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GENERAL NOTICE

NOTICE 307 OF 2009

DEPARTMENT OF TRANSPORT

Merchant Shipping Act 1951 (Act No. 57 of 1951)

Draft Courts of Marine Enquiry Amendment Regulations, 2009: For comment

The Minister of Transport publishes for public comment the proposed regulations set out in the accompanying Schedule. Written submissions should reach Department of Transport on or before **30 April 2009** (Note: late submissions may be disregarded). These should be addressed to the Acting Director: Maritime Safety, Security & Bilateral Affairs (for the attention of Mr. Bheka Zulu) and may be either:

- hand-delivered to Department of Transport at 159 Forum Building, Cnr Struben & Bosman Street, Pretoria or
- mailed to Private Bag X 193, 0001 or
- faxed to (012) 309 3124 ; or
- e-mailed to mabuelat@dot.gov.za

Telephonic enquiries should be directed to Mr. T. Mabuela at (012) 309 3070 or Mr N. Campbell at (041) 585 0051. Attention is invited to the explanatory note following the regulations.

The Minister of Transport has, under section *three hundred and fifty-six* of the Merchant Shipping Act, 1951 (Act No. 57 of 1951), made the regulations in the Schedule.

Schedule

1 Title and commencement

(1) These regulations are called *The Court of Marine Enquiry Amendment Regulations, 2009*

(2) These regulations commence on the day they are published in the Gazette.

Arrangement of Regulations***Regulation*****No.**

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INTRODUCTORY NOTE

Attention is invited to section 280 of the Act, which empowers a Court of Marine Enquiry, subject to the provisions of the Act and the Regulations made thereunder, to determine the procedure to be followed at the investigation. In so far, therefore, as any matter of procedure is not covered by the Act itself or the Regulations following, the Court is free to determine its own procedure.

In giving effect to or relying upon any of these Regulations, or in determining procedures for the effective holding of a Court of Marine Enquiry, regard should be had by the Court and the parties to the purposes of a Court of Marine Enquiry which include:

- To determine the cause of an accident;
- To determine blame for the accident;
- To prevent a similar accident from re-occurring;
- To respond to the public interest in an accident;
- To ensure transparency in the investigation of accidents.

Title of these Regulations

1. These Regulations are called the Courts of Marine Enquiry Regulations, 1961.

Interpretation

2. In these Regulations the expression "**the Act**" means the Merchant Shipping Act, 1951 (Act No. 57 of 1951), and unless the context otherwise indicates, any expression used in these Regulations to which a meaning has been assigned in the Act, bears the meaning so assigned, and—

"**Court**" means a Court of Marine Enquiry convened under section *two hundred and sixty-six* of the Act;

"**clerk**" means the clerk of a Court of Marine Enquiry appointed under Regulation 8;

"**party**" means a person declared by or under Regulation 9 to be a party to the proceedings of a Court.

Powers and duties of Director-General

2A. All powers conferred and all duties imposed upon the Director-General in terms of these Regulations may be exercised or performed by the Director-General personally or by an officer under the control or direction of the Director-General.

[Reg 2A inserted by reg 3, GNR777/27847,5Aug2005]

List from which members of court to be selected

3. (1) The Director-General shall from time to time frame a list of persons qualified in terms of subsection (2) of section *two hundred and sixty-seven* of the Act to be members (other than presiding officers) of Courts of Marine Enquiry.

(2) The Director-General shall submit the list framed under paragraph (1) to the Minister for approval. The Minister may in his discretion remove from the list any names appearing therein and insert therein any names of persons qualified as aforesaid.

(3) When the Minister has approved any such list submitted to him, the list that up to that time had been in use shall be cancelled.

(4) Opposite every name appearing in the list shall be stated the kind of nautical, engineering or other special skill, knowledge or experience which the person named possesses.

(5) Upon receipt by the Director-General of a request in writing by any person whose name appears on any such list for the removal of his name from the list, the Director-General shall remove his name.

(6) Every person whose name appears in the current list approved by the Minister shall be eligible for selection as a member (other than a presiding officer) of a Court of Marine Enquiry.

[Reg 3 amended by reg 4, GNR777/27847,5Aug2005]

Appointment of members of court

4. (1) Whenever the Minister has decided that a Court of Marine Enquiry be convened, he shall appoint a person contemplated in section 267(1) of the Act to be the presiding officer thereof and two or four other persons to be members thereof.

[Para (1) substituted by para 2, GNR241/19775/36,26Feb1999]

(2) The members, other than the presiding officer, shall be selected from the current list framed in terms of Regulation 3, unless by reason of the special nature of the investigation it appears to the Minister expedient to appoint as a member a person whose name does not appear on that list.

(3) In appointing the members of the Court of Marine Enquiry, the Minister shall have due regard to:

- (i) the nature and circumstances of the accident to be investigated;
- (ii) the nature of the ship or ships involved in the accident;
- (iii) whether any person has been or is likely to be charged in terms of section 283(2)(b) of the Act; and
- (iv) the qualifications and experience of the members to be so appointed relative to the issues mentioned in sub-Regulations (i) to (iii).

(4) If any question as leading to the exercise of the powers of the Court of Marine Enquiry in terms of section 269 of the Act is likely to arise, the presiding officer shall be assisted by not less than two members:-

- (a) two of whom shall be, in the case of a master or deck officer, master mariners;
- (b) one of whom shall be, in the case of an engineer, a chief engineer unlimited, and one a master mariner;
- (c) one of whom shall be, in the case of a fishing vessel officer, a master mariner and one an appropriately experienced fishing vessel skipper, provided that if the incident to be investigated is not peculiar to the fishing activities of a fishing

vessel, the provisions of sub-paragraphs (a) or (b), as the case may be, shall apply.

(5) In any case in which paragraph (4) above applies, wherever possible at least one of the members appointed shall have had experience in the same type of ship as the officer concerned.

Notification of appointment as member

5. The Director-General shall by letter inform all persons appointed by the Minister to be members of the Court that they have been so appointed, and of the questions which, on the information then in the possession of the Minister, are to be investigated by the Court.

The Director-General may, at any time before the hearing of the investigation, by a subsequent letter, modify, add to or omit any of the questions specified in the letter of appointment.

[Reg 5 amended by reg 5, GNR777/27847,5Aug2005]

Allowances payable to members

6. Every member of the Court shall, if he is in the employ of the Government of the Republic, be paid such allowances towards subsistence and transport as may be prescribed (otherwise than under the Act) for Government employees of his class, and if he is not in the employ of the Government of the Republic, or if no such allowances have been prescribed for Government employees of his class, he shall be paid the allowances towards subsistence and travel set forth in Annex A.

[Reg 6 substituted by para 3, GNR241/19775/36,26Feb1999]

Time when and place where investigation held

7. (1) The presiding officer shall appoint the time when and place where the investigation is to be held.

(2) The clerk shall by letter notify the Director-General and any other person who

before the commencement of the proceedings has been declared a party thereto of the said time and place.

(3) The presiding officer shall, as far as practicable, ensure that the investigation is held during one continuous sitting or, if that should prove impractical, take such steps as are reasonable and necessary to minimize the number of sittings of the investigation.

[Para (2) amended by reg 6, GNR777/27847,5Aug2005]

Appointment and duties of clerk of a Court of Marine Enquiry

8. (1) The Director-General shall appoint a person to be clerk of the Court of Marine Enquiry.

(2) The clerk shall, subject to the provisions of Regulation 20 and to any instructions by the presiding officer, make minutes of the proceedings of the Court, and take such minutes and any documents produced during or in connection with the investigation into his custody.

(3) The clerk shall, in addition to the duties described in paragraph (2):

- (a) carry out such other duties as may be prescribed in these Regulations; and
- (b) liaise with the members of the Court; and
- (c) generally follow the directives of the presiding officer.

[Para (1) amended by reg 7, GNR777/27847,5Aug2005]

Parties to the proceedings

9. (1) The following persons shall be parties to the proceedings:

(a) The Director-General; and

[Subpara (a) amended by reg 8, GNR777/27847,5Aug2005 as corrected by GNR826/27893,19Aug2005]

(b) any person who the presiding officer is satisfied has a direct interest in the subject of the investigation and who has been declared by the presiding officer to be a party.

(2) The presiding officer may make a declaration that any person is a party on the application of the person concerned or of any other party or of his own

motion, and any such declaration may be made at any time after the presiding officer has been appointed and before or after the commencement of the investigation.

(3) A declaration by the presiding officer that any person is a party may be made during a sitting of the Court or otherwise, and if such a declaration is made otherwise than during a sitting of the Court at which the person concerned is present, the clerk shall notify him in writing that he has been declared to be a party and when and where the next meeting of the Court will be held.

(4) Any person who has been declared a party to a Court of Marine Enquiry shall be notified forthwith by the clerk by registered mail or, if no postal address is available for such person, by any other practical means available to the clerk which will ensure that such declaration comes to the attention of such person.

Summoning of witnesses and service of charges*

10. (1) The summoning by the Court, in the exercise of its powers under paragraph (iii) of subsection (1) of section *nine* of the Act, of any person to appear before it to be interrogated or to produce any book, document or thing shall be by subpoena in the form set forth in Annex B.

(1A)(i) If during the course of proceedings at any Court of Marine Enquiry it appears desirable that any person appear before it to be interrogated or to produce any book, document or thing, the presiding officer may, on the oral or written application of any party, including any member of the Court, order such person to appear before it to be interrogated and/or to produce such book, document or thing, notwithstanding the provisions of paragraph (1) of this regulation.

(ii) In the event of the presiding officer making an order contemplated in subparagraph (i) of paragraph (1A) of this regulation:

* As to the method of service of a subpoena attention is invited to section 342(a) and (b) of the Act. As to the fees payable to witnesses, attention is invited to section 285 of the Act.

- (a) if the person so ordered is present or represented at or in the proceedings, he shall forthwith produce such book, document or thing and make himself available for interrogation;
- (b) if the person so ordered is not present or represented at or in the proceedings, the party who made the application shall take such steps as are necessary to summons the person by subpoena in accordance with the provisions of paragraph (1) of this regulation.
- (2) Any subpoena to be issued in terms of paragraph (1) of this Regulation may be sued out by the Director-General or any other party desiring the attendance of the witness and shall be signed by the clerk.
- [Para (2) amended by reg 9, GNR777/27847, 5Aug2005]
- (3) The subpoena may be served on the person to be summoned by the Messenger of the Magistrate's Court within whose area of jurisdiction the Court of Marine Enquiry is held or by any other person, and the service shall be effected at a reasonable time before attendance is required.
- (4) There shall be delivered to the person who is to effect service together with the subpoena so many copies thereof as there are witnesses to be summoned and also such sum or sums of money as the person suing out the subpoena intends that the person who is to effect service shall pay or offer to the said witnesses respectively for their conduct money.
- (5) The service of any such subpoena may be proved by the affidavit of the person who has effected the service or by his testimony upon oath before the Court, or, if the service was effected by the Messenger, by a return of service under his hand.
- (6) The Messenger shall be entitled to be paid for the service of any subpoena the fees and charges that would be payable to him if the subpoena were a subpoena issued out of a Magistrate's Court.
- (7) Any charges laid against any person in terms of paragraph (b) of subsection (2) of section *two hundred and eighty three* of the Act shall be stated in the form set forth in Annex D.

(8) Any such charges may be laid by the Director-General and shall be signed by the clerk.

(9) Such charges shall be served on the person to be so charged by the Messenger of the Magistrate's Court within whose area of jurisdiction such person resides or is employed.

Commencement of proceedings

11. At the time and place appointed for holding the investigation, the Court may proceed with the investigation, whether the parties or any of them are present or not.

Representation of parties

12. (1) Any party may be represented by an attorney for the purpose of suing out subpoenas and by an advocate or attorney for the purposes of examining, cross examining or re-examining witnesses or addressing the Court.

(2) The Director-General may be represented for the said purposes and for the purposes mentioned in Regulation 13 by any person appointed by him, whether or not such person is an advocate or attorney.

[Para (2) amended by reg 10, GNR777/27847,5Aug2005]

Formulation of questions for decision by Court

13. (1) As soon as reasonably practicable after the Minister has convened a Court of Marine Enquiry in terms of section *two hundred and sixty six* of the Act, the Director-General shall formulate the questions in reference to the allegation or event upon which the finding of the Court is required and include same in the letter referred to in Regulation 5.

(2) The questions referred to in paragraph (1) of this Regulation shall be sent to a party to the Court of Marine Enquiry by the clerk immediately upon the completion of the formulation of such questions, or upon the declaration of that party by the presiding officer in terms of Regulation 9, whichever date is the later, and in any event not less than thirty days prior to the first sitting of the Court,

provided that, if such questions have been formulated within the period of thirty days prior to the first sitting of the Court, they shall be sent to the parties forthwith upon their formulation.

(3) If any of the questions referred to in paragraph (1) of this Regulation are substantially modified, expanded or omitted by the Director-General after they have been sent to any party, the clerk shall forthwith send such amended or expanded questions to such party.

(4) After the Court has been opened, and before any evidence is given, the Director-General shall state in open court the questions referred to in paragraph (1) of this regulation. In formulating such questions, the Director-General may at any time make such modifications in, additions to or omissions from such questions, as, having regard to the information then known to him, he may think fit.

(5) The Director-General may at any stage of the investigation, with the approval of the presiding officer, make such further modifications in, additions to or omissions from any of the questions so formulated as, having regard to any evidence which may have been given, he may think fit.

[Reg 13 substituted by para 4, GNR241/19775/36,26Feb1999]

[Paras (1) and (2) substituted by reg 11, GNR777/27847,5Aug2005]

Evidence

14. (1) After the questions upon which the finding of the Court is required have been formulated in terms of paragraph (1) of Regulation 13, each of the parties shall be entitled to address the Court for the purpose of opening the evidence which he intends to adduce and, subject to paragraph (5) of this regulation, produce and examine witnesses or, with the approval of the presiding officer, recall any of the witnesses who have already been examined for further examination and generally adduce evidence. The witnesses may be cross-examined by the other parties in such order as the presiding officer may direct, and may then be re-examined by the party who has produced them. The parties

shall be heard and their witnesses examined, cross-examined and re-examined in such order as the presiding officer may direct.

(2) Any party who has produced witnesses may at any stage of the investigation, with the approval of the presiding officer, produce and examine further witnesses, who may be cross-examined by the other parties in such order as the presiding officer may direct, and reexamined by the party who has produced them.

(3) The law as to admissibility of evidence and as to the competency, examination, cross-examination and re-examination of witnesses in courts of law shall not be binding upon a Court of Marine Enquiry, but the presiding officer, may, in his discretion, disallow any question which any other member of the Court or any party proposes to put to any witness, on the ground that such question is irrelevant or that for any other cause it would be improper that the question be put, and may, in his discretion and on similar grounds, rule that the production of any book, document or thing required by any other member of the Court or any party shall not be allowed.

(4) Affidavits and statutory declarations may, by permission of the presiding officer, be used as evidence.

(5) No party shall, save with the leave of the presiding officer or the consent of all parties, be entitled to call as a witness any person to give evidence as an expert upon any matter upon which the evidence of expert witnesses may be received unless he shall—

(i) not less than 15 days before the first or next sitting of the Court, have delivered notice to the clerk of his intention so to do; and

(ii) not less than ten days before the first or next sitting of the Court, have delivered to the clerk a summary of such expert's opinions and his reasons therefor.

(6) Immediately upon receipt of any notice and summary referred to in paragraph (5) of this regulation, the clerk shall forward copies thereof to all other parties.

Addresses by the parties

15. After all the evidence has been adduced, any of the parties (other than the Director-General) who desires to do so may, in such order as the presiding officer may direct, address the Court upon the evidence, and the Director-General may address the Court in reply upon the whole case.

[Reg 15 amended by reg 12, GNR777/27847,5Aug2005]

Adjournments

16. Subject to the provisions of paragraph (3) of Regulation 7, the Court may adjourn the investigation from time to time and from place to place, and where an adjournment is asked for by a party to the proceedings, the Court may impose such terms as to payment of costs or otherwise as it may think just as a condition of granting the adjournment.

Orders for costs

17. (1) The Court may make such order for the payment by the Director-General or any other party—

(a) of the costs or any part thereof reasonably incurred by the Director-General or any other party in attending or being legally represented at the hearing or in bringing witnesses or adducing evidence; and

(b) of any other costs or any part thereof reasonably incurred by the Director-General in connection with the investigation or hearing, as may be just.

[Para (1) amended by reg 13, GNR777/27847,5Aug2005]

(2) Any costs awarded in terms of subparagraph (a) of paragraph (1) shall be subject to taxation by the clerk of the Magistrate's Court within whose area of jurisdiction the investigation was held. His taxation shall, unless the Court of Marine Enquiry has directed that it be made on scale B or C, be made on the ordinary scale A applicable to the taxation of costs in an action tried in a Magistrate's Court, as though it was a taxation of the costs of such an action, and shall be subject to review as though it was such a taxation. The same fees as

would be paid on the taxation of a bill of costs in a Magistrate's Court shall be paid in respect of the taxation of any costs so awarded.

[Para (2) amended by GNR215/3783/29, 16Feb1973]

(3) Any costs awarded in terms of subparagraph (b) of paragraph (1) shall be assessed by the presiding officer of the Court of Marine Enquiry.

(4) No person who is declared in terms of paragraph (3) of Regulation 9 by the presiding officer to be a party to a court of marine enquiry shall have any claim for costs against any party who made an application in terms of paragraph (2) of Regulation 9 solely by virtue of the fact that such party made such an application.

Orders for damages caused by frivolous or vexatious allegations

18. If the Court finds that the allegation for the investigation of which the Court was convened was frivolous or vexatious, it may make such order for the payment by the party who made the allegation of damages for any loss or delay caused thereby as may be just.

Enforcement of orders for costs or damages

19. (1) On the application of any party to a Court of Marine Enquiry, or *mero motu*, a presiding officer may order any party to establish security for any costs of the Court or any other party which may be made in terms of Regulation 17.

(2) In giving an order contemplated in paragraph (1), the presiding officer shall determine the amount of security to be established by the party concerned.

(3) Security which is established by a party in terms of paragraph (1) of this Regulation shall be in the form of a bank guarantee issued by a South African bank which is acceptable to the presiding officer or in the form of cash deposited with the clerk or in such other form as the presiding officer may order.

(4) If the party so ordered to establish security for costs fails to do so, the presiding officer may direct that that party may not lead evidence, or examine or cross-examine any witness at the proceedings to which such party has been declared a party.

(5) The security referred to in paragraph (3) shall:

- (a) if it is in the form of a bank guarantee or other acceptable form of undertaking, be addressed to the clerk;
- (b) if it is in the form of cash, be held in an interest bearing account opened by the clerk with interest to accrue for the benefit of the person who has established such security with the clerk;
- (c) be held by the Court for the benefit of anyone who may be awarded a costs order against the person on whose behalf such security has been established.

(5) Any person in whose favour a costs order in terms of Regulation 17 has been made may enforce that order against any party on whose behalf security in terms of this Regulation has been established by proceeding against such security.

(6) An order for the payment of costs or damages made under Regulation 17 or 18, respectively shall, on being filed with the clerk of the Magistrate's Court within the area of jurisdiction of which the Court of Marine Enquiry has held the investigation, have all the effects of and may be executed as if it were a civil judgment lawfully given in that Magistrate's Court in favour of the person who is by such order declared entitled to such costs or damages and against the person who is by such order directed to pay such costs or damages: Provided that if the person who is by such order directed to pay such costs or damages is or was a master, apprentice-officer or seaman in the employ of the person who is by such order declared entitled to such costs or damages, the amount of such costs or damages may be deducted from any wages that may be due to such master, apprentice officer or seaman.

Records of proceedings

20. (1) The Court shall cause minutes to be made of—

- (a) any *viva voce* evidence given in court;
- (b) any objection made to any evidence received or tendered;
- (c) the proceedings of the court generally, including the record of any inspection *in loco*;

and

(d) the decisions of the Court.

(2) The Court shall duly mark each document put in evidence and note such mark on the record.

(3) Such minutes and marks may be made by the clerk and, save where made by the clerk, or as hereinafter provided, they shall be made by the presiding officer.

(4) The Director-General may cause such minutes to be recorded by mechanical or other suitable means either *verbatim* or in narrative form.

[Para (4) amended by GNR1419/E897/6, 11Sep1964 and substituted by reg 14, GNR777/27847, 5Aug2005]

(5) Any party shall be entitled to a transcript of any such record certified as correct by the transcriber on payment of a fee to be fixed by the Director-General, having regard to the costs to the Director-General of such transcript.

[Para (5) amended by GNR1419/E897/6, 11Sep1964 and substituted by reg 14, GNR777/27847, 5Aug2005]

(6) In the event of an appeal being noted and set down for hearing such record shall, so far as relevant to the appeal, be transcribed and certified on oath by the transcriber as a true record of the proceedings and such transcript shall thereafter form part of the record.

[Para (6) amended by GNR1419/E897/6, 11Sep1964 and substituted by reg 14, GNR777/27847, 5Aug2005]

(7) Any party may apply to the presiding officer to correct any errors in the record.

(8) An application in terms of paragraph (7) shall be made not later than seven days after the decision of the Court has been declared: Provided that if the application is for a correction of any errors in the record made under paragraph (4) the transcript of which has not been completed before the decision of the Court is declared, it shall be made not later than seven days after the transcript has been completed. Upon being satisfied that reasonable notice of the application has been given by the applicant to every other interested party, the

presiding officer may, after consideration of any representations that may be made to him by any such party, and, if he thinks it necessary, after consultation with one or more of the other members of the Court, correct any such errors.

[Para (7) amended by GNR1419/E897/6, 11 Sep 1964 and substituted by reg 14, GNR777/27847, 5 Aug 2005]

(8) If, before the hearing of the application, all parties affected file a consent to the corrections claimed, no costs of such application shall be allowed; otherwise, costs shall be in the discretion of the presiding officer, and the provisions of paragraph (2) of Regulation 17 and Regulation 19 shall apply in respect of any award by him of such costs.

Transmission of records to Authority

21. (1) The records transmitted to the Authority in terms of section *two hundred and eighty-six* of the Act shall be certified by the clerk.

(2) The report referred to in the said section shall be in the form set forth in Annex C, with such modifications as circumstances may require.

(3) The Authority shall, within seven days of receipt thereof by it, cause to be transmitted to the Director-General for safe-keeping the record of proceedings, including the notes of evidence, the decisions, the report by the presiding officer and any reasons or other documents transmitted to it in terms of section 286 of the Act.

[Para (3) added by reg 15, GNR777/27847, 5 Aug 2005]

Appeal to High Court

22. (1) Any person aggrieved by a decision of a Court of Marine Enquiry who contemplates appealing to a High Court under section 292 of the Act may apply to the Director-General for a copy of the report transmitted to him in terms of Regulation 21(3).

Such application shall be made in writing, shall state an address to which the report may be posted or the name of the person to whom it may be delivered and

shall be delivered at the office of the Director-General or posted so as to reach the Director-General not later than fourteen days after the delivery of the decision of the Court at the conclusion of the investigation. The Director-General shall cause a copy of the report to be posted to the applicant at the address stated or to be delivered to the person named, upon payment by the applicant of a fee calculated at R1,10 per A4 page, but subject to a minimum fee of R35.

(2) An appeal may be noted by any person other than the Director-General within thirty days after the posting to him or the delivery to the person named of the copy of the report, and by the Director-General within thirty days after the receipt by him of the report transmitted in terms of Regulation 21(3).

(3) An appeal shall be noted by the service upon the Director-General and every other person who was a party to the proceedings of a notice of appeal and, unless the High Court to which appeal is made otherwise directs, by giving security to the satisfaction of the Registrar of that Court for the respondent's costs of appeal to the amount of R10 000:

Provided that no security shall be required from the State or the Authority.

(4) A notice of appeal shall state—

(a) the High Court to which the appeal is noted;

(b) whether the whole or part only of the decision is appealed against, and if part only, then what part; and

(c) the grounds of appeal, specifying the findings of fact or rulings of law appealed against.

(5) Whenever an appeal has been noted, the Director-General shall forthwith transmit a copy of the notice of appeal to the person who was the presiding officer of the Court, who shall, within seven days of the receipt thereof by him, transmit to the Director-General a statement, in writing, showing (so far as may be necessary having regard to any written decision already delivered by him or by the Court and to the report referred to in regulation

21)—

(i) the facts the Court found to be proved;

(ii) the grounds upon which the Court arrived at any finding of fact specified in the notice of appeal as appealed against; and

(iii) his reasons for any ruling of law so specified as appealed against. The statement shall become part of the record.

(6) Any party may apply to the Director-General for a copy of the statement referred to in paragraph (5). The application shall be made in writing, shall state an address to which the statement may be posted or the name of the person to whom it may be delivered, and shall be accompanied by a fee of R35. The Director-General shall cause a copy of the statement to be posted to the applicant at the address stated or to be delivered to the person named.

(7) The Director-General shall, within seven days after he receives notice that the appeal has been set down for hearing, cause to be transmitted to the Registrar of the High Court the record of the proceedings before the Court of Marine Enquiry, including the notes of evidence, the decisions, the report by the presiding officer and any reasons and other documents transmitted to the Director-General in terms of Regulation 21(3), and the statement referred to in paragraph (5).

(8) Subject to the provisions of this regulation, an appeal shall be prosecuted within the period and in accordance with the practice and rules which apply in the High Court to which appeal is made in respect of appeals in civil cases from Magistrates' Courts, and if the appeal is to a Local Division of the High Court which has no jurisdiction to hear appeals in civil cases from the Magistrates' Courts, the appeal shall be prosecuted within the period and in accordance with the practice and rules which apply in respect of such appeals in the Provincial Division of the Province within which that Local Division exercises jurisdiction, and in default of such prosecution, the appeal shall be deemed to have lapsed, unless that High Court shall see fit to make an order to the contrary.

(9) The judgment of the High Court to which appeal is made may be enforced as if it had been given in the Court appealed from.

[Reg 22 substituted by reg 16, GNR777/27847,5Aug2005]

Rehearing by order of the Minister

23. Whenever the Minister has directed under the provisions of section *two hundred and ninety-one* of the Act that a case heard by a Court of Marine Enquiry be reheard by such a Court or that a case heard by a Maritime Court be reheard by a Court of Marine Enquiry, the provisions of these Regulations shall apply to such rehearing.

[Reg 23 amended by reg 17, GNR777/27847,5Aug2005]

ANNEX A

(Regulation 6)

[Annex A amended by GNR3055/2500/11,8Aug1969, substituted by GNR1287/7077/95,20Jun1980, amended by GNR2584/11632/23,23Dec1988 and GNR1713/18549/42,19Dec1997, and substituted by reg18, GNR777/27847,5Aug2005]

ALLOWANCES TOWARDS SUBSISTENCE AND TRANSPORT PAYABLE TO MEMBERS OF COURTS OF MARINE ENQUIRY

1. A member shall receive an allowance for every day on which he attends an investigation in respect of expenditure necessarily and actually incurred in respect of meals, liquid refreshments, accommodation, bedding and laundry and ironing but excluding alcoholic beverages and dry-cleaning—

(i) when he is not absent from his usual place of residence or employment overnight: R100 per day or part of a day calculated from midnight to midnight; and

(ii) when he is absent from his usual place of residence or employment overnight: R200 per day or part of a day calculated from midnight to midnight: Provided that the Director-General shall pay for the accommodation of such member and provided further that, if this allowance is insufficient, the actual reasonable expenditure may be refunded to the member.

2. In addition to the allowance payable under paragraph 1 a member shall receive a special allowance equivalent to the maximum remuneration tariffs determined in terms of the Treasury Regulation 20.2.2 as amended for every day

on which he attends an investigation and on which the case is wholly or partly heard.

3. For journeys undertaken by a member from his usual place of residence or employment to the place where the investigation is held, he may make use of public transport or his own motor vehicle or a hired motor vehicle.

4. A member is entitled to travel first class by train and in economy class by air.

5. The actual cost will be refunded to a member in the case of public transport and, if the Director-General considers it reasonable, in the case of hired transport.

6. For the use of his own motor vehicle a member shall be reimbursed at the rate per kilometre allowed by Amendment *No 3 of 2007* or any subsequent and current amendments thereto of the Annexure to Transport Circular No 1 of 1977 (Transport Handbook on Tariffs for the use of Motor Transport), as amended for the distance travelled to and from the place of the investigation or the place from where the journey was continued by public transport.

ANNEX B

[Annex B amended by para 6, GNR241/19775/36,26Feb1999 and substituted by reg 18, GNR777/27847,5Aug2005]

COURT OF MARINE ENQUIRY SUBPOENA

(Regulation 10)

To—

(1) of
.....

(2) of
.....

(3) of
.....

(4) of
.....

You are hereby required to appear in person before the Court of Marine Enquiry at

..... on the day of 20....., at the hour of

which has been appointed to investigate the circumstances attending the

..... and to bring with you and then produce to the Court the several documents specified in the list hereunder:

Date	Description	Original or Copy
------	-------------	------------------

Place

Clerk of the Court

Date

.....[*name of party suing out the subpoena*] hereby tenders to pay any witness expenses incurred in accordance with the prescribed tariff for witnesses appearing in a civil case in the Magistrates Court.

Attention is invited to section 9, read with section 313 of Act 57/1951, which provides that any person who fails to attend at the time and place specified in a subpoena and remain in attendance; or to answer fully and satisfactorily, to the best of his ability, all questions lawfully put to him; or, upon his being required to do so, to produce any document in his possession or control shall be liable to a penalty of a fine, or imprisonment for a period not exceeding six months, or both.

ANNEX C

[Annex C substituted by reg 18, GNR777/27847,5Aug2005]

REPORT OF COURT OF MARINE ENQUIRY

(Regulation 21)

In the matter of a formal investigation by a Court of Marine Enquiry held at on the (here state all the days on which the Court sat)

..... before

....., Presiding Officer, and

..... and

....., Members, into the circumstances attending the..... (here state briefly the substance of the allegation or describe the event for the investigation of which the Court was convened)

The Court, having carefully inquired into the circumstances attending the matter to be investigated, finds for the reasons stated in the Appendix hereto, that the

(here state the finding of the Court)

Dated at thisday of 20.....

Presiding Officer

We (or I) concur in the above report.

Member

Member

APPENDIX TO THE REPORT

(Here state fully the circumstances of the case, the opinion of the Court touching the truth of the allegation or the causes of the event and the conduct of any persons implicated therein, and whether the certificate of any officer has been either suspended or cancelled, and the reasons for the said opinion, and if the certificates of any officer has been suspended or cancelled the reasons for such suspension or cancellation.)

ANNEX D**CHARGE SHEET**

(Regulation 10(7) of the Courts of Marine Enquiry Regulations, 1961 as read with section 283 of the Merchant Shipping Act, 1951)

Date: _____

Particulars of Court of Marine Enquiry:

Presiding officer: _____

Division/District: _____ Place of Enquiry: _____

Details of Vessel(s):

Date of Casualty/Damage: _____

Name of Ship(s): (1) _____

(2) _____

(3) _____

Place of Occurrence: _____

Particulars of Subject of Enquiry:

You are hereby charged in terms of section 283(2)(b) as read with section 269 of the Merchant Shipping Act, 1951, with the misconduct, or wrongful act or default stated below:

Name: _____ Surname: _____

Designation: _____

Date of Birth: _____ Nationality: _____

Age: _____

Identity no./passport no./other applicable no: _____

Address in Republic: _____

Particulars of Alleged Misconduct, Wrongful Act or Default: _____

For Director-General
Duly authorised

Clerk of the Court

Date:

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