition.

7. Monitoring and review

7.1 Should a need to review be identified in case of emerging trends in the sector, the Cabinet Secretary for the time being responsible for shipping will amend the Regulations as appropriate.

8. Contact

In the event there is a need for clarification of any provisions of the regulations to which this Memorandum relate, please contact:-

The Director-General

Kenya Maritime Authority

P.O Box 95076-80104

White House, Off MSC Plaza

Mombasa

Tel No 041-2318398/9/0724-319344, 0733-221322

Email Address: info@kma.go.ke

Prepared By:



JAMES MACHARIA

CABINET SECRETARY FOR TRANSPORT AND INFRASTRUCTURE

THIS 7th DAY OF March 2016