

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



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## THE PRESIDENCY

No. 581

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It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

**No. 10 of 2011: Merchant Shipping (Safe Containers Convention) Act, 2011.**



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*(English text signed by the President)*  
*(Assented to 13 July 2011)*

# ACT

**To give effect to the International Convention for Safe Containers, and to provide for matters connected therewith.**

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

## Definitions

1. (1) In this Act, unless the context indicates otherwise—

“**Authority**” means the South African Maritime Safety Authority established by section 2(1) of the South African Maritime Safety Authority Act, 1998 (Act No. 5 of 1998);

“**container**” means a container as defined in the Convention and to which the Convention applies;

“**Contracting State**” means a state specified in a notice under section 4; 10

“**inspector**” means a person appointed as an inspector under section 6;

“**Minister**” means the Minister of Transport;

“**organ of state**” has the same meaning assigned to it in section 239 of the Constitution of the Republic of South Africa, 1996;

“**the Convention**” means the International Convention for Safe Containers set out in the Schedule; 15

“**the Republic**” includes the Prince Edward Islands referred to in section 3;

“**this Act**” includes the regulations.

(2) In this Act, unless the context indicates otherwise, any word or expression to which a meaning has been assigned by the Convention, has the same meaning as in the Convention. 20

## Act binds State

2. This Act binds the State and every organ of state.

## Application of Act

3. (1) This Act extends to the Prince Edward Islands as defined in section 1 of the Prince Edward Islands Act, 1948 (Act No. 43 of 1948). 25

(2) In its application to those islands, transport between the Republic and the Prince Edward Islands is not international transport.

## Declaration of Contracting States

4. (1) The Minister may, by notice in the *Gazette*, declare a state, other than the Republic, specified in the notice as a State Party to the Convention. 30

(2) A notice under subsection (1) is evidence that a state specified in such notice is a State Party to the Convention.

### **Certain provisions of Convention have force of law**

5. Subject to this Act, Articles II to VI of the Convention have the force of law in the Republic. 5

### **Inspectors**

6. (1) The Authority may appoint as an inspector any person who is qualified to be so appointed, to perform any of the functions assigned to an inspector in terms of this Act.

(2) The Authority must issue to each inspector a certificate in the prescribed form, stating that he or she has been appointed as an inspector. 10

(3) When boarding any vehicle or entering any premises contemplated in section 7(1), an inspector must, on request, show the certificate to the person in charge of the vehicle or premises.

### **Powers of inspectors**

7. (1) In addition to any powers that he or she may have under the regulations, an inspector may, without a warrant, at any reasonable time— 15

(a) board any vehicle, including a ship, train, truck or aircraft, or enter any premises if he or she believes on reasonable grounds that—

(i) there is significant evidence that the condition of a container in or on such vehicle or premises creates an obvious risk to safety; 20

(ii) there is a container in or on such vehicle or premises, for the purpose of verifying as to whether such container carries a valid Safety Approval Plate as required by the Convention; or

(iii) a provision of this Act has been contravened; and

(b) examine any record or document and make copies or extracts of such a record or document, found in such a vehicle, ship, train, truck, aircraft or premises. 25

(2) The owner or person in charge of any vehicle boarded or premises entered by an inspector and every person in such vehicle or on such premises, must give the inspector all reasonable assistance to enable the inspector to perform his or her functions under this Act and must provide the inspector with any information that the inspector may reasonably require with respect to the administration of this Act. 30

(3) An entry and inspection of premises without a warrant must be carried out only during normal hours of business and with the consent of the owner or person in control of the premises.

### **Obstruction of inspectors**

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8. (1) No person may obstruct or hinder an inspector in the performance of his or her functions under this Act.

(2) No person may knowingly make any false or misleading statement, either orally or in writing, to an inspector engaged in the performance of his or her functions under this Act. 40

(3) No person may remove or interfere in any way with a container detained by an inspector in terms of this Act, unless authorised by an inspector.

### **Inquiry into accident or incident**

9. (1) If an accident or incident involving a container results in death or injury to any person, danger to the health or safety of the public or damage to property or the 45

environment, the Authority may direct an inquiry to be conducted into the accident or incident by any suitable person, authorised by the Authority.

(2) The person authorised by the Authority under subsection (1) has all the powers conferred upon a court of marine enquiry by section 9(1) and (4) of the Merchant Shipping Act, 1951 (Act No. 57 of 1951), and subsections (2) and (3) of that section 5 apply accordingly.

(3) The person authorised to conduct an inquiry must, as soon as possible after conclusion of that inquiry, submit a report with recommendations to the Authority, together with all the evidence and other material that was before the inquiry.

(4) The Authority must publish the report within 60 days of receipt, unless the report 10 contains a recommendation that a publication be withheld in the public interest, in which case the Authority may withhold publication of the report in whole or in part as it deems fit.

(5) The Authority may supply copies of a published report in the manner and on the terms that it deems proper. 15

### Regulations

10. (1) The Minister may make regulations—

- (a) regarding the detention and transportation of containers that do not carry a valid Safety Approval Plate as required by the Convention;
- (b) regarding the detention and transportation of containers in respect of which 20 there is significant evidence that the condition of the container creates an obvious risk to safety;
- (c) regarding the maintenance and repair of containers;
- (d) pertaining to the circumstances under which and the manner in which the Authority may dispose of detained containers that have not been reclaimed; 25
- (e) requiring that the Safety Approval Plate affixed to any or all containers approved in terms of this Act be in one or more of the official languages of the Republic;
- (f) prescribing matters required or permitted by this Act to be prescribed; and
- (g) generally with regard to any other incidental administrative or procedural 30 matter necessary to prescribe for the proper implementation of this Act.

(2) (a) The Minister may incorporate all or part of any health and safety standard, without re-stating the text thereof, in a regulation by referring to the number, title and year of issue of that health and safety standard or to any other particular by which that health and safety standard is sufficiently identified. 35

(b) Whenever a health and safety standard referred to in paragraph (a) is subsequently amended or substituted, the amended health and safety standard is, in the absence of a contrary intention, deemed to have been incorporated in terms of the regulation contemplated in paragraph (a).

(c) A copy of a full text of a health and safety standard incorporated in terms of 40 paragraph (a) and any amendment or substitution thereof, must be kept at a place in the Republic that the Authority directs and must be available for public inspection.

(d) Section 28 of the Standards Act, 2008 (Act No. 8 of 2008), does not apply to any incorporation of a health and safety standard or to any amendment or substitution of a health and safety standard under this section. 45

### Offences and penalties

- 11.** (1) A person who contravenes this Act commits an offence and is liable upon conviction to a fine or to imprisonment for a period not exceeding two years.
- (2) Without affecting the jurisdiction of any court existing apart from this subsection, a court has jurisdiction over an offence in terms of this Act if— 5
- (a) the offence was committed in the territorial jurisdiction of that court; or
  - (b) the accused is found or carries on business in the territorial jurisdiction of that court.
- (3) If a person—
- (a) admits to the Authority that he or she has contravened this Act; 10
  - (b) agrees to abide by the decision of the Authority; and
  - (c) deposits with the Authority such amount of money as may be determined by the Authority, which amount must not exceed the maximum fine that may be imposed under subsection (1),
- the Authority may, after any inquiry that it deems fit, determine the matter summarily 15 and may, without legal proceedings, order the whole or any part of the deposit to be forfeited by way of a penalty.
- (4) A person may appeal to the Minister against a determination or order of the Authority.
- (5) An appeal must be lodged within 90 days from the date of the determination or 20 order.
- (6) The imposition of a penalty under subsection (3) must not be regarded as a conviction for an offence, and no prosecution in respect of the offence in question may thereafter be instituted.
- (7) All fines and other money penalties imposed under this Act must be paid to the 25 Authority for the benefit of the Maritime Fund established by section 38 of the South African Maritime Safety Authority Act, 1998 (Act No. 5 of 1998).

### Duration of Act

- 12.** This Act continues in force until a date fixed by the President by proclamation in the *Gazette* following denunciation of the Convention by the Republic or the 30 termination thereof in accordance with Article XII of the Convention.

### Repeal of Act 11 of 1985

- 13.** The International Convention for Safe Containers Act, 1985 (Act No. 11 of 1985), is repealed.

### Short title and commencement

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- 14.** This Act is called the Merchant Shipping (Safe Containers Convention) Act, 2011, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.