



news flash

August 2013



PROPOSED AMENDMENTS TO THE MERCHANT SHIPPING ACT, 1958

The Merchant Shipping Act 1958 (“**Act**”) was enacted to ensure development and efficient maintenance of the Indian mercantile marine in a manner best suited to serve the national interest. Since its enactment, the Act has been amended from time to time to give effect to the provisions of the various International Conventions and Protocols adopted by the International Maritime Organization (“**IMO**”) to which India has acceded. Of the 55 IMO conventions, India has so far ratified 33.

The Indian Shipping Industry now intends to endorse two more IMO Conventions: International Convention for the Control of Harmful Anti-Fouling Systems on Ships, 2001 (“**AFS Convention, 2001**”) and the Maritime Labour Convention, 2006 (“**ML Convention 2006**”). For this purpose, the Merchant Shipping (Amendment) Bill, 2013 and the Merchant Shipping (Second Amendment) Bill, 2013 were introduced in the Parliament on 18th March 2013 and 19th August 2013 respectively.

The detailed provisions of these Conventions and the amendments proposed to the Act have been detailed below:

AFS CONVENTION 2001

The AFS Convention aims at protecting the marine environment and human health from the adverse consequences of the use of listed harmful anti-fouling systems. These harmful substances in anti fouling systems have proven to cause deformations in aquatic environment and as well harm human health. The AFS Convention, therefore, prohibits and seeks to put in place a mechanism to prevent the use of harmful substances in anti-fouling system.

The reasons for the amendments in the Act are two-fold:

- i. To enable the Government of India or its agencies to give effect to the AFS Convention, 2001 and
- ii. To enable the maritime administration to meet the operation requirements.

August 2013

Under the provisions of the Merchant Shipping (Amendment) Bill, 2013, all Indian flag vessels having 400 gross tonnage or more, engaged in international voyages, would be issued with an 'International Anti-Fouling System Certificate', after due verification.

The proposed amendment would enable India to ensure that all foreign flag vessels entering the Country's territorial waters, or any marine areas adjacent thereto over which India has, or may hereafter have, exclusive jurisdiction in regard to control of pollution under any law for the time being in force, are duly certified in accordance with the requirement of the AFS Convention 2001. The Bill also provides for the levy of the penalty for noncompliance of the provisions of the Convention. Moreover the Director General of Shipping has been given the power to enforce deterrent measures, including detention of a ship as well.

Some of the salient features of the amendments proposed are as follows:

- i. The new Part XIB proposed to be introduced would apply to every Indian ship and ships operating under the authority of India. The provisions would not apply to warships, naval auxiliary ships and non commercial ships on Government service;
- ii. The Central Government shall prescribe rules to control wastes from anti fouling systems, their removal, collection, treatment and disposal to protect human health and environment;
- iii. The waste collected from the vessel will need to be collected and disposed off. During disposal, it will need to be ensured that no harm is caused to the marine life.
- iv. A surveyor or any person authorized by the Director General of Shipping may inspect any ships to ensure that the obligations are complied with.

ML CONVENTION 2006

The ML Convention, 2006 is considered as the 'Bill of Rights' for the seafarers across the world. The ML Convention, 2006 provides for international standards for the living and working conditions of seafarers, including their food, accommodation, medical care, repatriation, social security, and recruitment. The convention "aims to achieve both, decent work for seafarers and secure economic interests in fair competition for quality ship owners."

Under the provisions of the Merchant Shipping (Second Amendment) Bill, 2013, every Indian flag vessel of 500 gross tonnage or more and engaged in international voyage(s), would be issued with a Maritime Labour Certificate after an inspection of the ship concerned. This Maritime Labour Certificate will enable them to get preferential treatment and exemption from inspection at foreign ports thereby reducing operational and transaction costs and time. The shipping master, surveyor, seamen's welfare officer, port health officer, Indian consular officer or any other officer at any port duly authorized in this behalf by the Central Government, may inspect

August 2013

any ship, and the master of the ship or any person having charge over the ship shall make available to such inspecting officer, the Maritime Labour Certificate and the Declaration of Maritime Labour Compliance.

The Merchant Shipping (Second Amendment) Bill, 2013 also contains provisions pertaining to:

- i. The hours of work; rest and entitlement for leave.
- ii. Standards for the quantity and quality of food and drinking water on board.
- iii. Educational activities to promote awareness and implementation of the standards.
- iv. No person under the age of sixteen years shall be engaged or carried to sea to work in any capacity in any ship.

India will also be able to ensure that all foreign flag vessels entering the territorial waters of India, over which India has or may have exclusive jurisdiction are subject to an inspection under the ML Convention, by which the rights of all seafarers are protected, regardless of their nationality.

CONCLUSION

In view of the constant efforts being made to ensure uniformity and improvement in the conditions of seafarers and with a view to ensure growth of the shipping industry, whilst not degrading the marine environment, it would be beneficial if the proposed amendments are passed.

It is believed that India's ratification to the AFS Convention, 2001 and the consequent amendments to the Act will benefit the Indian Shipping industry in several ways:

- i. India will be able to enforce the AFS Convention requirements on the foreign flag ships treading in its coastal waters and will be able to take action on the non-compliant foreign ships;
- ii. Marine fisheries will be more sustainable and sea food production will be further enhanced; and
- iii. It will enable implementation of relevant records required to be maintained on board the ships.

On ratification of the MLC, 2006 and the consequent amendments to the Act, Indian national seafarer will enjoy the following benefits:

- a safe and secure workplace that complies with safety standards
- fair terms of employment
- decent working and living conditions on board the ship
- health protection, medical care, welfare measures and other forms of social protection

news flash

August 2013

Disclaimer

This news flash has been written for the general interest of our clients and professional colleagues and is subject to change. This newsflash is not to be construed as any form of solicitation. It is not intended to be exhaustive or a substitute for legal advice. We cannot assume legal liability for any errors or omissions. Specific advice must be sought before taking any action pursuant to this news flash.

For further clarification and details on the above, you may write to our Admiralty and Maritime team comprising of (amongst others) Gautam Bhatikar (Partner) at gbbhatikar@almtlegal.com, Rujuta Joshi (Senior Associate) at rjoshi@almtlegal.com, Krushi Barfiwala (Associate) at kbarfiwala@almtlegal.com and Shreyans Ghia (Paralegal) at sghia@almtlegal.com.

ALMT Offices

Mumbai:

4th Floor, Express Towers,
Nariman Point,
Mumbai 400-021
India
Tel: +91 22 4001 0000
Email: mumbai@almtlegal.com

Bangalore:

2 Lavelle Road,
Bangalore 560 001
India
Tel: +91 80 4016 0000
Email: bangalore@almtlegal.com

New Delhi:

506 DLF Place Mall Office,
Block District Centre,
Saket, New Delhi 110 017
India
Tel: +91 11 4944 5566
Email: delhi@almtlegal.com

London

330, High Holborn,
1st Floor
London WC1V 7QT
United Kingdom
Tel: +44 20 7203 6707
Email: london@almtlegal.com