

**REPUBLIC OF KENYA
 MINISTRY OF MINING, BLUE ECONOMY AND MARITIME AFFAIRS
 STATE DEPARTMENT FOR SHIPPING AND MARITIME AFFAIRS
 OFFICE OF THE PRINCIPAL SECRETARY**

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MOT & I/C/MSA/5/7 VOL.V (57)

Date: 30th January, 2023

The Clerk of the National Assembly
 National Assembly,
 Clerk's Chambers
NAIROBI

Attn: The Committee on Delegated Legislation

THE MERCHANT SHIPPING (TRAINING & CERTIFICATION) (AMENDMENT) REGULATIONS, 2022

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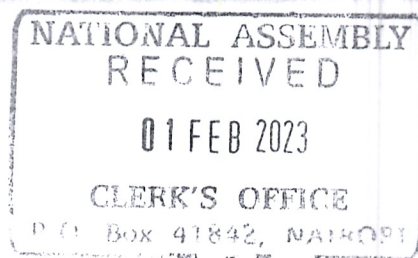
Pursuant to the Statutory Instruments Act, 2013, this Ministry hereby submits the **MERCHANT SHIPPING (TRAINING & CERTIFICATION) (AMENDMENT) REGULATIONS, 2022** (enclosed) published as Legal Notice No. 1 on 20th January, 2023 for consideration by the National Assembly Committee on Delegated Legislation.

In addition to the Regulations, we hereby enclose the Explanatory Memorandum, the Regulatory Impact Assessment (RIA) and other relevant materials on the Regulations.

Thank you for your continued support.

Signature of Shadrack Mwadime

**Shadrack Mwadime, EBS
 PRINCIPAL SECRETARY**



Encls.

Copy to: **Hon. Salim Mvurya, EGH**
Cabinet Secretary
Ministry of Mining, Blue Economy & Maritime Affairs
NAIROBI

Hon. Justin B. N. Muturi, EGH
Attorney General
Attorney General Chambers
NAIROBI

Mr. Omingo
Ag. Director General
Kenya Maritime Authority
MOMBASA

SPECIAL ISSUE

Kenya Gazette Supplement No. 3

(Legislative Supplement No. 1)

LEGAL NOTICE NO. 1

THE MERCHANT SHIPPING ACT
(No. 4 of 2009)

IN EXERCISE of the powers conferred by section 450 of the Merchant Shipping Act, 2009, the Cabinet Secretary for Mining, Blue Economy and Maritime Affairs makes the following Regulations—

THE MERCHANT SHIPPING (TRAINING AND CERTIFICATION)
(AMENDMENT) REGULATIONS, 2022

1. These Regulations may be cited as the Merchant Shipping (Training and Certification) (Amendment) Regulations, 2022.
2. The Merchant Shipping (Training and Certification) Regulation, 2016, in these Regulations referred to as “the principal Regulations” is amended in regulation 2 by—

- (a) deleting the definition of the term “radio duties” and substituting therefor the following new definition—

“radio duties” includes watchkeeping and technical maintenance and repairs conducted in accordance with the Radio Regulations, the Safety Convention and, at the discretion of the Authority, the relevant recommendations of the Organization;

- (b) deleting the definition of the term “passenger ship” and substituting therefor the following new definition—

“passenger ship” means a ship as defined in the International Convention for the Safety of Life at Sea, 1974,

- (c) inserting the following new definitions in their proper alphabetical sequence—

“Code for Implementation” means the IMO Instruments Implementation Code (III Code) adopted by the Organization by resolution A.1070(28);

“IGF Code” means the International Code of safety for ships using gases or other low-flashpoint fuels, as defined in regulation II-1/2.299 of the Safety Convention;

“Polar Code” means the International Code for Ships Operating in Polar Waters, as defined in regulation XIV/1.1 of the Safety Convention;

“polar waters” mean Arctic waters or the Antarctic area, as defined in regulations XIV/1.2 to XIV/1.4 of the Safety Convention;

20th January 2023
THE NATIONAL ASSEMBLY
DATE: 14 FEB 2023
BY: [Signature]
LEADER OF MAJORITY
MWAHES

Citation.

Amendment
of L. N. No.
41 of 2016.

3. Regulation 15 of the principal Regulations is amended—

- (a) by renumbering the existing opening paragraph as in sub-regulation (1);
- (b) in sub-regulation (1), by inserting the words “Part VI, Division D and” immediately before the words “Part VII”;
- (c) inserting the following new sub-regulation immediately after sub-regulation (10) —

(11) Every master and officer shall, for continuing seagoing service on board ships operating in polar waters, meet the requirements in sub-regulation (2) and, at intervals not exceeding five years —

- (a) have approved seagoing service on ships operating in polar waters, performing functions appropriate to the certificate held, for a period of at least two months in total during the preceding five years; or
- (b) have performed functions considered to be equivalent to the seagoing service required in paragraph (a);
- (c) pass an approved test; or
- (d) successfully complete an approved training course or courses.

4. The principal Regulations are amended by inserting the following new Regulation immediately after Regulation 24 —

Periodic audits by the Organization.

24A. The Authority shall coordinate the relevant entities in the conduct of periodic audits carried out by the Organization in line with Code for Implementation.

5. Regulation 44 of the principal Regulations is amended in paragraph (b) by deleting the expression “51 to 54” and substituting therefor the expression “51 to 55”.

6. (1) The principal Regulations are amended by deleting regulation 50 and substituting therefor the following new regulation—

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) The Authority shall determine the applicability of the requirements specified in this division to personnel serving on passenger ships engaged on domestic voyages.

7. The principal Regulations are amended by deleting regulation 51 and substituting therefor the following new regulation—

Trainings for
personnel on a
passenger ship.

51. (1) A master, officer, rating or other personnel serving on board a passenger ship shall have completed the training and familiarization required by sub-regulations (3) to (7), in accordance with their capacity, duties and responsibilities.

(2) A master, officer, rating or other personnel required to be trained in accordance with sub-regulations (5) to (7) shall, at intervals not exceeding five years, undertake the appropriate refresher training specified in the Code of Seafarers Qualifications, or provide evidence to the Authority of having achieved the required standard of competence within the five years preceding the training in question.

(3) A person serving on board a passenger ship shall have completed —

- (a) the safety familiarization training specified in section A-VI/1, paragraph 1 of the STCW Code; and
- (b) the passenger ship emergency familiarization appropriate to their capacity, duties and responsibilities as specified in section A-V/2, paragraph 1 of the STCW Code.

(4) Any person providing direct service to passengers in passenger spaces on board a passenger ship shall have completed the safety training specified in section A-V/2, paragraph 2 of the STCW Code.

(5) A master, officer, rating qualified in accordance with Parts III, IV and VIII of these Regulations or any other personnel designated on the muster list to assist passengers in emergency situations on board a passenger ship shall have completed the passenger ship crowd management training as specified in section A-V/2, paragraph 3 of the STCW Code.

(6) A master, chief engineer officer, chief mate, second engineer officer or any person designated on muster list of having responsibility for the safety of passengers in emergency situations on board passenger ships shall have completed the approved training in crisis management and human behaviour as specified in section A-V/2, paragraph 4 of the STCW Code.

(7) A master, chief engineer officer, chief mate, second engineer officer or any other 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 have completed the approved training in passenger safety, cargo safety and hull integrity as specified in section A-V/2, paragraph 5 of the STCW Code."

8. The principal Regulations are amended by inserting the following sub-heading immediately before regulation 52—

D- Masters, officers, ratings and other personnel on ships subject to the IGF Code.

9. The principal Regulations are amended by deleting regulation 52 and substituting therefor the following new regulation—

Safety training.

52 (1) This division shall apply to master, officer, rating, and other personnel serving on board a ship subject to the IGF Code.

(2) The Authority may exempt a seafarer to whom this Part applies from any of the requirements under regulation 53 —

- (a) in respect of ships of less than five hundred gross tonnage, except for passenger ship;
- (b) if it considers that the size of the ship and the length or character of its voyage is such as to render the application of the requirements of regulation 53 unreasonable or impracticable,

taking into consideration the safety of people on board, the ship, property and protection of the marine environment.

10. The principal Regulations are amended by deleting Regulation 53 and inserting the following new regulation —

Personnel working onboard ships subject to IGF Code.

53. (1) Prior to being assigned any duty onboard a ship, a master or seafarer referred to under regulation 52 shall, in accordance with their capacity, duties and responsibilities —

- (a) complete the mandatory minimum training required under sub-regulations (2) to (7); and
- (b) receive appropriate familiarization as specified in regulation I/14, paragraph 1.5 of the STCW Convention.

(2) A seafarer, on board a ship, responsible for designated safety duties in relation to care, use or in emergency response to the fuel on board ship shall possess a certificate of proficiency in basic training for service on ships subject to the IGF Code in accordance with provisions of section A-V/3, paragraph 1.1 of the STCW Code.

(3) A seafarer who is qualified and certified under regulations 48(2) or 49(2) of these Regulations shall be deemed to have met the requirements specified in sub-regulation (2).

(4) A master, engineer officer and any personnel with immediate responsibility for the care and use of fuels and fuel systems on ship shall hold a certificate of proficiency in advanced training for service on ships subject to the IGF Code.

(5) Every candidate for the certificate specified in sub-regulation (4) shall, while holding the certificate of proficiency provided under sub-regulation (2), have completed —

- (a) the approved advanced training for service onboard a ship subject to the IGF Code and meet the standard of competence specified in section A-V/3, paragraph 2.1 of the STCW Code; and
- (b) at least one month of approved seagoing service that includes a minimum of three bunkering operations onboard a ship:

(6) Notwithstanding the provisions of sub-regulation (5)(b), two of the three bunkering operations may be replaced by approved simulator training on bunkering operations as part of the training under sub-regulation (5) paragraph (a).

(7) A seafarers who is qualified and certified under regulation 48(2) of these Regulations shall be deemed to have met the requirements specified in sub-regulation (5):

Provided that the seafarer—

- (a) meets the bunkering requirements of sub-regulation (5)(b) or has participated in conducting three cargo operations on board the liquefied gas tanker; and
- (b) has completed sea going service of three months in the previous five years on board—

- (i) a ship subject to the IGF Code;
- (ii) tanker carrying as cargo, fuels covered by the IGF Code; or
- (iii) a ship using gases or low flashpoint fuel as fuel.

11. The principal Regulations are amended by inserting the following new sub-heading immediately before regulation 54 —

E- Masters and deck officers on ships operating in polar waters.

12. The principal Regulations are amended by deleting regulation 54 and substituting therefor the following new regulation—

Application of division.

54. This division shall apply to masters, chief mates and officers in charge of navigational watch on ships operating in polar waters.

13. The principal Regulations are amended by deleting regulation 55 and substituting therefor the following new regulation—

Personnel working on board ships subject to Polar Code.

55 (1) A master, chief mate and officer in charge of a navigational watch on ships operating in polar waters shall hold a certificate of proficiency in basic training for ships operating in polar waters, as required by the Polar Code.

(2) Every candidate for the certificate specified in sub-regulation (1) shall have completed an approved basic training for ships operating in polar waters and meet the standard of competence specified in section A-V/4, paragraph 1, of the STCW Code.

(3) A master and chief mate on a ship operating in polar waters shall hold a certificate of proficiency in advanced training for ships operating in polar waters, as required by the Polar Code.

(4) Every candidate for the certificate specified in sub-regulation (3) shall—

- (a) meet the requirements for certification in basic training for ships operating in polar waters;
- (b) have at least two months of approved seagoing service in the deck department, at management level or while performing watchkeeping duties at the operational level, within polar waters or other equivalent approved seagoing service; and
- (c) have completed approved advanced training for ships operating in polar waters and meet the standard of competence specified in section A-V/4, paragraph 2 of the STCW Code.

14. The principal Regulations are amended by deleting the form of the certificate of approval set out in the Fourth Schedule and substituting therefor the following new form—

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 the Merchant Shipping (Training and Certification) Regulations, 2016, is hereby approved to conduct
(name of course).....

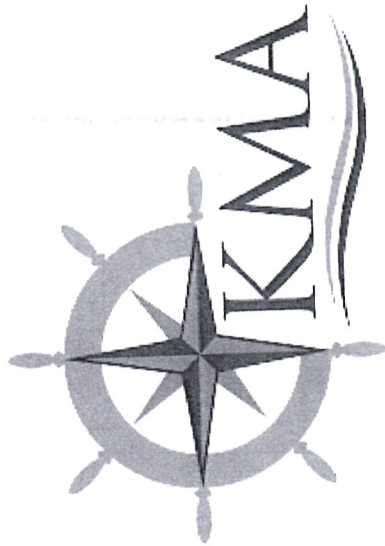
This approval is valid from.....(dd-mm-yyyy)..... to
.....(dd-mm-yyyy) and may subject to annual verification audits be renewed in accordance with the regulations.

----- SIGN -----

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

Made on the 15th December, 2022.

SALIM MVURYA,
*Cabinet Secretary, Ministry of Mining,
Blue Economy and Maritime Affairs.*



**REPORT ON THE DEVELOPMENT OF AMENDMENTS TO THE MERCHANT SHIPPING (TRAINING AND CERTIFICATION)
REGULATIONS 2016 AFTER PUBLIC PARTICIPATION EXERCISE ON 14TH AND 15TH SEPTEMBER, 2022**

Annex 1

Key

- | | |
|--|---|
| | Means the comment/submission has been adopted and incorporated in the Regulations |
| | Means the comment/submission has not been adopted with sufficient reason |
| | Means the comment does not require an amendment to the Regulations |

S.NO	REGULATION	ISSUE/COMMENT/SUBMISSION	STAKEHOLDER	ACTION TAKEN/RESPONSE
1.	Regulation 2- Interpretation	<p>Definition of 'Responsible person' as is open and persons representing institutions have a handicap as far as implementing compliance.</p> <p>Qualify definition on the part of 'or a senior member' to read 'or a qualified senior member'</p>	Twalib- TUM	Amendment done.
2.	Regulation 51- Passenger ship personnel	<p>The Code of Seafarer Qualification ought to be made available to stakeholders.</p>	Twalib- TUM	This will be done.
3.	Fourth Schedule	<p>The Authority should not remove the KMA logo and exchange the same with coat of arms on the form of certificate</p>	Jotham Munya-	<p>The use of the KMA logo in the previous certificates was an anomaly but the amendment of the same to have the coat of arms is the practice as the certificates are issued on behalf of Kenya.</p>
4.	Regulation 3- Application	<p>Do the Regulations apply to fishing vessels?</p>	Betty ITF Makena-	<p>The Regulations do not apply to fishing vessels. Separate Regulations shall be drafted</p>

S.NO	REGULATION	ISSUE/COMMENT/SUBMISSION	STAKEHOLDER	ACTION TAKEN/RESPONSE
		Do the Regulations cater for hospitality crew on passenger ships?		for fishing vessels pursuant to STCW - F Convention. The Regulations cater for 'merchant ships' and merchant ships include passenger ships.
5.	General Comment	<p>Note the 2018 guidelines regarding standard of colour testing for eyesight which may be an amendment to the MS (Seafarer Medical Examination and Certification) Regulations 2016</p> <p>KMA to improve on communication and brief participants prior to stakeholder engagements for fruitful input.</p> <p>Further, KMA to benchmark with other Administrations in the establishment of legislations.</p> <p>Why are fees for seafarers medical examination exorbitant? What has KMA as a Regulator done to ensure affordable medical examination?</p>	<p>Twalib- TUM</p> <p>Feruzi Kaemba-SUK</p> <p>Owaki- SUK</p>	<p>The 2018 Guidelines concerning the same had already been communicated to the respective service providers</p> <p>This is noted</p> <p>The fees for medical examination is high in most jurisdictions. Philippine is a special case as they have a strong Seafarers union that owns the hospital where</p>

S.NO	REGULATION	ISSUE/COMMENT/SUBMISSION	STAKEHOLDER	ACTION TAKEN/RESPONSE
		<p>Government ought to assist seafarers through negotiations with service providers for the Kenyan seafarers to have an affordable package like the case of Philippines.</p> <p>KMA to explore engaging doctors in Government institutions.</p> <p>The Seafarers Union of Kenya ought to revamp itself to be able to achieve what seafarers unions like the Philippines one has achieved- establishment of a seafarers hospital.</p>	<p>Betty Makena-ITF</p> <p>Lydia Muthoni-JKUAT</p>	<p>seafarers are treated at subsidized rates.</p> <p>KMA's previous attempts to license doctors in government institutions failed as the STCW Convention requires licensing for a particular doctor and a corresponding well- equipped facility which aspect does not work for government hospitals as doctors are transferred from time to time. Further it was important to license private facilities for accountability purposes and to avoid the possibility of forgery.</p> <p>Of note is that there are two different examinations required and whatever the Authority stipulates for is not exorbitant but determined by the Medical Board while the more expensive medical examination is usually in the purview of shipowners.</p>

S.NO	REGULATION	ISSUE/COMMENT/SUBMISSION	STAKEHOLDER	ACTION TAKEN/RESPONSE
		Refund of medical examination fees.	Nyaita- SUK/ MSC	Shipowners have specific doctors/ medical facilities and such expenses for the medical examination are usually reimbursed by the shipowner as per the law.
6.	Additional General Comments	<p>Are the ferry crew trained in courses like crowd Management?</p> <p>Seafarers are required to undertake certain courses but the local institutions are not offering them e.g. Ship Cooks Certificates for lack of which Kenyan seafarers have risked being disembarked and some undertook the course online.</p>	<p>Betty Makena-ITF</p> <p>Betty Makena-ITF</p>	<p>The ferry crew are required to have the requisite crowd management training. They are not exempted from STCW courses since the ferries are equally passenger vessels.</p> <p>There are courses that the training institutions in Kenya do not offer as they have no capacity as far as equipment and trainers are concerned. The trainers that are employed are not well remunerated and the institutions had difficulty retaining them.</p>

S.NO	REGULATION	ISSUE/COMMENT/SUBMISSION	STAKEHOLDER	ACTION TAKEN/RESPONSE
		<p>What is KMA doing with regard to enforcement of the Regulations?</p> <p>Are periodical audits carried out on the institutions licensed to conduct the courses? Is the audit report accessible to the public?</p>	<p>Owaki- SUK</p> <p>Betty Makena- ITF</p>	<p>The crew boarding as Chefs are already professionals with the requisite certificates as merchant shipping catering departments are regulated by MLC 2006</p> <p>To bridge that gap, specific companies like MSC have contracted instructors for specific STCW courses</p> <p>The Authority assists in the development of training syllabus and acquisition of training equipment in some cases. However, there are still challenges with engagement and retention of training personnel.</p> <p>The certificates of approval are valid for four years and the Authority conducts periodic audits annually.</p>

S.NO	REGULATION	ISSUE/COMMENT/SUBMISSION	STAKEHOLDER	ACTION TAKEN/RESPONSE
		<p>Forgery of KMA Certificates rampant which could compromise the standing of Kenyan certificates.</p> <p>Suggestion that just like in Bandari Maritime Academy, students in other institutions taking certain maritime courses be uniformed.</p> <p>It is important to invite manning agents as they will be affected by these Regulations.</p>	<p>Betty Makena-ITF</p> <p>Panjol- TUM</p> <p>Betty Makena-ITF</p>	<p>The audit report is only shared with the respective auditee.</p> <p>Investigations on the same shall be conducted.</p> <p>The Authority is unable to implement this. It is the responsibility of individual institutions to ensure this is done.</p> <p>The Authority will reach out to manning agents to get their input on Regulations.</p>
7.	Additional Comments	The 60% pass mark for STCW exams as per the Regulations is not suitable for universities which have a pass mark of 40%	Christiaan Adena- JKUAT	There are planned amendments to the Regulations which will cater for both universities and technical institutions.

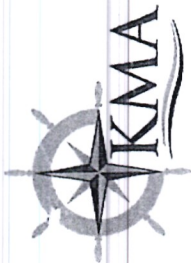
S.NO	REGULATION	ISSUE/COMMENT/SUBMISSION	STAKEHOLDER	ACTION TAKEN/RESPONSE
		<p>KMA should enforce for all students taking maritime courses to wear uniform as it is in Bandari Maritime Academy</p> <p>KMA to subsidize the process costs and get the reimbursement from the ship owner</p> <p>How do we make sure that the government is not charged beyond economic levels .Can't Government press for exemptions for the equipment's used by the approved doctors require to carry out examinations on the seafarers.</p>	<p>Josphat Panjo - TUM</p>	<p>The matter will be looked in and the outcome be communicated to all MET institutions</p> <p>The seafarer should get involvement of the ship owners and try support whatever procedures involved as this is a private entity</p> <p>USD 500 Charged by the doctors is nowhere related to KMA. Only the endorsement fee is the only charge related to KMA. Doctor's fee is uncontrollable by our regulations as well as by the government as it's a private entity and which cannot be mandated in by KMA. It's not in KMA's mandate to dictate what the private (hospitals) equipment are used.</p> <p>What we can do is to try balance and see what best interest is for Kenyan Seafarers and employers.</p>



ATTENDANCE SHEET

VIRTUAL MEETING DRAFT STAKEHOLDER COMMENTS FOR MS (TRAINING AND CERTIFICATION) REGULATIONS HELD ON 14TH SEPTEMBER, 2022

1. Stephen owaki- SUK
2. Bety makenA- ITF
3. Jotham Muthoka munyalo-JKUAT
4. Twalib mohammed -TUM
5. Kevin ochieng- Kenya Coast polytechnic
6. Joseph Wanjala- Kenya Coast polytechnic
7. Vitalis Leo -kimarce
8. Daniel kairu-BMA
9. Nafula Laureta- KMA
10. Luke Samba- KMA (Chairing)
11. Julius Koech-KMA
12. Eng. Andika-JKUAT
13. Josephine Nthia- KMA
14. Caroline Kioko-KMA



ATTENDANCE SHEET

AMENDMENTS TO THE MERCHANT SHIPPING-(TRAINING & CERTIFICATION) REGULATIONS PUBLIC PARTICIPATION HELD AT MOMBASA BEACH HOTEL ON 15TH SEPTEMBER, 2022

S/NO	NAME	ORGANISATION	CONTACTS	EMAIL ADDRESS	SIGNATURE
1.	JOSPHAT PANJO OMBEVA	SUK	0743999243	Josphatpajo@gmail.com	<i>[Signature]</i>
2.	FRISCELLAH WANSA NGUHI	SUK	0704992350	ngigithemarine@gmail.com	<i>[Signature]</i>
3.	TALIB IBRAHIM	TUM	0717897600	tinohammed@tum.ac.ke	<i>[Signature]</i>
4.	ERIC K. NYAKA	KMA	072057773	ericoxa@kma.go.ke	<i>[Signature]</i>
5.	NAPATA KLEKALI	KMA	0719380255	lnghlg@kma.go.ke	<i>[Signature]</i>
6.	STEVE ODOCKI	SUK	0710303291	odocki2002@pub.com	<i>[Signature]</i>
7.	MWYI TACHAZI	Mombasa Wharves Council	0721697610	Seaportoperations@gmail.com	<i>[Signature]</i>
8.	DANIEL KENON	BMA	0720869892	dkenon@bma.co.ke	<i>[Signature]</i>
9.	JOSEPH WARIJWA MAKOMBE	K.C.H.P	0705135411	iwarijwa29@gmail.com	<i>[Signature]</i>
10.	MICHAEL NYG	Kenya P.	0723712171	Michael.mwarijwa@kenya.co.ke	<i>[Signature]</i>
11.	PAUL NYAINDA	SUK	0729700730	phnyainda@outlook.com	<i>[Signature]</i>
12.	FATUMA KISIWA	SUK	0703325573	fatumakisiwa@gmail.com	<i>[Signature]</i>
13.	JUMA MWALALO	SUK	0726287942	mwabaji@johno.com	<i>[Signature]</i>
14.	SARALINE K. KIWU	KMA	072862127	ekikiro@kma.go.ke	<i>[Signature]</i>
15.	ZIPPORAH OTWORI	BMA	0713070608	zotwori@bma.co.ke	<i>[Signature]</i>
16.	KAMPAMBE TRWINGI	SUK	0720533049	Kampambej@gmail.com	<i>[Signature]</i>
17.	HESSEN KOMBO	SUK	0727409560		<i>[Signature]</i>

18.						
19.	BABU OMARI	SUK	0737531975			PA
20.	Lydia Ngugi	MKCAFICA	0724251798			Lydia
21.	BETTY MARLENA	ITF	0721425828		bety.marlina@yahoo.com	Betty
22.	ILHAM KENDI MOHAMED	IMCO	0705743151		mohacuilham123@gmail.com	Baham
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KENYA MARITIME AUTHORITY

Draft Merchant Shipping Training and Certification (Amendment) Regulations, 2022

TEMPLATE FOR COMMENTS/RECOMMENDATIONS

(Please type or write legibly)

1. PERSONAL DETAILS

Name:	JOSPAT PANJO OMBEVA.
Job Title:	STUDENT, CADET
Organization / Company:	TUM, AMPK, SUK (member).
Contact (email):	Pp Josphatpanjo23@gmail.com
Telephone:	0743999243

2. COMMENTS

No.	Regulation	Comment/ Recommendation
1.		- Kindly Introduce that it should be mandatory for all maritime Universities to ensure students
2.		have uniforms. for discipline
3.		- Kindly start a mandatory medical checkup for all cadets by they start the courses, both
4.		Nautical and Marine Engineering.

Note: Complete this template and forward a soft copy to the Kenya Maritime Authority via email (comments.draftlaws@KMA.go.ke)

**EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (TRAINING AND CERTIFICATION)
(AMENDMENT) REGULATIONS, 2022
LEGAL NOTICE NO 1 OF 2022**

PART I

Name of the statutory instrument	:	Merchant Shipping (Training and Certification) (Amendment) Regulations, 2022
Name of the parent Act	:	Merchant Shipping Act, 2009
Enacted pursuant to	:	Section 450 of the Merchant Shipping Act, 2009
Name of the Ministry/Department:	:	Ministry of Mining, Blue Economy and Maritime Affairs
Gazetted on	:	20 th January, 2023
Tabled on	:	

PART II

1. The Purpose of the Merchant Shipping (Training and Certification) (Amendment) Regulations, 2022.

The purpose of these Regulations is to provide:

- (a) Minimum standards relating to training and certification seafarers in Kenya.
- (b) Requirements and procedures for approval of Training institutions to offer Maritime Education Training courses in accordance with the requirements set out in the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978.
- (c) Procedure for examining and certificating trainees on completion of approved Maritime Education and Training courses.
- (d) Procedure for revalidating of certificates issued to Kenyan seafarers.
- (e) Sets out the pre-requisite requirement for certification of various personnel to serve onboard different types of ships.
- (f) Procedures for mutual recognition of certificates issued by other party states to IMO in accordance with provisions of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978.

- (g) Procedures for communicating of national instruments for ratifying the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 to the IMO Secretary General.

2. The Legislative Context

The process of developing the Merchant Shipping (Training and Certification) (Amendment) Regulations, 2022, started in the year 2022. The Regulations seek to give effect to the amendments under the STCW Convention; a Convention ratified by Kenya.

Merchant Shipping (Training and Certification) (Amendment) Regulations, 2022 is developed under section 450 of the Merchant Shipping Act, 2009 and the development was guided by the following considerations:

- (a) Provision of a framework for the prescribing minimum standards relating to training and certification of Seafarers in Kenya; and
- (b) Ensuring compliance with the principles of international law.

3. Policy Background.

3.1 *What is being done and why*

Section 450 of the Merchant Shipping Act, 2009 (MSA) empowers the Minister to make regulations specifying standards of competence to be attained and other conditions to be satisfied, subject to such exceptions as may be allowed by or under the regulations, by officers and other seafarers of any description in order to be qualified for the purposes of this Regulations in Kenya:

- (a) **Oversight Role:** being the Regulator in the maritime industry, the Kenya Maritime Authority is mandated to oversee the standards of training and administer and enforce the provisions of the Merchant Shipping Act, 2009 which empowers the Minister in Section 450 to make regulations to provide a framework for the prescribing minimum standards relating to training, certification and watchkeeping for seafarers in Kenya.
- (b) **Monitoring Role:** monitoring the domestication and implementation of the minimum standards of the International Convention on Standards of Training, Certification and Watchkeeping, 1978 as amended (STCW Convention). This ensures that Kenya honours its international obligations arising from the STCW Convention.

- (c) **Advisory Role:** advising Government on legislative and other measures necessary for the implementation of relevant international instruments to which Kenya is a party to.

In execution of the above mandate, the Kenya Maritime Authority faces the following challenges:

- (a) Kenyan seafarers not being accorded pertinent rights including to working onboard international going vessels due to delays in incorporating STCW amendments into the national laws.
- (b) Undertaking of the 5 year STCW independent evaluation audit aimed at evaluating the country's compliance with the provisions of STCW Convention including regular incorporation of STCW amendments into national laws.
- (c) Lack of national laws guiding the training and certification of Kenyan seafarers for working onboard ships operating in polar regions and ships using Gases or other low-flash point fuels.

3.2 Consolidation

It is on this basis that the Merchant Shipping (Training and Certification) (Amendment) Regulations, 2022 seeks to provide a framework for the prescribing minimum standards relating to training, certification and watchkeeping for seafarers in Kenya ensuring compliance with Kenya's international obligations.

Some of the salient features of these Regulations include:

1. The amendments to Regulations 2 provide for the definition of terms taking into account polar regions and ships using Gases or other low-flash point fuels.
2. Regulation 15 gives a provision for the revalidation of certificates and the provision for the training requirements for masters and officers of ships operating in polar waters.
3. Regulation 24A provides for periodic audits by the Organization. Mandates the Authority to coordinate with the relevant entities in the conduct of periodic audits carried out by the Organization in line with Code for Implementation
4. Regulation 51 provides for the minimum requirement for training of personnel on passenger ships.
5. Regulation 53 provides for training requirements for Personnel working on board ships subject to IGF code.
6. Regulation 55 provides for standards for Personnel working on board ships subject to polar code.

4. Consultation outcome

The Merchant Shipping (Training and Certification) (Amendment) Regulations, 2022 have taken into account the views of key stakeholders including the Seafarers Union of Kenya, International Transport Workers' Federation (ITF), Maritime Wages Council, Kenya Coast National Polytechnic, Bandari Maritime Academy, Technical University of Mombasa, KIMARCE, Jomo Kenyatta University of Science and Technology and the general public.

The outcome of these consultation is herein attached.

5. Guidance

The Kenya Maritime Authority will sensitize stakeholders including Seafarers Union of Kenya, International Transport Workers' Federation (ITF), Maritime Wages Council, Kenya Coast National Polytechnic, Bandari Maritime Academy, Technical University of Mombasa, KIMARCE, Jomo Kenyatta University of Science and Technology and the general public, on the provisions of the Merchant Shipping (Training and Certification) (Amendment) Regulations 2022 to ensure that the minimum standards relating to training, certification and watchkeeping for seafarers in Kenya and the mechanisms for ensuring compliance with the Regulations.

6. Impact

6.1 Impact on fundamental rights and freedom

These Regulations do not limit fundamental rights and freedoms as enshrined in the Constitution.

6.2 Impact on the private sector

Kenyan Seafarers and maritime training institutions will be required to obtain the minimum standards relating to training, certification and watchkeeping for seafarers required by the Regulation prior to certification and/or approval.

6.3 Impact on the public sector

The Regulations will ensure compliance with the minimum standards relating to training, certification and watchkeeping for seafarers in accordance with the Merchant Shipping Act, Merchant Shipping (Training and Certification) Regulations, 2016, the STCW Convention and the Constitution and shall not occasion any expenditure of public funds.

6.4 An impact assessment statement

A regulatory impact assessment report has not been prepared for these Regulations since, the Regulations—

6.4.1 contains only matters arising under the Merchant Shipping Act, 2009 transposition of the international instrument already ratified by Kenya which is substantially uniform and complementary with other legislation.

6.4.2 shall not cause any disadvantage to any person by—
(a) decreasing the person's rights; or
(b) imposing liability on the person, as per section 9 of the Statutory Instruments Act, 2013.

7. Monitoring and Review

The Kenya Maritime Authority shall monitor the application of the Merchant Shipping (Training and Certification) (Amendment) Regulations, 2022 and ensure compliance with the set IMO standards.

It is important to note that the Regulations shall apply from the commencement date of these Regulations. In this respect, a review thereof will be done by the Cabinet Secretary with the approval of Parliament in line with section 450 of the Merchant Shipping Act and the Statutory Instruments Act.

8. Contact Person.

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