



NATIONAL EXECUTIVE COUNCIL

Special N.E.C. Meeting No: 11/2010

Statutory Submission No: 55/2010

ADVICE TO THE GOVERNOR-GENERAL

Your Excellency,

You are hereby informed that on the

1<sup>st</sup>

day of

June,

2010

the National Executive Council did decide to advise you to make the *Ports (Management and Safety) Regulation 2010* under the Habours Act (Chapter 240);

in accordance with the attached Regulation.

Acting Chairman

National Executive Council

Date: 2nd June, 2010



## NOTICE OF THE MAKING OF REGULATION.

The Regulation set out in the table below has been made under the Laws set out in the table.

Statutory Instrument No.	Citation or Nature
No. 12 of 2010.	<i>Ports (Management and Safety) Regulation 2010.</i>

The above Regulation shall come into operation on and from 1<sup>st</sup> October, 2010.

Copies of the Regulations may be obtained from the Office of Legislative Counsel at the following address:-  
Office of Legislative Counsel, Department of the Prime Minister and NEC, Level 4, Morauta Haus, P O Box 639, WAIGANI, National Capital District, Telephone: 327 6652, Facsimile: 327 6663.

DATED this 24<sup>th</sup> day of November, 2010.

**SECRETARY,  
NATIONAL EXECUTIVE COUNCIL.**



No. 17 of 2010.

*Ports (Management and Safety) Regulation 2010,*

**ARRANGEMENT OF CLAUSES.**

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  - “agent”
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  - “Authority”
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  - “child”
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  - “Departmental Head”
  - “driver”
  - “goods”
  - “inflammable liquid”
  - “inspector”
  - “lifting gear”
  - “liquefied inflammable gas”
  - “master”
  - “Minister”
  - “oil”
  - “owner”
  - “owner”
  - “person responsible for dangerous goods”
  - “pipeline”
  - “Port Manager”
  - “port facility”
  - “Port Facility Operator”
  - “stevedore”
  - “timber”

“vehicle”  
“vessel”  
“wharf”.

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### ***Division 1. - General Controls.***

3. Lease of Land.
4. Construction of Ports and Port facilities.
5. Excavation and reclamation within a port.
6. Protection of Port Air, Land and Water.

### ***Division 2. - Construction of Ports and Port Facilities.***

7. Construction standards and specifications.
8. Construction, maintenance and testing of pipelines.
9. Inspection and testing of pipelines.

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10. Responsibilities of Port Manager.
11. Port Management and operations directions.
12. Licensing and appointment of port facility operators.

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13. Obligations of the Authority.
14. Port safety Directions.
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22. Allocation and vacation of berths.
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## STATUTORY INSTRUMENT.

No. of 2010.

entitled

### *Ports (Management and Safety) Regulation 2010,*

Being a Regulation under the *Harbours Act* (Chapter 240),

MADE by the Head of State to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

### PART 1. - PRELIMINARY.

#### 1. TITLE AND COMMENCEMENT.

(1) These Regulations may be cited as the *Ports (Management and Safety) Regulation 2010*.

(2) These Regulations commence on the date of approval by the Head of State.

(3) Notice of commencement of the Regulations must be published in the National Gazette.

#### 2. INTERPRETATION.

In these Regulations, unless the contrary intention appears -

“Act” means the *Harbours Act* (Chapter 240);

“agent” means a person appointed by an owner or master of a vessel under Section 20;

“aquatic sports” includes swimming, bathing, rowing, paddling, recreational and competitive sailing, recreational and competitive motor boating, motor boat racing, jet skiing, water skiing, fishing, diving, skin diving, surfing, surf board riding, para sailing and any other water sport;

“Authority” means the National Maritime Safety Authority established under the *National Maritime Safety Authority Act 2003*, and for the purpose of the Regulations the General Manager of the Authority may exercise any function, power, duty or other authority given to the Authority by the Regulations;

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- “authorized officer” means a person authorized in writing by a Port Manager for the purposes of these Regulations under Section 79;
- “cargo” includes goods, containers, timber and other items or things capable of being carried on a vessel;
- “child” means a person less than 18 years of age;
- “dangerous goods” means all the goods and substances listed in the International Maritime Dangerous Goods Code relating to the carriage of dangerous goods by sea for the time being approved by the Maritime Safety Committee and published by the International Maritime Organization, unless exempted in writing by the Authority, and includes empty cargo containers or packages that have contained dangerous goods unless the cargo container or package has been effectively cleaned;
- “Departmental Head” means the Head of the Department responsible for transport matters;
- “driver” in relation to a vehicle, means any person driving the vehicle, the owner of the vehicle and any person in charge of, or apparently in charge of, the vehicle;
- “goods” means goods, wares, merchandise, articles of any description, baggage, liquids, gases and other movable property of any kind whatsoever, and includes passengers, animals and carcasses;
- “inflammable liquid” means any liquid having a flash point of not higher than 61 degrees Celsius;
- “inspector” means an inspector appointed by the Authority under Section 9;
- “lifting gear” includes any wires, ropes, rigs or other devices or equipment used in connection with the loading or unloading of cargo;
- “liquefied inflammable gas” means an inflammable gas which has been liquefied by pressure or by cooling;
- “master” means every person having for the time being, lawfully or de facto, the command, charge or management of a vessel;
- “Minister” means the Responsible Minister for the Act;
- “oil” means oil or hydrocarbon of any description, or any mixture of oil or hydrocarbon and water, irrespective of its flash point;
- “owner” in relation to goods, means any person having or claiming any right, title or interest to or in any goods, and includes -
- (a) the agent of the owner of the goods; and
  - (b) any consignor, consignee, shipper or agent for the sale or custody, carriage, loading or unloading of the goods; and
  - (c) the holder of any bill of lading or other document representing the goods; and
  - (d) an agent of any of the above persons;
- “owner” in relation to a vessel, means any person who, jointly or severally, whether at law or in equity, is entitled to any share or interest in the vessel, and includes -
- (a) a charterer of the vessel; and
  - (b) the agent of the owner or charterer of the vessel; and
  - (c) the master of the vessel; and



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- (d) an agent of any of the above persons;
- “person responsible for dangerous goods” and “person responsible for goods” includes, but is not limited to, the owner of the dangerous goods or goods, the master and owner of a vessel handling the dangerous goods or goods and any person in charge of the dangerous goods or goods, as the case may require;
- “pipeline” includes hoses, control valves and pipeline fittings;
- “Port Manager” means a manager appointed by the Departmental Head to manage a Port under Section 15K(2)(f) of the Act;
- “port facility” means any fixed or floating building, structure, shed, vessel, terminal, facility, erection, pipeline or other improvement within a Port, and includes a wharf and any navigational aids within a Port and the channels and approaches leading to a Port;
- “Port Facility Operator” means a person, body or organization constructing, maintaining or operating a port facility, terminal or shed;
- “stevedore”, “stevedoring” and “business of a stevedore” mean the operation of loading and unloading of vessels, but does not include the movement of cargo between vessels and stacking areas and the storing, stacking, and delivery of cargo within transit sheds and open stacking areas within a Port;
- “timber” includes logs;
- “vehicle” means any description of vehicle on wheels, and includes a lorry, traction engine and trailer;
- “vessel” means a ship, boat or other description of vessel used for any purpose on the sea or in navigation;
- “wharf” means any fixed or floating wharf, quay, jetty, pier, landing place, landing stage, platform, slip, basin, siding, dock, wall or other place at which goods are landed, loaded or unloaded, and includes:
  - (a) any building or other erection on any wharf; and
  - (b) the appurtenances of, and the approaches to, any wharf.

### **PART 2. - CONTROL OF PORT DEVELOPMENT.**

#### *Division 1. - General Controls.*

#### **3. LEASE OF LAND.**

Where a Port Manager proposes to lease any land, water or under-water area comprising part of the area included in a Declared Port, the Port Manager must notify the Departmental Head of any such lease.

#### **4. CONSTRUCTION OF PORTS AND PORT FACILITIES.**

(1) Where a person proposes to construct, extend or alter a Port or Port Facility, and before any Port or Port Facility is constructed, extended or altered and before any contract connected with such Port or Port Facility construction, extension or alteration is entered into by or on behalf of that person, the person must obtain the prior written approval of the Port Manager.

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(2) To facilitate the Port Manager's consideration of any proposed construction, extension or alteration, the person referred to in Subsection (1) must provide the Port Manager with such plans, economic impact statements and other information as the Port Manager may require from time to time.

(3) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is as prescribed under Section 83.

**5. EXCAVATION AND RECLAMATION WITHIN A PORT.**

(1) Unless the prior written approval of the Port Manager has been obtained, a person must not make an excavation or reclamation within a Port.

(2) Where an excavation or reclamation has been made within a Port, whether with or without the approval of the Port Manager, the Port Manager shall cause barricades to be erected or warning lights to be placed at appropriate parameters of the excavation or reclamation.

(3) The cost of erecting or installing barricades or lights may be recovered by the Port Manager as a debt from the person who made or authorised the making of the excavation or reclamation.

(4) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**6. PROTECTION OF PORT AIR, LAND AND WATER.**

(1) Subject to the Regulations, a Port Manager may issue such written or other Environmental Directions as the Port Manager thinks necessary to -

- (a) preserve the air, land, water or under sea area within a Port; and
- (b) protect, maintain or improve the natural and man made environment within a Port; and
- (c) prevent the entry into a Port, or the removal from a Port, of any person or thing which, in the reasonable opinion of the Port Manager, endangers, threatens or otherwise puts at risk the air, land, water or under sea area or natural or man made environment within a Port.

(2) An Environmental Direction issued under this Regulation may include any matter concerning the entry into the air or into or onto the land, water or under sea area within a Port, from outside a Port, of any substance or thing which would pollute the natural or man made environment of a Port.

- (3) Environmental Directions may -
- (a) provide for their application to all Ports or specified Ports managed by the Port Manager; and
  - (b) be amended from time to time.

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(4) Environmental Directions and any amendments issued by a Port Manager under this regulation must be published in the National Gazette.

(5) Any person who fails to comply with an Environmental Direction is guilty of an offence, the penalty for which is as prescribed under Section 83.

*Division 2. - Construction of Ports and Port Facilities.*

**7. CONSTRUCTION STANDARDS AND SPECIFICATIONS.**

(1) All Ports and Port Facilities must be constructed and maintained by Port Facility Operators or owners of such ports and facilities (as the case may require) in accordance with any standards and specifications established by the Port Manager.

(2) For the purposes of this regulation the Port Manager may, by written order, establish standards and specifications for the construction and maintenance of Ports and Port Facilities.

(3) Where standards and specifications are established under Subsection (2) -

(a) the Port Manager must publish and make available the standards and specifications in a form which is available to the public; and

(b) for the purpose of this Regulation, such publication may be posted on the Internet.

(4) Without limiting Subsection (2), standards and specifications may refer to or incorporate, wholly or partially and subject to such modifications and conditions as are determined by the Port Manager, any standard, code, procedure, specification or other document prepared or laid down by an authority or agency within Papua New Guinea or elsewhere, and may apply to one or more Ports, as the Port Manager may determine.

(5) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is as prescribed under Section 83.

**8. CONSTRUCTION, MAINTENANCE AND TESTING OF PIPELINES.**

(1) Subject to Regulation 7, all pipelines within a Port or connecting to a Port Facility must be constructed, maintained and tested by a Port Facility Operator or a pipeline owner (as the case may require) in accordance with the standards and specifications established by the Authority.

(2) For the purpose of this Regulation the Authority may establish standards and specifications for the construction, maintenance and testing of pipelines.

(3) Where standards and specifications are established under Subsection (2) -

(a) the Authority must publish and make available the standards and specifications in a form which is available to the public; and

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(b) for the purpose of this Regulation, such publication may be posted on the Internet.

(4) For the purposes of this regulation, where an existing pipeline is to be re-laid or renewed or any major repairs are to be effected, including any repairs involving the use of electric or gas welding or cutting apparatus, the pipeline is classified as being constructed.

(5) Where the Authority is of the opinion that it is in the interests of public safety to do so, the Authority may, by written notice given to a Port Facility Operator or a pipeline owner (as the case may require), require the Port Facility Operator or pipeline owner to re-lay, renew, replace, repair or re-test the pipeline.

(6) Where a person proposes to construct, re-lay or alter a pipeline the person must submit plans and specifications for such construction, re-laying or alteration to the Port Manager for approval prior to such work proceeding.

(7) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is as prescribed under Section 83.

### **9. INSPECTION AND TESTING OF PIPELINES.**

(1) Pipelines within a Port or connecting to a Port Facility must be inspected and tested by the Authority annually.

(2) The Authority must appoint, in writing, suitably qualified inspectors to carry out inspections and testing of pipelines within a Port or connecting to a Port Facility.

(3) Inspectors appointed under this regulation must carry out inspections and testing of pipelines in accordance with these Regulations and any written or other directions from the Authority.

(4) The pipeline owner or Port Facility Operator (as the case may require) is responsible for the cost of any inspection or testing under this Regulation.

## **PART 3. - MANAGEMENT AND OPERATION OF PORTS.**

### *Division 1. - Port Manager Responsibilities and Directions.*

#### **10. RESPONSIBILITIES OF PORT MANAGER.**

A Port Manager must manage the Port they are appointed to manage in accordance with the provisions of the Regulations and any applicable law.

#### **11. PORT MANAGEMENT AND OPERATIONS DIRECTIONS.**

(1) Subject to the Act, a Port Manager must prepare and issue Port Management and Operations Directions concerning -

(a) navigation, vessel movements and vessel safety:

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- (b) passenger services, handling and safety; and
- (c) cargo services, handling, storage and safety; and
- (d) dangerous goods handling, storage and safety; and
- (e) port facilities management, operations and safety, including but not limited to the making of enforceable Port Facility Operator Rules, Practices and Guidelines; and
- (f) port safety; and
- (g) port security; and
- (h) equipment and machinery management and operations; and
- (i) traffic and other movement management and operations; and
- (j) aquatic sports; and
- (k) such other matters concerning the operation and control of the Port as the Port Manager reasonably deems necessary.

(2) Port Management and Operations Directions may contain provisions concerning the powers and duties of Port Facility Operators to make enforceable operational Rules, Practices and Guidelines within their areas of operation and responsibility, not inconsistent with Port Management and Operations Directions.

- (3) In preparing Port Management and Operations Directions, the Port Manager must -
- (a) consult with and take into account any matters identified by the Departmental Head; and
  - (b) consult with the Authority and comply with any Directions issued by the Authority under these Regulations.

(4) In preparing and issuing Port Management and Operations Directions, the Port Manager may refer to or incorporate, wholly or partially, and subject to such modifications as the Port Manager determines, any standard, code, procedure or other document prepared or laid down by an authority or agency in Papua New Guinea or elsewhere.

- (5) Port Management and Operations Directions may -
- (a) provide for their application to all Ports or specified Ports managed by the Port Manager; and
  - (b) be amended by the Port Manager from time to time.

(6) Port Management and Operations Directions and any amendments issued by a Port Manager under this Regulation must be published in the National Gazette.

(7) Any person who fails to comply with Port Management and Operations Direction is guilty of an offence, the penalty for which is as prescribed under Section 83.

**12. LICENSING AND APPOINTMENT OF PORT FACILITY OPERATORS.**

(1) Subject to Section 87, a person must not carry on the business of Port Facility Operator within a Port unless the person holds a Port Facility Operator Licence issued by the Port Manager for that Port.

(2) The application for a Port Facility Operator Licence or renewal of a licence must include such particulars, details, information and documents as the Port Manager determines, and must include -

- (a) in the case of a company, particulars of the applicant's equity shareholding; and
- (b) evidence of compliance, or capacity to comply, with the qualifications and standards of performance as a Port Facility Operator specified by the Port Manager from time to time; and
- (c) details of a training scheme to improve operating, supervisory, efficiency and safety standards; and
- (d) in the case of employment of non-citizens, a training and localization scheme approved pursuant to the *Employment of Non-citizens Act 1978*; and
- (e) details of an insurance policy with a reputable insurer sufficient to indemnify the Port Manager and the Licensed Port Facility Operator against all liabilities due to the granting of a Port Facility Operator Licence and conducting of business of Port Facility Operator within the Port.

(3) Subject to the Port Manager approving the application and upon payment of the licence fee, the Port Manager may issue or renew a Port Facility Operator Licence for a period not greater than 5 years.

(4) A Port Facility Operator License -

- (a) may be granted for a particular Port or Ports for which the Port Manager is appointed as Port Manager; and
- (b) may be made subject to terms and conditions specified by the Port Manager; and
- (c) is subject to annual review by the Port Manager.

(5) A Port Facility Operator Licence issued under this Regulation does not give the license holder an automatic right of entry to a particular Port or Port Facility or an automatic right to operate as a Port Facility Operator in a particular Port or Port Facility.

(6) The Port Manager may cancel or suspend a Port Facility Operator License -

- (a) for a breach by, or on behalf of, the Licenced Port Facility Operator of the requirements of the Regulations; or
- (b) for general unsatisfactory performance of Port Facility Operator duties by, or on behalf of, the Licenced Port Facility Operator adversely affecting, or likely to adversely affect, the efficiency or safety of Port operations.

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(7) A Port Manager may, in writing, appoint Port Facility Operators or other nominees to act for or on behalf of the Port Manager under Port Management and Operations Directions or the Regulations.

(8) A Port Facility Operator or other nominee appointed under Subsection (7) may exercise any function, power, responsibility or duty specified in the appointment, and, subject to the appointment, is for all purposes, deemed to be the Port Manager under the Port Management and Operations Directions or the Regulations, as the case requires.

(9) A licensed Port Facility Operator who breaches any of the terms and conditions of a license issued by the Port Manager is guilty of an offence, the penalty for which is, as prescribed under Section 83.

*Division 2. - Authority Obligations and Directions.*

**13. OBLIGATIONS OF THE AUTHORITY.**

- (1) The Authority must -
  - (a) comply with its obligations and duties under these Regulations; and
  - (b) prepare and issue Port Safety Directions; and
  - (c) monitor and report on Port Safety as required by these Regulations.
  
- (2) In preparing Port Safety Directions the Authority must -
  - (a) consult with and take into account any matters identified by the Departmental Head; and
  - (b) consult with and take into account any matters identified by the Port Manager.
  
- (3) Port Safety Directions issued by the Authority under this regulation may -
  - (a) provide for their application to all Ports or specified Ports; and
  - (b) be amended by the Authority from time to time.
  
- (4) Port Safety Directions and any amendments issued by the Authority must be published in the National Gazette.

**14. PORT SAFETY DIRECTIONS.**

- (1) The Authority must prepare and issue Port Safety Directions concerning -
  - (a) safe navigation and vessel movement within Ports; and
  - (b) safe passenger handling and movement; and
  - (c) safe cargo handling, storage and movement; and
  - (d) safe dangerous goods handling and movement; and
  - (e) safe maritime traffic and other movements and operations within Ports.
  
- (2) In preparing and issuing Port Safety Directions, the Authority may refer to or incorporate wholly or partially and subject to such modifications and conditions as the Authority determines -
  - (a) any standard, code, procedure or other document prepared or laid down by an authority or agency in Papua New Guinea or elsewhere; and

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(b) Port Management and Operations Directions issued by Port Managers under the Regulations.

(3) Port Safety Directions may -

(a) provide for their application to all Ports or to specified Ports; and

(b) be amended by the Authority from time to time.

### **15. MONITORING AND REPORTING BY THE AUTHORITY.**

The Authority must -

(a) monitor each Port and Port Manager's compliance with Port Safety Directions; and

(b) report annually, in writing, to the Minister and Departmental Head concerning compliance.

### **16. COMPLIANCE WITH PORT SAFETY DIRECTIONS.**

Any person who fails to comply with Port Safety Directions is guilty of an offence, the penalty for which is as prescribed under Section 83.

## **PART 4. - OBLIGATIONS OF OWNERS AND MASTERS.**

### *Division 1. - General Responsibilities and Documentation.*

### **17. OBSERVANCE OF PART 4.**

(1) Except where otherwise specifically provided in the Regulations -

(a) the owner and master of a vessel are jointly and severally responsible for the due performance of their obligations and duties under this Part; and

(b) the owners of goods entering or leaving a Port are responsible for the due performance of their obligations under this Part.

(2) A Port Manager may, in his discretion or upon application, exempt a particular vessel or class of vessels from any one or more of the obligations and duties under this Part.

### **18. LIABILITY OF OWNERS.**

(1) Subject to this Part and the Act, the owner of any goods entering or leaving a Port must ensure that the Regulations and all other laws relating to the goods are properly observed and carried out.

(2) Subject to this Part and the Act the owner of a vessel entering or leaving a Port must ensure that the Regulations and all other laws relating to the Port are properly observed and carried out.

(3) The owner of any goods or the owner of any vessel or any person acting on behalf of the owner of the goods or vessel who breaches any of the Regulations is guilty of an offence, the penalty for which is, as prescribed under Section 83.



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**19. RESPONSIBILITY FOR VEHICLES, EQUIPMENT AND MACHINERY.**

(1) The owner, person in charge, driver or operator of any vehicle, equipment or machinery (as the case may require) are jointly and severally responsible for the due performance and observance of the Regulations relating to or affecting vehicles, equipment and machinery.

(2) Any person who fails to comply with the Subsection (1) is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**20. REQUIREMENTS BEFORE ENTERING A PORT.**

(1) Before a vessel enters a Port, the master and owner of the vessel must -

(a) appoint an agent of the vessel who is authorized to act on behalf of the master and owner in all matters arising out of the administration of the Regulations unless, the Port Manager has agreed in writing to dispense with the appointment; and

(b) make application and obtain the permission of the Port Manager to enter the Port.

(2) An application for permission to enter a Port must contain -

(a) a complete description of the vessel, including full disclosure of its conditions of class, defects, deficiencies and other conditions; and

(b) such other information as required by the Port Manager.

(3) An agent appointed under this regulation must be resident in Papua New Guinea.

(4) The Port Manager must notify the Authority of the entry of a vessel into a Port.

(5) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**21. BERTHING OF VESSELS.**

(1) A person must not berth a vessel at a Port without the prior permission of a Port Facility Operator approved by the Port Manager.

(2) Application for permission to berth a vessel at a Port must be made in the form and manner, and at the time, specified by the approved Port Facility Operator.

(3) Where the approved Port Facility Operator specifies, an application made under Subsection (2) may be made in conjunction with an application for permission to enter a Port under Section 20.

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(4) On being allocated a berth and the berth becoming available, a vessel must immediately proceed to occupy the berth and commence and continue to load and unload her cargo.

(5) A person must not move a vessel from a berth except as directed by the Port Manager or approved Port Facility Operator.

(6) The owner, master or agent of a vessel must give the Port Manager and approved Port Facility Operator at least 4 hours notice of intention to sail or move the vessel from a berth, unless otherwise agreed with the Port Facility Operator.

(7) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**22. ALLOCATION AND VACATION OF BERTHS.**

(1) Subject to the Act, the Port Facility Operator approved by the Port Manager has absolute discretion as to the allocation of berths within a Port Facility under the control of the Port Facility Operator, and may establish such priority for the allocation of berths as the approved Port Facility Operator deems necessary.

(2) The approved Port Facility Operator may require a vessel to berth or leave a berth as the approved Port Facility Operator deems necessary.

(3) The master of a vessel must comply with the approved Port Facility Operator's requirements under this regulation.

- (4) The Port Manager and approved Port Facility Operator are not liable for -
- (a) any failure or delay to provide a berth; or
  - (b) any failure to provide a full berth; or
  - (c) any requirement for a vessel to berth or leave a berth.

(5) Any person who fails to comply with the provisions of Subsection (3) is guilty of an offence, the penalty for which is as prescribed under Section 83.

**23. STATEMENT OF GOODS ON VESSEL.**

(1) Within 24 hours prior to its arrival in a Port, the master, owner or agent of a vessel must deliver to the Port Manager and approved Port Facility Operator a signed written statement showing -

- (a) the total and net registered tonnage of the vessel; and
- (b) the total tonnage of the cargo on board that is to be discharged at the Port; and
- (c) such other information concerning the vessel, its crew and cargo as the Port Manager or approved Port Facility Operator may specify.

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(2) Within 48 hours prior to its departure from a Port, the master, owner or agent of a vessel in a Port must deliver to the Port Manager and approved Port Facility Operator a true copy of the outward manifest of the vessel, signed as correct and, if required by the Port Manager or approved Port Facility Operator, verified by statutory declaration.

(3) In the case of a vessel having no cargo on board when entering or leaving a Port, the statement referred to in sub regulation (1) must be marked "Nil Cargo".

(4) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is as prescribed under Section 83.

**24. PRODUCTION OF CERTIFICATE OF REGISTRY.**

(1) The master of a vessel must produce the Certificate of Registry of the vessel to the Port Manager -

- (a) in the case of a vessel registered outside Papua New Guinea, on every occasion the vessel enters the Port; and
- (b) in the case of a vessel registered in Papua New Guinea, when the vessel enters the Port for the first time and thence annually; and
- (c) in the case of a vessel registered in Papua New Guinea which has been structurally modified affecting the tonnage, immediately the vessel enters the Port following such modification.

(2) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**25. LANDING, DISCHARGE AND TRANSHIPMENT OF GOODS.**

(1) Within 24 hours prior to the arrival of a vessel in a Port from which goods are to be landed, discharged or transhipped, the master, owner or agent must deliver to the Port Manager and approved Port Facility Operator a true, complete and signed as correct copy of the manifest of the vessel in respect of all goods intended to be landed, discharged or transhipped in the Port, and, if required by the Port Manager or approved Port Facility Operator, verify it by statutory declaration.

(2) If the vessel is not laden, the manifest must be marked as "Nil Cargo".

(3) The master, owner or agent must, on demand by the Port Manager or approved Port Facility Operator, produce and submit to the Port Manager or approved Port Facility Operator, as the case requires, the master's copy of all bills of lading.

- (4) Goods must not be landed, discharged or transhipped in a Port -
- (a) without the Port Manager's or approved Port Facility Operator's consent; and
  - (b) until the copy of the manifest required under Subsection (1) has been delivered to the Port Manager and approved Port Facility Operator.

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- (5) If the master, owner or agent -
- (a) fails to deliver the copy of the manifest within the prescribed time; or
  - (b) delivers an inaccurate copy of the manifest; or
  - (c) lands, discharges or tranships any goods from the vessel before the copy of the manifest is delivered; or
  - (d) before the Port Manager's or approved Port Facility Operator's consent is obtained under sub regulation (4)(a),
- the master, owner and agent are each and severally guilty of an offence.

(6) If the master, owner or agent of a vessel fails to comply with any requirement of this section, a Port Facility Operator may refuse to allocate a berth for the vessel or refuse to berth the vessel.

(7) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**26. REQUIREMENTS ON DEPARTURE OF VESSEL.**

(1) Before a vessel departs a Port, the master, owner or agent of the vessel must make application and obtain the permission of the Port Manager or approved Port Facility Operator to depart the Port.

(2) Not later than 24 hours prior to a vessel's departure from a Port, the master, owner or agent of a vessel from which goods have been unshipped must deliver to the Port Manager or approved Port Facility Operator a signed and dated written statement containing the following particulars -

- (a) the name of the vessel, vessel owner and master; and
- (b) a description of the goods unshipped and the identifying marks or numbers on the goods or on the outside containers, cases or packages containing the goods, as the case may be; and
- (c) the state, order and condition of, and any apparent damage to, the goods, containers, cases or packages, as the case may be.

(3) The Port Manager may refuse a clearance certificate for a vessel if, the master, owner or agent of the vessel has, in the reasonable opinion of the Port Manager, failed to comply with the Regulations.

(4) The Port Manager must notify the Authority of the departure of a vessel from a Port.

(5) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**27. NOTIFICATION TO OWNER OF LANDED GOODS.**

- (1) The owner or agent of a vessel from which goods are to be landed in a Port -

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- (a) must give notice of the arrival of the goods to the owner of the goods at least 24 hours prior to the landing of the goods; and
- (b) must, immediately after the completion of the landing of the goods, cause the owner of the goods to be notified of the landing and their location.

(2) The Port Manager and approved Port Facility Operator may, by written notice, require an owner of landed goods to remove the goods from a wharf.

(3) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

### *Division 2. - Other Obligations and Responsibilities.*

#### **28. LOADING AND UNLOADING.**

- (1) The owner and master of a vessel and Port Facility Operator must -
  - (a) if required by the Port Manager, cause the loading and unloading of the vessel to proceed without intermission day or night; and
  - (b) ensure that the loading and unloading of the vessel proceeds efficiently and without delay; and
  - (c) provide all necessary facilities, material and gear to permit the expeditious loading and unloading of the vessel.

(2) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

#### **29. KEEPING WHARF OPEN.**

- (1) The owner of a vessel from which goods have been landed on to a wharf and relevant Port Facility Operator must -
  - (a) cause all parts of the wharf that are necessary to enable the goods to be delivered and removed promptly to be kept open between the hours specified by the Port Manager; and
  - (b) subject to any other law, cause the owner's, and relevant Port Facility Operator's, employees and contractors to be in attendance at the wharf for the purposes of delivering goods during those hours to the owner of the goods.

(2) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

#### **30. SLINGING OF GOODS.**

(1) The master and owner of a vessel that is loading or unloading goods are responsible for the proper slinging of all goods.

(2) Any damage arising as a result of the breaking of slings or the goods being improperly slung is the responsibility of the master and owner.

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(3) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

### **31. DAMAGE TO GOODS ON WHARF FROM VESSEL.**

(1) The master and owner of a vessel lying alongside a wharf are responsible for all damage caused to goods lying on the wharf by water used on the vessel for washing down decks or any other purpose.

(2) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

### **32. DISCHARGE OF BALLAST.**

Subject to any other law, the master and owner of a vessel which discharge ballast in a Port without the written permission of the Port Manager are guilty of an offence, the penalty for which is, as prescribed under Section 83.

### **33. PASSENGERS AND GOODS LOADED OVER ANOTHER VESSEL.**

(1) Passengers and cargo may only be loaded and unloaded by a vessel berthed in tier over and across the deck of a vessel berthed at the wharf with the prior approval of the Port Manager or approved Port Facility Operator.

(2) In a case in which sub regulation (1) applies, the master of the vessel berthed at the wharf must, at the direction of the Port Manager or approved Port Facility Operator, allow and afford the necessary facilities for the purpose of the loading and unloading.

(3) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

### **34. OCCUPATION OF WHARF SPACE.**

(1) The cargo of a vessel loading or unloading at a wharf -

(a) must not, without the written permission of the Port Manager or approved Port Facility Operator, occupy a greater space on the wharf than the length of the vessel; and

(b) must be placed in such a manner -

(i) to allow a clear passage of at least 3 metres from the edge of the wharf nearest the vessel; and

(ii) to leave a space of 1 metre all round each fire plug and a clear passage of 1 metre leading up to each fire plug.

(2) All cargo, equipment and dunnage must be cleared from a wharf apron prior to departure of a vessel from a wharf.

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(3) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**35. DISCHARGE OF CARGO OVERSIDE.**

(1) The master of a vessel must not discharge cargo overside into the waters of a Port without the permission of the Port Manager.

(2) Cargo discharged overside must be secured, rafted, moored, anchored, placed and marked in accordance with the Port Manager's directions.

(3) The owner of cargo discharged overside must take delivery of the cargo within the time specified by the Port Manager.

(4) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**36. VESSEL MOVEMENTS, ANCHORING, MOORING AND SPEED.**

(1) The master of a vessel must comply with the Port Manager's directions concerning the movement, anchoring, mooring, location, relocation and speed of a vessel in a Port.

(2) Any master who fails to comply with Subsection (1) is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**37. OBSTRUCTION BY VESSEL.**

Any person who anchors or moors a vessel in a Port so as to obstruct a channel or approach to a wharf is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**38. DEAD SHIP AND REPAIR AND CAREENING OF A VESSEL.**

(1) For the purpose of this Regulation, a dead ship is a vessel which is incapable of moving under its own power.

(2) A master of a vessel must apply to and obtain the consent of a Port Manager before turning the vessel into a dead ship in a Port.

(3) The master of a vessel must comply with the Port Manager's direction concerning the repair, careening, heaving down or hauling of the vessel onshore in a Port.

(4) Any master who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**39. USE OF TUG AND PILOT.**

(1) The master of a vessel must engage the services of a tug or pilot when and where directed to do so by the Port Manager or approved Port Facility Operator.

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(2) Any master who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**40. ASSISTANCE TO PORT MANAGER AND APPROVED PORT FACILITY OPERATOR.**

(1) The master and crew of a vessel must, when requested by the Port Manager or approved Port Facility Operator, give and afford the Port Manager and approved Port Facility Operator all possible aid and assistance in the performance of the Port Manager's and approved Port Facility Operator's duties in relation to such vessel.

(2) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**41. OBEDIENCE TO PORT MANAGER AND APPROVED PORT FACILITY OPERATOR.**

(1) The master of a vessel must, on all occasions, obey the directions and orders of the Port Manager or an approved Port Facility Operator in relation to such vessel when, in the opinion of the Port Manager or the approved Port Facility Operator, it may be necessary to do any act to ensure the safety of the vessel, another vessel, any person or property.

(2) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**42. DISCHARGE FROM VESSEL.**

(1) The master of a vessel must ensure that no discharge of oil, refuse, waste or other matter is made into the waters of a Port.

(2) Where a discharge occurs in breach of this regulation the master and owner of the vessel are responsible for all costs of the recovery and safe disposal of the discharge and any consequential cleanup of the Port required by the Port Manager.

(3) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**43. RESPONSIBILITY FOR DAMAGE.**

(1) The owner and master of a vessel are responsible for any damage or injury caused by such vessel to a person or a wharf, navigation aid, Port Facility or other property within a Port.

(2) The owner and master of a vessel must make good any damage or injury referred to in sub regulation (1) as directed by the Port Manager.

(3) Where a vessel damages or injures a person or a wharf, navigational aid, Port Facility or other property within a Port the master and owner of the vessel must, before the vessel departs the Port -



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- (a) pay for the damage or injury; or
- (b) make such arrangements as the Port Manager approves for payment of the damage or injury.

(4) Where the master and owner of a vessel fail to comply with the requirements of sub regulation (3) the Port Manager may seize and detain the vessel until the master and owner of the vessel have complied with the requirements of sub regulation (3).

(5) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**44. CLEANSING OF WHARF OR PORT.**

(1) Before any vessel is moved from a wharf or Port, the owner, master or agent of the vessel must cause all dirt and refuse to be removed from the wharf or Port in a manner as directed by the Port Manager or approved Port Facility Operator and ensure that the wharf or Port is thoroughly cleansed.

(2) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**45. RESPONSIBILITY OF MASTER FOR CREW.**

(1) The master of a vessel is responsible for the behavior of the vessel's crew and must ensure the crew in a Port -

- (a) do not commit a nuisance; or
- (b) are not drunk or drug affected; or
- (c) do not behave in a drunken, drug affected, offensive or unseemly manner; or
- (d) do not cause a disturbance; or
- (e) do not interfere with the comfort of other persons lawfully within the Port; or
- (f) do not loiter, spit, or cast refuse; or
- (g) do not do any other thing which in the reasonable opinion of the Port Manager and approved Port Facility Operator endangers, threatens or otherwise puts at risk any person, Port Facility or Port or the good order and management of a Port.

(2) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**46. FACILITIES FOR HANGLING ARRIVAL AND DEPARTURE OF VESSEL.**

(1) The agent of a vessel must supply -

- (a) sufficient persons to handle the vessel's lines on arrival and departure from a Port; and
- (b) such boats for running lines as directed by the Port Manager or approved Port Facility Operator.

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(2) An agent who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**47. EXAMINATION OF VESSELS BY PORT MANAGER AND PORT FACILITY OPERATOR.**

(1) The master and owner of a vessel in a Port must -

- (a) admit the Port Manager and approved Port Facility Operator at all reasonable times to any part of the vessel for the purposes of ascertaining whether the Regulations are being or have been complied with; and
- (b) must not obstruct, or permit the obstruction of, the Port Manager and approved Port Facility Operator whilst the Port Manager and approved Port Facility Operator are exercising any powers under this Regulation.

(2) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**48. SMALL CRAFT TO GIVE WAY.**

(1) The master of every launch, barge, lighter, rowing boat, sailing boat, pleasure craft or similar craft, when in a Port, must give way to and keep out of the way of ocean going vessels or tugs when engaged in towing.

(2) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**49. DIVING.**

(1) A person -

- (a) who proposes to dive within a Port must apply to the Port Manager for permission to dive in an application approved by the Port Manager; and
- (b) must not dive in a Port without the written permission of the Port Manager.

(2) A vessel in a Port from which a person is operating under water as a diver or skin diver must fly Flag "A" of the International Code of Signals (a blue and white burgee) as an indication that a diver or skin diver is operating under water in the vicinity.

(3) A vessel in a Port in the vicinity of a vessel flying Flag "A" must -

- (a) keep well clear of such vessel; and
- (b) travel at a slow speed.

(4) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**PART 5. - STEVEDORING.**

**50. LICENSING OF STEVEDORES.**

(1) Subject to the Act and Sections 51 and 87 of the Regulations, a person must not carry on the business of a stevedore within a Port unless the person holds a Stevedoring Licence issued by the Port Manager for that Port.

(2) The application for a Stevedoring Licence or renewal of a licence must include such particulars, details, information and documents as the Port Manager determines, and must include -

- (a) in the case of a company, particulars of the applicant's equity shareholding; and
- (b) evidence of compliance, or capacity to comply, with the qualifications and standards of performance as a Stevedore specified by the Port Manager from time to time; and
- (c) details of a training scheme to improve operating, supervisory, efficiency and safety standards; and
- (d) in the case of employment of non-citizens, a training and localization scheme approved pursuant to the *Employment of Non-citizens Act 1978*; and
- (e) particulars concerning compliance, or capacity to comply, with Sections 53 to 58 inclusive; and
- (f) details of an insurance policy with a reputable insurer sufficient to indemnify the Port Manager and the Licensed Stevedore conducting the business of a stevedore within the Port against all liabilities.

(3) Subject to the Port Manager approving the application and upon payment of the licence fee, the Port Manager may issue or renew a Stevedoring Licence for a period not greater than 3 years.

(4) A Stevedoring License -

- (a) may be granted for a particular Port or Ports for which the Port Manager is appointed as Port Manager; and
- (b) may be made subject to terms and conditions specified by the Port Manager, including but not limited to matters concerning the handling of dangerous goods; and
- (c) is subject to annual review by the Port Manager.

(5) A Stevedoring License issued under this Regulation does not give to the licence holder an automatic right of entry to a particular Port or Port Facility or an automatic right to operate as a Stevedore in a particular Port or Port Facility.

(6) A licensed stevedore that breaches any of the terms and conditions of a stevedoring license is guilty of an offence, the penalty for which is, as prescribed under Section 83.

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**51. CANCELLATION AND SUSPENSION OF STEVEDORING LICENSE.**

The Port Manager may cancel or suspend a Stevedoring License -

- (a) for a breach by, or on behalf of, the Licenced Stevedore of the requirements of the Regulations; or
- (b) for general unsatisfactory performance of stevedoring duties by, or on behalf of, the Licenced Stevedore where, in the opinion of the Port Manager, the Licensed Stevedore's performance of stevedoring duties is adversely affecting, or is likely to adversely affect, the efficiency or safety of Port operations.

**52. EXEMPTION FROM REQUIREMENT TO HOLD A STEVEDORING LICENSE.**

Subject to such conditions and restrictions as the Port Manager may determine, the Port Manager may, by written notice, exempt a person or class of persons from the requirement to hold a Stevedoring Licence for a vessel or class of vessels or wharf or class of wharves under Section 50.

**53. DUTY TO PROVIDE SUPERVISION AND LABOUR.**

(1) To ensure that stevedored vessels are worked efficiently and without delay to the satisfaction of the Port Manager, a Licenced Stevedore must -

- (a) provide adequate and efficient supervision; and
- (b) maintain or have on call an adequate labour force, including a proportion of experienced workers and such special categories of workers as stipulated by the approved Port Facility Operator; and
- (c) provide additional labour, both by number and category, as required by the approved Port Facility Operator.

(4) A licensed stevedore that fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**54. STEVEDORING EQUIPMENT.**

(1) A Licensed Stevedore must maintain, or have on call, all necessary stevedoring equipment in good working order and condition, sufficient to be able to efficiently handle the number of vessels that would normally be required by the Stevedore to be serviced.

(2) A Licensed Stevedore must keep available for inspection by the Port Manager or approved Port Facility Operator a register of equipment specifying the type, age and condition (including all repairs and alterations) of the equipment.

(3) A licensed stevedore that fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

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**55. SAFETY AND CARE.**

(1) A Licensed Stevedore must -

- (a) not at any time, carry on a work practice that, in the opinion of the Port Manager or approved Port Facility Operator, is unsafe or undesirable; and
- (b) on being instructed to do so by the Port Manager or approved Port Facility Operator, immediately discontinue any such practice.

(2) A Licensed Stevedore must observe due care in the handling of cargo, and is liable to compensate the owner of any cargo for any damage or loss occasioned by careless, negligent or unsafe handling during stevedoring.

(3) A licensed stevedore that fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**56. LIFTING GEAR STANDARDS AND SPECIFICATIONS.**

(1) A Port Manager may, by notice, specify standards and specifications for lifting gear to be used by a Licenced Stevedore.

(2) Lifting gear standards and specifications may refer to or incorporate, wholly or partially and subject to such modifications and conditions as are determined by the Port Manager, any standard, code, procedure, specification or other document prepared or laid down by an authority or agency within Papua New Guinea or elsewhere, and may apply to one or more Ports, as the Port Manager may determine.

(3) A licensed stevedore that fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**57. CHECKING OF LIFTING GEAR.**

(1) All lifting gear used by a Licenced Stevedore must be inspected by the Stevedore every three months in accordance with requirements specified by the Port Manager.

(2) A licensed stevedore that fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**58. HOURS OF WORK.**

(1) As instructed by the Port Manager or approved Port Facility Operator, a Licenced Stevedore must work each vessel to capacity and at such hours as required by the number of vessels in the Port.

(2) A licensed stevedore that fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**PART 6. - DANGEROUS GOODS.**

**59. APPLICATION OF THIS PART.**

Unless otherwise specified, this Part does not apply to dangerous goods forming part of the equipment or stores required for the navigation, safety or maintenance of a vessel.

**60. PERMIT TO CONVEY OR HANDLE DANGEROUS GOODS.**

(1) Before -

(a) dangerous goods are loaded aboard or unloaded from a vessel in a Port or handled within in a Port; or

(b) any vessel carrying dangerous goods, whether as through cargo or not, enters a Port,

the owner of the vessel must apply for and obtain a written permit from the Port Manager to convey or handle the dangerous goods.

(2) Notwithstanding Subsection (1), the Port Manager may exempt, in writing, the following vessels from the requirements of Subsection (1):

(a) a local ship as defined in the *Merchant Shipping Act 1975*; or

(b) a vessel under 200 gross registered tons; or

(c) a vessel not intending to berth at a wharf not owned or managed by the Port Manager.

(3) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**61. PERMIT APPLICATION AND CONDITIONS.**

(1) A permit referred to in Section 60 must comply with Port Management and Operations Directions and Port Safety Directions.

(2) Subject to Subsection (1), a permit referred to in Section 60 -

(a) may contain such conditions as the Port Manager determines; and

(b) may be issued to apply for one or more Ports; and

(c) may be issued for a period determined by the Port Manager.

**62. NOTIFICATION AND LIABILITY FOR DAMAGE.**

(1) Any person responsible for dangerous goods in a Port must notify the Port Manager as soon as possible of any damage to or deterioration of the dangerous goods or any package or container containing the dangerous goods.

(2) Where -

(a) there is doubt as to the nature of a substance in a Port or on a vessel and that substance is suspected of being dangerous goods; or

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- (b) there is damage to or deterioration of a package or container suspected of containing dangerous goods, the Port Manager may, at the expense of the person responsible for the goods, consult a chemist or other expert to assist the Port Manager in deciding what action needs to be taken in respect of the goods, package or container.

(3) If directed to do so by a Port Manager, a person responsible for any dangerous good or goods must promptly remove from the Port any spilled dangerous good or goods and any damaged or deteriorated package or container containing the dangerous good or goods.

(4) Where a person responsible for dangerous good or goods fails to comply with a direction under Subsection (3), the Port Manager may, at the expense of the person responsible for the dangerous good or goods, remove and dispose of the goods or cause the goods to be removed and disposed of.

- (5) The person responsible for dangerous goods is liable for all costs involved in -
  - (a) the removal of the goods from a Port; and
  - (b) the costs of the Port Manager in removing the goods from a Port and disposing of them; and
  - (c) the costs of any damage caused by the goods to any person, place or thing.

(6) The cost of any action taken by the Port Manager under this Section may be recovered by the Port Manager as a debt from the person who failed to comply with the direction.

(7) Notwithstanding Subsection (6), any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**63. OBLIGATIONS OF OWNER OF VESSEL CONCERNING DANGEROUS GOODS.**

(1) The owner of a vessel on which there are dangerous goods or on which dangerous goods are to be loaded in a Port, must -

- (a) provide on the vessel and maintain in efficient working order, sufficient fire fighting equipment and fire extinguishers to the satisfaction of the Port Manager; and
- (b) provide on the vessel and on any wharf where the vessel is berthed, warning signs, notices, signals and lights as specified by the Port Manager; and
- (c) ensure that a competent person, approved by the Port Manager, is present and in charge of the handling of the dangerous goods at all times when the dangerous goods are being handled; and
- (d) provide a responsible officer of the vessel to be on duty at all times while the vessel is handling dangerous goods; and

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- (e) provide sufficient and competent crew to be available to assist the responsible officer as directed, operate fire pumps and other fire fighting equipment and carry out any task or responsibility required by or under these Regulations.

(2) An owner of a vessel who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**64. VESSELS NEAR VESSELS CARRYING DANGEROUS GOODS.**

(1) If any vessel is anchored, moored or berthed within 30m of a vessel carrying or handling dangerous goods, the owner of the vessel must comply with any applicable Port Management and Operations Directions and Port Safety Directions, and any other directions which the Port Manager may issue.

(2) An owner of a vessel who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**65. HANDLING, CLEANING, TESTING AND REPAIR OF TANKS.**

(1) The owner of -  
(a) a tank in a Port; or  
(b) a vessel in a Port on which there is a tank,  
in which there are dangerous goods or in which dangerous goods were previously contained, must handle, clean, test and repair the tank in accordance with Port Management and Operations Directions and Port Safety Directions.

(2) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**66. DRY DOCKING OF VESSELS CARRYING DANGEROUS GOODS.**

(1) Notwithstanding Section 59 and subject to such terms and conditions as determined by the Port Manager, a vessel which has contained dangerous goods on board the vessel as cargo or fuel must not enter or be permitted to enter a dry dock, graving dock or slip unless the written permission of the Port Manager has been obtained.

(2) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**67. HANDLING, STORAGE, PACKING, IDENTIFICATION AND LABELING OF DANGEROUS GOODS.**

(1) All persons responsible for dangerous goods within or entering a Port must ensure that dangerous goods are handled, stored, packed, identified and labeled in accordance with Port Management and Operations Directions and Port Safety Directions.



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(2) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**PART 7. - OTHER PORT CONTROLS.**

**68. FIRES, FLAMES AND LIGHTS.**

- (1) All persons within a Port must comply with -
- (a) Port Management and Operations Directions; and
  - (b) Port Safety Directions; and
  - (c) any order issued by a Port Manager,

concerning the lighting of fires, the use, maintenance and care of any equipment which produces a flame or spark, naked lights, smoking, and the possession and use of matches or any tool or device that is capable of creating or designed to create a spark or flame.

(2) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**69. VEHICLE AND TRAFFIC CONTROLS.**

(1) The Port Manager may establish and amend Port Traffic Control Rules concerning vehicle movements, handling, speed and parking, driver behavior and the entry of vehicles to a Port and removal of vehicles from a Port.

(2) Subject to such modifications, adaptations and exemptions as may be specified by a Port Manager, the following Parts of the *Motor Traffic Regulation 1967* apply to every Port and are deemed to be Port Traffic Control Rules:

- (a) Part XI - Traffic Signs and Lines; and
- (b) Part XII - Speed Limits; and
- (c) Part XIIA - Seat Belts (except for forklift drivers); and
- (d) Part XIII - Traffic Rules Generally.

(3) Port Traffic Control Rules and amendments must be published in the National Gazette.

(4) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**70. HANDLING, STORAGE, PACKING, IDENTIFICATION AND LABELING OF GOODS.**

(1) All persons responsible for goods within, entering or leaving a Port must ensure that the goods are handled, stored, packed, identified and labeled in accordance with Port Management and Operations Directions and Port Safety Directions.

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(2) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**71. ENTRY TO PORT OR PORT FACILITY.**

(1) Subject to any other laws, the Port Manager may, for the purposes of protecting persons and the good order, management and safety of a Port -

- (a) grant or deny entry of persons to a Port, Port Facility or part of a Port or Port Facility on such terms and conditions as the Port Manager may determine; and
- (b) require a person within a Port to leave a Port, Port Facility or part of a Port or Port Facility; and
- (c) take or authorize the taking of such actions as may be reasonably required in the circumstances to ensure Port Safety, Port Security, Port Operations and good order within a Port concerning the enforcement of any matter referred to in Paragraphs (a) and (b) and the Regulations.

(2) Actions under Subsection (1)(c) include but are not limited to -

- (a) preventing, if necessary by reasonable force, a person from entering or remaining in a Port, Port Facility or part of a Port or Port Facility; and
- (b) removing, if necessary by reasonable force, a person from a Port, Port Facility or part of a Port or Port Facility; and
- (c) taking possession of, and removing from a Port, Port Facility, part of a Port or Port Facility or a person, if necessary by reasonable force, any item, matter or thing within a Port where such item, matter or thing puts at risk Port Safety, Port Security, Port Operations or good order within a Port.

(3) The Port Manager and any person taking action as authorised by a Port Manager under this regulation are not liable for an act or default done or omitted to be done in good faith for the purpose of this Regulation.

(4) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**72. OPENING AND CLOSURE OF PORT AND PORT FACILITY.**

(1) Subject to the Act and the *Merchant Shipping (Maritime Security) Regulation 2005* and a requirement to act reasonably, a Port Manager may open or close a Port, Port Facility or part of a Port or Port Facility as the Port Manager deems necessary for the purposes of Port Safety, Port Security or Port Operations or to maintain good order within a Port on such terms and conditions as the Port Manager may determine.

(2) Any person who fails to comply with a Port Manager's decision and determination under this Regulation is guilty of an offence, the penalty for which is, as prescribed under Section 83.

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**73. NUISANCE AND OTHER BEHAVIORS.**

- (1) A person within a Port, Port Facility or part of a Port or Port Facility must not -
- (a) commit a nuisance or breach of the peace; or
  - (b) be drunk or drug affected; or
  - (c) behave in a drunken, drug affected, offensive or unseemly manner; or
  - (d) cause a disturbance; or
  - (e) interfere with the comfort of other persons lawfully within the Port; or
  - (f) loiter, spit or caste refuse; or
  - (g) do any other thing which in the reasonable opinion of the Port Manager and approved Port Facility Operator endangers, threatens or otherwise puts at risk any person, Port Facility or Port or the good order and management of a Port.

(2) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**74. INTERFERENCE WITH AND INJURY TO PORT AND PORT FACILITY.**

- (1) Without a Port Manager's written permission, a person must not -
- (a) interfere with; or
  - (b) write or draw on; or
  - (c) mark; or
  - (d) post bills or placards on; or
  - (e) damage, carve, cut, break, injure, disfigure or destroy,
- a Port, Port Facility or any Port Manager's property.

(2) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**75. CARE OF CHILDREN.**

(1) A child must not enter or remain within a Port unless the child is under the care and control of an adult.

(2) A person who has the care and control of a child must ensure that the child does not enter or remain within a Port unless the child is under the care and control of an adult.

(3) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**76. OBSTRUCTION TO ENTRANCE TO PORT.**

(1) A person must not obstruct the approach or entrance to a Port, whether the approach or entrance is by water or land.

- (2) A person must not set down, leave, store or allow to remain -
- (a) within 1 metre of a perimeter fence of a Port or Port Facility; or

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- (b) within 1 metre of a road, roadway, street or verge of a road, roadway or street leading to the entrance to a Port or Port Facility; or
- (c) within 15 metres of the entrance to a Port or Port Facility, any cargo, package or container which is intended to enter or has been removed from a Port.

(3) Where a person has failed to comply with any provision of this section, the Port Manager may, at the expense of that person, remove or cause to be removed any cargo, package or container.

(4) The cost of removing any cargo, package or container may be recovered by the Port Manager as a debt from the owner of the cargo, package or container.

(5) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**PART 8. - MISCELLANEOUS.**

**77. FEES, LEVIES AND CHARGES.**

(1) Subject to the Act and the Regulations, a Port Manager may, by Notice published in the National Gazette, set and amend fees, levies and charges for any service, function, activity, permit, supply or any other matter relating to the Port as the Port Manager may determine.

(2) Without limiting the matters for which fees, levies and charges may be set, fees, levies and charges may include Port Dues, Port and Port Facility Charges, Dockage Dues, Berthage Charges, Passenger Fees, Cargo Fees, Tug Service Charges, Labour Hire Charges, Storage Charges, Security Charges, Equipment Usage Charges, Inspection, Approval and Licence Fees, Handling and Removal Fees and Fees for late returns and late payments.

(3) The owner, master and agent of a vessel for which fees, levies and charges are payable concerning or relating to the vessel are jointly and severally liable for the fees, levies and charges.

(4) The owner of goods is liable to pay any fees, levies and charges concerning or relating to the goods.

(5) A Port Manager or approved Port Facility Operator may detain any goods within a Port until -

- (a) all fees, levies and charges concerning or relating to the goods have been paid;
- Or

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(b) security to the satisfaction of the Port Manager or approved Port Facility Operator for payment of the fees, levies and charges has been received.

(6) The Authority may, by Notice published in the National Gazette, set and amend fees, levies and charges for any service, function, activity, permit, supply, inspection or other matter relating to the Authority under the Regulations as the Authority may determine.

(7) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**78. DISPOSAL OF UNCLAIMED GOODS.**

(1) A Port Manager or approved Port Facility Operator may dispose of unclaimed goods in accordance with the provisions of this Section.

(2) Prior to disposing of any goods, the Port Manager or the approved Port Facility Operator must notify the owner of the goods, in writing, to remove the goods -

(a) in the case of perishable goods, immediately; and

(b) in the case of other goods, within 7 days of the date the goods are landed.

(3) If unclaimed goods are not removed as required under this regulation, the Port Manager or the approved Port Facility Operator may take possession of and sell the goods, and the proceeds of which may be used to defray the expenses of storage, removal and sale and the payment of any unpaid fees and charges concerning or relating to the goods.

(4) After the deduction of the expenses, fees and charges referred to in Subsection (3), the Port Manager or approved Port Facility Operator must pay any balance from the proceeds of sale to the owner of the goods.

**79. AUTHORIZED OFFICERS.**

(1) The Port Manager may, in writing, appoint and reappoint, such suitable persons as the Port Manager determines, to be authorized officers, who may exercise any function, power, responsibility or duties specified in the appointment, and, subject to the appointment, are, for all purposes, deemed to be the Port Manager under the Regulations.

(2) Appointments made under Subsection (1) may -

(a) include persons employed by or working for the Port Manager or any other agency, organisation or body; and

(b) be general or limited and subject to terms, conditions, limitations and directions as the Port Manager may specify in the appointment; and

(c) apply to one or more Ports; and

(d) may be for a period not exceeding 12 months.

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- (3) Authorized officers must -
  - (a) be issued with an identity document by the Port Manager; and
  - (b) carry and produce the identity document when on duty and upon request to do so by any person.

**80. POWERS OF AUTHORIZED OFFICERS.**

- (1) Port Managers and Authorized Officers have the following powers -
  - (a) the power to require any person in a Port to provide the person's name and address and to produce such evidence as to the person's identity, as may be reasonably required; and
  - (b) subject to any other law, and with the consent of Customs where necessary or appropriate, to -
    - (i) enter and inspect any part of the Port or Port Facility, a vessel in a Port and any vehicle in a Port; and
    - (ii) take measurements and make tests as required by their duties; and
    - (iii) inspect and take copies of documents; and
    - (iv) take photographs and remove specimens or samples of any substance, material or thing as is reasonable in the circumstances.

(2) Any person who fails to comply with the requirements of this regulation or hinders or obstructs a Port Manager or authorised officer in the exercise or performance of a function, power, responsibility or duty under the Regulations is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**81. POWERS OF INSPECTORS.**

- (1) Inspectors appointed under Section 9 have the following powers -
  - (a) the power to require any person in a Port to provide the person's name and address and to produce such evidence as to the person's identity, as may be reasonably required; and
  - (b) subject to any other law, and with the consent of Customs where necessary or appropriate, to -
    - (i) enter and inspect any part of the Port or Port Facility, a vessel in a Port and any vehicle in a Port; and
    - (ii) take measurements and make tests as required by their duties; and
    - (iii) inspect and take copies of documents; and
    - (iv) take photographs and remove specimens or samples of any substance, material or thing as is reasonable in the circumstances.

(2) Any person who fails to comply with the requirements of this regulation or hinders or obstructs an inspector in the exercise or performance of a function, power, responsibility or duty under the Regulations is guilty of an offence, the penalty for which is, as prescribed under Section 83.

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**82. REPORT OF CASUALTY, DEATH OR DAMAGE.**

(1) Where -

- (a) a casualty or death occurs within a Port, including but not limited to a vessel or vehicle within a Port; or
- (b) damage is done to a Port, Port Facility, or vessel or vehicle within a Port, the person responsible for or causing or witnessing the casualty, death or damage, or the master of the vessel in the case of a casualty, death or damage on a vessel, or the driver of the vehicle, as the case may require, must report the matter to relevant Port Facility Operator and Port Manager without delay.

(2) Any person who fails to comply with the provisions of this section is guilty of an offence, the penalty for which is, as prescribed under Section 83.

**83. GENERAL PENALTY PROVISION.**

The penalty for -

- (a) any breach or non compliance with any provisions of this Regulation, or
- (b) any conviction as a result of a breach or non compliance with any provision of this Regulation,

is a fine not exceeding K10, 000.00 and in default, a default penalty not exceeding K250.00 per day until the fine and the default penalty are paid in full.

**84. PROSECUTION OF OFFENCES.**

(1) A prosecution for an offence under the Regulations may be instituted in a District Court by appropriate proceedings in the name of the Port Manager.

(2) A prosecution in a District Court may be commenced, prosecuted and proceeded with in accordance with -

- (a) any rules of practice established by the Court for proceedings by the State in revenue matters; or
- (b) the usual practice established by the Court in civil cases; or
- (c) any directions of the Court or a Judge.

(3) Any penalty imposed by a Court for an offence under the Regulations and any default penalty paid under the Regulations is to be paid to the Port Manager and used by the Port Manager to offset its costs in administering and enforcing the Regulations.

**85. DEFAULT PENALTY.**

(1) Where the Port Manager is satisfied that an offence has been committed under the Regulations for which a default penalty is specified, the Port Manager may impose a default penalty in accordance with this regulation.

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(2) Subject to Subsection (1), where the Port Manager is satisfied that a person has committed an offence under the Regulations, the Port Manager may issue a notice specifying the offence and requiring the person to pay a default penalty, not exceeding K250.00 to the Port Manager.

- (3) Upon receipt of a notice under Subsection (2), the person must -
- (a) if the person admits the commission of the offence, pay the default penalty to the Port Manager within 14 days of the date the notice was issued; or
  - (b) if the person denies the commission of the offence, notify the Port Manager in writing within 14 days of the date the notice was issued that he denies the commission of the offence.

(4) Where an offence is admitted and a default penalty is paid in accordance with Subsection (3)(a), no further proceedings for the offence may be instituted against the person making the admission and paying the default penalty.

(5) Where an offence is denied and no default penalty is paid in accordance with Subsection (3)(b), the Port Manager may prosecute the person in accordance with the provisions of Section 84.

#### **86. GENERAL POWERS TO RECTIFY.**

(1) Where any person has failed to comply with a requirement, duty, obligation, responsibility, direction, order or other matter under the Regulations, the Port Manager may order the person to so comply, including but not limited to rectification and making good any damage, default or other matter related to the non compliance and dismantling any construction, building or work which does not comply with the Regulations.

- (2) Where a person fails to comply with an order under Subsection (1), the Port Manager may take any necessary actions to -
- (a) ensure the order is complied with; and
  - (b) rectify and make good any damage, default or other matter related to the non compliance; and
  - (c) dismantle any construction, building or work which does not comply with the Regulations.

(3) The cost of the Port Manager under Subsection (2) may be recovered by the Port Manager as a debt from the person who failed to comply with an order under sub section (1).

(4) Nothing under this Regulation limits the right of any other person to recover damages or take other action against the person who has failed to comply with an order under Subsection (1).



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**87. SAVINGS AND TRANSITIONAL ARRANGEMENTS.**

(1) Where any Stevedoring Licence made under the provisions of the Act or the *Harbours Board (General) By-laws 1967* (whether by way of licence or agreement) remains in force as at the date of commencement of the Regulations such licence remains in force for a period of 6 months from the date of commencement of the Regulations.

(2) The provisions of Section 12 must be complied with within 6 months of the date of commencement of the Regulations.

(3) The provisions of Section 50 must be complied with within 6 months of the date of commencement of the Regulations.

MADE this *twenty - second* day of *November*, 2010.

*Pambias M. Atame*  
GOVERNOR-GENERAL.