

Bill No. 108 of 2004

THE MERCHANT SHIPPING (AMENDMENT) BILL, 2004

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further to amend the Merchant Shipping Act, 1958 and the Indian Ports Act, 1908.

BE it enacted by Parliament in the Fifty-fifth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Merchant Shipping (Amendment) Act, 2004.

Short title and
commencement.

5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act.

CHAPTER II

AMENDMENT OF THE MERCHANT SHIPPING ACT, 1958

Amendment of long title.	2. In the Merchant Shipping Act, 1958 (hereinafter referred to as the principal Act), in the long title, for the words “registration”, the words “registration, certification, safety and security” shall be substituted.	44 of 1958.
Amendment of section 3.	<p>3. In section 3 of the principal Act, after clause (44), the following clause shall be inserted, namely:—</p> <p style="padding-left: 40px;">‘(44A) “security” means maritime security and includes any measure to protect ports or ships or any person or thing relating directly or indirectly to maritime navigation,—</p> <p style="padding-left: 80px;">(i) against terrorism, sabotage, stowaways, illegal migrants, asylum seekers, piracy, armed robbery, seizure or pilferage; and</p> <p style="padding-left: 80px;">(ii) against any other hostile act or influence,</p> <p style="padding-left: 40px;">employed by the owners or operators or persons in charge of the vessels or management of port facilities, offshore installations and other marine organisations or establishments;’.</p>	
Amendment of section 31.	<p>4. In section 31 of the principal Act, after clause (a), the following clause shall be inserted, namely:—</p> <p style="padding-left: 40px;">“(aa) the ship identification number;”.</p>	
Insertion of new section 99A.	<p>5. After section 99 of the principal Act, the following section shall be inserted, namely:—</p> <p style="padding-left: 40px;">‘99A. (1) No person shall engage or carry to sea any seafarer in any ship, unless the seafarer is in possession of seafarer’s identity document.</p> <p style="padding-left: 40px;">(2) The seafarer’s identity document under sub-section (1) shall be issued in such form and manner and on payment of such fees as may be prescribed.</p> <p style="padding-left: 40px;"><i>Explanation.</i>—For the purposes of this section, “seafarer” means any person who is employed or engaged or works in any capacity on board a sea going ship ordinarily engaged in maritime navigation, other than a ship of war.’.</p>	
Prohibition of engagement of seafarer without seafarer’s identity document.		
Insertion of new Part IXB.	<p>6. After Part IXA of the principal Act, the following Part shall be inserted, namely:—</p> <p style="text-align: center;">‘PART IXB</p> <p style="text-align: center;">SECURITY OF SHIPS AND PORT FACILITIES</p>	
Application.	<p>344J. (1) Subject to sub-section (2), this Part shall apply to—</p> <p style="padding-left: 40px;">(a) the following types of ships engaged on international voyages, namely:—</p> <p style="padding-left: 80px;">(i) passenger ships including high speed passenger craft;</p> <p style="padding-left: 80px;">(ii) cargo ships including high speed craft of five hundred gross tonnage and above;</p> <p style="padding-left: 80px;">(iii) mobile offshore drilling units:</p> <p style="padding-left: 40px;">Provided that the Central Government may extend the application of this Part to those ships which are exclusively engaged on coastal voyages;</p> <p style="padding-left: 40px;">(b) the port facilities serving ships referred to in clause (a):</p> <p style="padding-left: 40px;">Provided that the Central Government may, after taking decision, on the basis of port facility security assessment having carried out under this Part, extend the application of this Part to those port facilities which, although used primarily</p>	

by ships not engaged on international voyages, are occasionally required, to serve ships arriving or departing on international voyages.

(2) This Part shall not apply to war ships, naval auxiliaries, or other ships owned or operated by the Central Government and used only for non-commercial service by that Government.

344K. In this Part, unless the context otherwise requires,—

Definitions.

(a) “company” means the owner of the ship who, or any organisation which has assumed the responsibility of operation of the ship from the owner of such ship and who or which has agreed to take over all the duties and responsibilities imposed by the International Safety Management Code;

(b) “declaration of security” means an agreement between ships or a ship and a port facility specifying therein the security measures to be complied with;

(c) “designated authority” means such authority as the Central Government may, by notification in the Official Gazette, specify;

(d) “International Ship and Port Facility Security Code” means the code for the security of ships and port facilities provided in the Safety Convention;

(e) “port facility” means any location or area including anchorages or waiting berths or approaches from seaward and determined by the Central Government or the designated authority, as the case may be, where interface between ships or a ship and a port takes place;

(f) “recognised security organisation” means any organisation, company, firm or body of individuals having expertise in matters relating to security and knowledge of ship, and port operations, which or who are authorised by the Central Government by notification in the Official Gazette, to carry out assessment or verification or approval or certification required by this Part or by the International Ship and Port Facility Code;

(g) “security level” means the qualification of the degree of risk associated with the threat or an unlawful act against a ship, or against a port facility or any other area connected therewith;

(h) words and expressions used in this Part but not defined in this Part shall have the respective meanings as assigned to them in the Safety Convention.

344L. (1) **The Central Government or such other authority as may be designated by it shall provide every Indian ship of one hundred gross tonnage and above and every Indian cargo ship of three hundred gross tonnage and above, a ship identification number, which conforms to the relevant scheme formulated by the International Maritime Organisation.**

Ship identification number.

(2) **All the certificates issued under this Act and all certified copies thereof shall bear the ship identification number.**

344M. (1) **The Central Government or the designated authority, as the case may be, shall set security levels and provide information thereof to all the Indian ships, as may be prescribed.**

Security measures.

(2) **The Central Government or the designated authority, as the case may be, shall set security levels and provide information thereof to port facilities within India and to every ship prior to entering an Indian port or while in a port within India, as may be prescribed:**

Provided that the Central Government may authorise any recognised security organisation to carry out any of the security measures under this section, on behalf of it, with such conditions as may be prescribed.

Port facility assessment.	344N. The Central Government shall carry out port facility assessment in the manner as may be prescribed.
Obligations of companies, etc.	344—O. Every company, ship or port facility shall comply with the relevant requirements under the Safety Convention and the International Code for the Security of Ships and Port Facility.
Obligations of port facility.	344P. Every port facility in India shall comply with the requirement of this Part or the rules made thereunder.
International Ship Security Certificate.	344Q. The Central Government or such other authority as may be designated by it shall issue every Indian ship to which this Part applies, an International Ship Security Certificate or an Interim International Ship Security Certificate, as the case may be, in the form and manner as may be prescribed.
Ship Security Alert System.	344R. Every Indian ship shall be provided with such Ship Security Alert System, as may be prescribed.
Control measures.	344S. Every ship to which this Part applies shall be subject to such control measures as may be prescribed.
Power to make rules.	344T. (1) The Central Government may, having regard to the provisions of the Safety Convention, make rules to carry out the purposes of this Part. (2) In particular and without prejudice to the generality of the provisions of sub-section (1), such rules may provide— (a) for alternative or equivalent security levels; (b) fee to be levied for any service rendered; (c) any other matter which by this Part is to be, or may be, prescribed.’.

CHAPTER III

AMENDMENT OF THE INDIAN PORTS ACT, 1908

Insertion of new section 68D of Act 15 of 1908.	7. After section 68C of the Indian Ports Act, 1908, the following section shall be inserted, namely:—
Maritime security.	‘68D. A port facility in India shall comply with all the requirements contained in Chapter IXB of the Merchant Shipping Act, 1958 or the rules made thereunder so far as they are not inconsistent with the provisions of this Act. 44 of 1958. <i>Explanation.</i> —For the purposes of this section, the expression “port facility” shall have the same meaning as assigned to it in Part IXB of the Merchant Shipping Act, 1958.’.

STATEMENT OF OBJECTS AND REASONS

India has ratified the International Convention on Safety of Life at Sea 1974 (SOLAS 1974) on 16th June, 1976 which came into force on 25th May, 1980. This Convention in its successive forms is generally regarded as the most important of all international treaties concerning the safety of merchant ships. The main objective of the SOLAS 1974 is to specify minimum standards for the construction, equipment and operation of ships, compatible with their safety. There are 11 Codes or similar instruments that are made mandatory under SOLAS 1974. Of these, the last Code is the 'International Code for the Security of Ships and Port Facility' (ISPS Code). This Code was adopted as an amendment to SOLAS 1974 by the conference of contracting States on 12th December, 2002, by passing 11 resolutions. Resolution 6 prescribes 1st July, 2004 as the application date for the Code. The objectives of the ISPS Code are to establish an international framework involving co-operation between contracting States, Government agencies, local administrations and the shipping and port industries to detect or assess security threats and take preventive measures against security incidents affecting ships or port facilities used in international trade; to establish the respective roles and responsibilities of all concerned at the national and international level for ensuring maritime security; to ensure the early and efficient collation and exchange of security related information; to provide a methodology for security assessments so as to have in place plans and procedures to react to changing security levels and; to ensure adequate and proportionate maritime security measures. If the ISPS Code is not implemented, it will be difficult for the Indian ships to secure entry in the ports of other contracting States and also for the foreign ships to visit Indian Ports. The present text of the Merchant Shipping Act, 1958 and the Indian Ports Act, 1908 do not contain the provisions addressing the above.

2. With a view to implement the provisions of the ISPS Code, it is proposed to amend the Merchant Shipping Act, 1958 so as to incorporate therein provisions relating to security measures to be adopted by ships and port facilities, ship identification number, port facility assessment, international ship security certificate, ship security alert system, control measures and compliance. India being a major seafarer supplying nation, it is essential to ensure that our seafarers' employment prospects and movements to other countries are not hampered for want of Seafarers' identity document. Accordingly, it is proposed to incorporate necessary provisions in the Bill.

3. Since the implementation of ISPS Code also involves ports, it is proposed to consequentially amend the Indian Ports Act, 1908 so as to facilitate a port facility in complying with the requirements of the maritime security proposed to be included under the new Part IX B of the Merchant Shipping Act, 1958.

4. The Bill seeks to achieve the above objects.

NEW DELHI;
The 17th December, 2004.

T. R. BAALU.

FINANCIAL MEMORANDUM

Clause 6 of the Bill proposes to insert a new Part IX B which makes provision for Ship Identification Number setting security measures, port facility assessment, issuance of International Ship Security Certificate, Ship Security Alert System, Control and compliance measures. In order to implement the above, an expenditure of rupees ten lakhs to two crores are required to be spent in respect of major ports and maritime boards and private ports in India.

Additional infrastructure is also required in terms of manpower, communication facilities, etc. Accordingly, an additional staff of five officers and three support staff are required for Central Government and other hardware and software facilities are also required for data keeping, monitoring etc. The cost of manpower works out to an annual recurring expenditure of rupees twenty-two lakhs twenty thousand and for hardware and software facilities, a non-recurring expenditure of forty lakhs and running cost of approximate rupees twenty-four lakhs per annum, which is a recurring expenditure, are required against the proposed provisions in the Bill.

Besides an expenditure on infrastructure of which rupees four crores as non-recurring expenditure for implementation of the proposals over two to three years is required. The expenditure on infrastructure, manpower and office expenses for the three shipping offices will be around rupees fifty-eight lakhs forty-five thousands per annum which is a recurring expenditure.

The Bill, if enacted, will not incur any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clauses 5 and 6 of the Bill propose to confer power upon the Central Government to make rules for carrying out the provisions of the Bill. The matters in respect of which such rules may be made relate, *inter alia*, to the provision for the issuance of a seafarers' identity document and levying of fees thereof for the purposes of sub-section (1) of the proposed section 99A and to carry out the purposes of the new Part IX B such as, to the extension of application of the said Part to a ship engaged exclusively on coastal voyage; to identify and notify 'designated authority', 'port facility', 'recognised security organisation'; the terms, conditions and duties of 'recognised security organisation'; to set appropriate security levels and to provide information on security levels to Indian ships and port facilities in India and to every ship entering a port in India; to carry out port facility assessments; to the form and manner of issuance of International Ship Security Certificate; to provide Ship Security Alert System; to the control measures for the requisition of information from ships before entering an Indian Port and detention, exclusion thereof for non-compliance; to the provision for alternative or equivalent security levels; and to the fees to be charged for any service rendered.

2. The rules to be made by the Central Government shall be laid, as soon as may be, after they are made, before each House of Parliament.

3. The matters in respect of which rules may be made are general matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE MERCHANT SHIPPING ACT, 1958

(44 OF 1958)

An Act to foster the development and ensure the efficient maintenance of an Indian mercantile marine in a manner best suited to serve the national interests and for that purpose to establish a National Shipping Board to provide for the registration of Indian ships and generally to amend and consolidate the law relating to merchant shipping.

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Definitions.

3. In this Act, unless the context otherwise requires,—

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Entry of particulars in register book.

31. As soon as the requirements of this Act preliminary to registry have been complied with, the registrar shall enter in the register book the following particulars in respect of the ship:—

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further to amend the Merchant Shipping Act, 1958 and the
Indian Ports Act, 1908.

(Shri T. R. Baalu, Minister of Shipping, Road Transport and Highways)

MGIPMRND—3793LS—(S1)—21-12-2004.