This diagram can be found in the Survey Guidelines cited in Paragraph 7.10 above.

Dated the 22nd May, 2014.

M. S. M. KAMAU,
Cabinet Secretary for Transport and Infrastructure.

LEGAL NOTICE NO. 90
THE MERCHANT SHIPPING ACT, 2009
(No. 4 of 2009)
THE MERCHANT SHIPPING (CASUALTY REPORTING AND INVESTIGATION) REGULATIONS 2014
ARRANGEMENTS OF THE REGULATIONS
1—Short Title and Commencement.
2—Interpretation.
3—Meaning of Accident.
4—Application.
5—Objective of investigation.
6—Duty to report casualties, dangerous occurrences and serious injuries.
7—Ordering of investigation.
8—Subsequent or re-opened investigations.
9—Preservation of evidence.
10—Conduct of investigation.
11—Disclosure of records.
12—Reports of investigations.
13—Summary of inquiry.
14—Recommendations.
15—Extension of time.
16—Service of documents.
17—Penalties.
18—Director-General may impose fine upon admission of guilt.

THE MERCHANT SHIPPING ACT, 2009
(No. 4 of 2009)

IN EXERCISE of the powers conferred by section 8(1) and 8(2) (e) as read with section 424 of the Merchant Shipping Act, the Minister for Transport makes the following regulations—

MERCHANT SHIPPING (CASUALTY REPORTING AND INVESTIGATION) REGULATIONS 2014

1. These Regulations may be cited as the Merchant Shipping (Marine Casualty Reporting and Investigation) Regulations, 2014.

2.(1) In these Regulations, unless the context otherwise requires—
"access" means the process of embarking on or disembarking from a ship, by whatever means employed;
"Board" means a Board appointed by the Minister to conduct formal investigation pursuant to section 421(2) of the Act;
"Cabinet Secretary" means the Cabinet Secretary responsible for transport;
"marine casualty" means accident;
"Director-General" means the Director-General of the Kenya Maritime Authority;
"disabled" in relation to a vessel means not under command for a period of more than 12 hours, or for any lesser period where, as a result, the vessel needs assistance to reach port;
"grounding" means making involuntary contact with the ground, except for touching briefly so that no damage is caused, and "goes aground" shall be construed accordingly;
"hazardous incidents" means any event, other than an accident, associated with the operation of a ship which involves circumstances indicating that an accident nearly occurred;
"incapacity" means inability to undertake the full range of activities normally undertaken;

"Inspector" means the inspector of marine accidents appointed by the Director-General under section 421 of the Act, and any deputy inspector;

"inquiry" means a formal investigation in terms of section 422 of the Act;

"major injury" means -
(a) any fracture, other than to the fingers or toes;
(b) any loss of a limb or part of a limb;
(c) dislocation of the shoulder, hip, knee or spine;
(d) loss of sight (whether temporary or permanent);
(e) penetrating injury to the eye; or
(f) any other injury -
   (i) leading to hypothermia or to unconsciousness;
   (ii) requiring resuscitation; or
   (iii) requiring admittance to a hospital or to an offshore sick-bay for more than 24 hours or, where at sea, requiring confinement to bed for more than 24 hours;

"Maritime Safety Administration" means the Kenya Maritime Authority;

"preliminary inquiry" means the initial part of an investigation which may be held to establish the causes and circumstances of an accident with a view to deciding whether any further investigation is warranted;

"senior surviving officer" means the senior surviving officer in the deck department and if there is no surviving officer in the deck department, the senior surviving officer engineer officer;

"serious injury" means an injury, other than a major injury, to a person employed or carried in a Kenyan ship which occurs on board or during access which results in incapacity for more than three consecutive days excluding the day of the accident, or as a result of which the person concerned is put ashore and the ship sails without him, unless the incapacity is known or advised to be of three consecutive days or less excluding the day of the accident;

"ship's boat" includes a life raft, painting punt and any boat normally carried by a ship;

"voyage data recorder" means the electronic or mechanical equipment which may be installed on a ship to record key navigational and control information.

(2) Where a ship is managed by a person other than her owner or some other person or on his own behalf, a reference in these Regulations to the owner shall be construed as including a reference to that person.
3. For the purposes of these Regulations and of section 421 of the Act, "accident" means any occurrence on a ship or involving a ship whereby—

(a) there is loss of life or major injury to any person on board, or any person is lost or falls overboard from, the ship or one of its ship's boats;

(b) a ship—

(i) causes any loss of life, major injury or material damage,
(ii) is lost or presumed to be lost,
(iii) is abandoned;
(iv) is materially damaged by fire, explosion, weather or other cause;
(v) grounds,
(vi) is in collision,
(vii) is disabled, or
(viii) causes significant harm to the environment; or

(c) any of the following occur: -

(i) a collapse or bursting of any pressure vessel, pipeline or valve;
(ii) a collapse or failure of any lifting equipment, access equipment, hatch-cover, staging or boatswain's chair or any associated load-bearing parts;
(iii) a collapse of cargo, unintended movement of cargo or ballast sufficient to cause a list, or loss of cargo overboard;
(iv) a snagging of fishing gear which results in the vessel heeling to a dangerous angle;
(v) a contact by a person with loose asbestos fibre except when full protective clothing is worn; or
(vi) an escape of any harmful substance or agent,

where the occurrence, taking into account its circumstances, might have caused serious injury to the health of any person.

4. (1) These Regulations shall apply to accidents involving or occurring on board—

(a) any Kenyan ship, except that Regulation 6 shall not apply in relation to—

(i) a pleasure vessel,
(ii) a recreational craft which is hired on a bareboat basis, or
(iii) any other craft or boat, other than one carrying passengers, which is in commercial use in a harbour or in an inland waterway and is less than eight (8) metres overall in length.
unless in case of a craft or a boat mentioned in sub paragraph (ii) and (iii) the accident involved any of the following—

(aa) explosion,

(bb) fire,

(cc) death,

(dd) major injury,

(ee) capsize of a power-driven craft or boat, or

(ff) pollution causing significant harm to the environment; and

(b) any other ship within Kenya or Kenyan waters save that regulation 6 and 9 (1) to (3) shall only apply to such a ship if:

a) the ship is within a port in Kenya;

b) the ship is employed in carrying passengers to or from a port in Kenya;

c) an inspector or other person acting on his behalf, requires that any of the evidence mentioned in regulation 9(1) or (2) be preserved.

(2) These Regulations shall apply in respect of serious injuries and hazardous incidents as they apply to accidents except that:

(a) regulation 6 (with the exception of paragraph (5)) and regulation 9 shall not apply to serious injuries; and

(b) regulation 6 and 9 shall not apply to hazardous incidents.

(3) For the purpose of this regulation, “hired on a bareboat basis” means hired without a professional master, skipper or crew.

5. (1) The sole objective of the investigation of an accident under these Regulations shall be the prevention of future accidents through the ascertainment of its causes and circumstances.

(2) It shall not be the purpose of an investigation to determine liability nor, except so far as is necessary to achieve its objective, to apportion blame.

6. (1) When an accident occurs the following persons associated with the ship shall send a report to the Authority as soon as is practicable following the accident and by the quickest means available:—

(a) the master or, if he has not survived, the senior surviving officer, and

(b) the ship’s owner, unless he has ascertained to his satisfaction that the master or the senior surviving officer has reported the accident in accordance with paragraph (a).

(2) In addition to any report made under subregulation (1), the following persons shall report to the Authority as soon as is practicable and by the quickest means available any accident of which they are aware—

(a) in the case of an accident within or adjacent to the limits if any port, the port authority for that port;
(b) in the case of an accident on any inland waterway in Kenya, the person, Authority or body having responsibility for that waterway; or

(c) an official of the Authority in respect of an accident within Kenyan waters.

(3) A person making a report pursuant to subregulation (1) or (2) shall in so far as is practicable include the following information—

(a) the name of ship and IMO, official or fishing vessel number;

(b) the name and address of the owner;

(c) the name of master, skipper or person in charge;

(d) the date and time of the accident;

(e) where from and where bound;

(f) the latitude and longitude or geographical position in which the accident occurred;

(g) the part of the ship where accident occurred if on board;

(h) the weather conditions;

(i) the name and port of registry of any other ship involved;

(j) the number of people killed or injured, together with their names, addresses and gender;

(k) brief details of the accident, including, where known, the sequence of events leading to the accident, extent of damage and whether the accident caused pollution or a hazard to navigation;

(l) if the ship is fitted with a voyage data recorder, the make and model of the recorder.

(4) In addition to making a report under the preceding subregulations, the persons specified in subregulation (1) shall, so far as is reasonably practicable ensure that the circumstances of every accident are examined and that a report giving the findings of such examination stating any measures taken or proposed to prevent a recurrence, shall be provided to the Authority as soon as is practicable.

(5) The master and the ship’s owner shall, so far as is reasonably practicable, ensure that the circumstances of every serious injury are examined and one of them shall, within fourteen days, provide the Authority with a report giving the findings of such examination and stating any measures taken or proposed to prevent a recurrence.

(6) This regulation shall not apply—

(a) to an accident when the person killed or injured is a stevedore or shore-based worker and the accident occurs in a port in Kenya; or

(b) to an accident which occurs in a shipyard in Kenya.
(7) No report made under this regulation shall be admissible in evidence against the maker in any proceedings except proceedings in pursuance of these regulations.

7. (1) The Director-General may cause a preliminary inquiry into the accident to be held.

(2) Where a report has been received under subregulations (1), (2), (4) or (5) of regulation 6, the Director-General shall decide whether or not a preliminary inquiry should be carried out and shall notify the parties to the accident of his decision within 14 days following receipt by him of the report.

(3) Before deciding whether a preliminary inquiry should be carried out and if so, what form it should take, the Director-General may cause to be obtained such information as he considers necessary concerning the accident and any remedial action taken as a result, and any person mentioned in regulation 6(1) or (2), as well as any other person who is in possession of it and has been requested to do so by an inspector, shall provide such information to the best of their ability and knowledge.

(4) In the case of an accident to which regulation 3(1)(a) applies, the Director-General may decide not to carry out a preliminary inquiry if he is satisfied, or it is otherwise established to his satisfaction, that—

(a) any loss of life resulted from suicide or natural causes, or
(b) any major injury resulted from attempted suicide, and in such circumstances he may discontinue any inquiry which has already been commenced.

(5) Public notice that a preliminary inquiry has commenced may be given in such manner as the Director-General may think fit, and may invite any persons who so desire to present relevant evidence to the Inspector in such a manner and within such a time as is specified in the notice.

(6) The Cabinet Secretary may cause a formal investigation to be held by a Board appointed for that purpose.

(7) The board appointed under subregulation (1) may be required to investigate any accident or to expand the scope of an investigation to include any further consequences of an accident, including—

(a) salvage and pollution aspects; or
(b) the conduct of search and rescue operations,

and in such circumstances the Board may conduct an investigation into the further consequences of an accident which may be separate and distinct from the investigation into the initial accident.

8.(1) Notwithstanding a decision by the Director-General under regulation 7(2) not to investigate by way of a preliminary inquiry, the Director-General may at any subsequent time cause an investigation to be carried out if he is then satisfied there is good reason in the interests of future safety to do so.

(2) The Director-General may cause any investigation to be reopened if, following its completion, and in his opinion, new and important evidence is discovered which could have a material effect on any safety recommendations made.
(3) Any investigation may be re-opened either in whole or in part and a re-opened investigation shall be subject to and conducted in accordance with the provisions of these Regulations.

9.(1) Following an accident involving a Kenyan ship which is reportable under regulation 6, the persons referred to in subregulation (3) shall so far as is practicable ensure that—

(a) all charts;
(b) all log books;
(c) all electronic and magnetic recording and video tapes, including information from a voyage data recorder or recording system relating to the period preceding, during and after the accident; and
(d) all documents or other records which might reasonably be considered pertinent to the accident are kept and that no alteration is made to any recordings or entries in them.

(2) In the case of an accident involving a Kenyan ship, the persons mentioned in subregulation (3) shall in addition to subregulation (1), ensure that—

(a) all information from a voyage data recorder or recording system relating to the circumstances of an accident is saved and preserved, in particular by taking steps, where necessary, to prevent such information from being overwritten; and
(b) any other equipment which might reasonably be considered pertinent to the investigation of the accident is so far as practicable left undisturbed.

(3) The persons referred to in subregulations (1) and (2) are—

(a) the master or, if he has not survived, the senior surviving officer, and
(b) the ship’s owner, unless he has ascertained to his satisfaction that the master or senior surviving officer has taken the action in question.

(4) The duty under subregulation (1) to ensure that documents, information or records are kept and not altered and to ensure under subregulation (2) that information is saved and preserved, or that equipment is left undisturbed, shall continue until—

(a) notification is received from the Director-General that no investigation is to take place or that the investigation has been completed;
(b) 14 days have passed since the Director-General received the report referred to in regulation 6(1) and no notice has been sent by the Director-General that he has decided to investigate the matter; or
(c) the Director-General or an inspector carrying out the investigation gives written notification that he no longer requires them.
(5) Following an accident in Kenyan waters involving a ship which is not a Kenyan ship, the persons mentioned in subregulation (3) shall comply with the requirements of subregulations (1) and (2) if requested to do so by or on behalf of the Director-General.

(6) An inspector may, pending investigation, prohibit persons from gaining access to, or interfering with, any ship, ship's boat or other equipment involved in an accident.

(7) Following an accident, the Director-General may, if he considers it reasonably necessary for the collection or preservation of evidence in connection with any investigation, including preliminary examination, relating to the accident, require any of the master or, if he has not survived, the senior surviving officer and the ship's owner to ensure that a ship is accessible within Kenyan waters to any inspector or members of the board engaged in the preliminary inquiry or investigation of such accident, until the process of collecting or preserving the evidence has been completed to the satisfaction of the inspector or the board.

(8) The Director-General shall not require a ship to remain in Kenyan waters any longer than is necessary for the collection or preservation, as the case may be, of the evidence mentioned in subregulation (7) and shall take all reasonable steps to ensure that such evidence is collected or preserved expeditiously.

(9) No requirement under subregulation (7) shall be made unless the Director-General has reasonable grounds for concern that if the ship leaves Kenyan waters, access to it, to any member of the crew, or to any evidence on board relating to the investigation may subsequently be denied to him or any inspector or members of the Board conducting such investigation.

10. (1) If the Director-General decides pursuant to regulation 7(1) that a preliminary inquiry shall be carried out, it shall be undertaken by an inspector and one or more deputy inspectors at such times and places and in such manner as appear to them most conducive to achieving the objective set out in regulation 5.

(2) The Director-General may in addition to subregulation (1) appoint one or more persons who are not inspectors appointed under the Act for the purpose of carrying out a preliminary inquiry in circumstances where inspectors appointed under the Act are not conveniently available or where the persons appointed have special qualifications or experience, and such persons shall have the powers conferred on an inspector by section 411 of the Act.

(3) An investigation or a preliminary inquiry may extend to cover all events and circumstances preceding the accident together with subsequent events and circumstances which in the opinion of an inspector may have been relevant to its cause or outcome.

(4) Any person, not being an advocate of the High Court of Kenya or other professional legal adviser acting solely on behalf of the person required to attend, who—

(a) is allowed by an inspector to be present; or

(b) is nominated to be present by a person required to attend at an oral examination before an inspector,
may at any time be excluded from being present by the inspector with the agreement of the Director-General, if-

(i) both the inspector and Director-General have substantial reason to believe that his presence would hamper the investigation with the result that the objective in regulation 5 is likely to be hindered and future safety thereby endangered; and

(ii) the Director-General is satisfied, having regard to all the circumstances, that it is proper to exclude that person.

(5) Where a person nominated to be present has been excluded in accordance with subregulation (4), the person required to attend shall be entitled to nominate another person to be present at the oral examination in place of the excluded person and subregulation (4) shall then apply to that other person.

(6) Any document, record or information mentioned in regulation 9, properly required by an inspector to be produced for the purposes of an inquiry (whether on board the ship involved or otherwise), may be retained by him until the inquiry is completed.

(7) In relation to any investigation-

(a) where a preliminary inquiry has been conducted the Director-General may decide, having regard to the objective set out in regulation 5, whether it is appropriate in all the circumstances to conduct further investigation leading to publication of a report;

(b) the Director-General may subsequently make recommendation to the Cabinet Secretary to appoint a Board to undertake formal investigations.

11. (1) Subject to the following paragraphs, the names, addresses or any other details of anyone who gives evidence to an inspector shall not be disclosed.

(2) The following documents or records shall not be made available for purposes other than the investigation, unless a court orders otherwise:-

(a) subject to subregulation (3), all declarations or statements taken from persons by an inspector or supplied to him in the course of his inquiry, together with any notes or voice recordings of interviews;

(b) medical or confidential information regarding persons involved in an accident;

(c) any report made under regulation 6(4) or (5);

(d) copies of the report other than the final report except as mentioned in regulation 12 (3) (a), (4), or (8).

(3) A person who gives a declaration or statement to an inspector in the course of an inquiry may make available a copy of his declaration or statement to another person as he sees fit.
(4) Any independent technical analysis commissioned by the Director-General and opinions expressed in such analysis may be made publicly available if the Director-General it appropriate to do so.

(5) Subject to subregulation (6), no order shall be made under paragraph (2) unless the Court is satisfied, having regard to the views of the Director-General, that the interests of justice in disclosure outweigh any prejudice, or likely prejudice, to-

(a) the investigation into the accident to which the document or record relates,

(b) any future accident investigation undertaken in Kenya, or

(c) relations between Kenya and any other State, or international organization.

(6) The provisions of this regulation shall be without prejudice to any rule of law which authorises or requires the withholding of any document or record or part thereof on the ground that disclosure of it would be injurious to the public interest.

(7) Copies of information obtained from a voyage data recorder or from other recording systems, pertinent to the accident, including voice recordings (other than any recordings mentioned in subregulation (2)(a)), video recordings and other electronic or magnetic recordings and any transcripts made from such information or recordings, may be provided at the discretion of the Director-General to the police or other official authorities.

12. (1) Subject to subregulation (3), the Board shall cause a report of an investigation into an accident conducted pursuant to regulation 10 (7) (a) and (b), other than an accident the investigation of which is being undertaken on behalf of a State other than Kenya, to be submitted to the Cabinet Secretary who shall make the report publicly available in the shortest time possible and in such a manner as he thinks fit.

(2) The report submitted under subregulation shall set out-

(a) conclusions relating to the facts of the accident;

(b) where the facts cannot be clearly established, analysis and professional judgment to determine the probable facts; and

(c) recommendations for future safety

(3) the Minister shall not make the report publicly available until he has-

(a) served a notice under this regulation upon any person who, or organization which, could be adversely affected by the report or, if that person is deceased, upon such person or persons as appear to the Minister, at the time he proposes to serve notice pursuant to this paragraph, as best to represent the interests and reputation of the deceased in the matter, and

(b) considered the representations relating to the facts or analysis contained in the report which may be made to him in accordance with paragraph (5) by or on behalf of the persons served with such notice, and amend the report in such manner as he thinks fit.
(4) The notice referred to in subregulation (3)(a) shall be accompanied by a draft copy of the report.

(5) The representations referred to in subregulation (3)(b) shall be in writing and shall be served on the Minister within 28 days of service of the notice referred to in paragraph (3)(a) or within such further period as may be allowed under regulation 15.

(6) Subject to any Court order under regulation 11, no person shall disclose any information—

(a) which has been furnished to him pursuant to subregulation (4) of this regulation; or

(b) which has otherwise been furnished to him by or on behalf of the Cabinet Secretary in advance of the publication of a report and whose confidentiality is protected by regulation 11,

or permit such information to be disclosed, save with the prior consent in writing of the Cabinet Secretary, to any other person, except to such advisers as are necessary in order to make representations to the Cabinet Secretary, referred to in subregulation (3)(b), and those advisers shall similarly be subject to the duty not to disclose the information or permit it to be disclosed.

(7) A copy of the report when made publicly available shall be given by the Cabinet Secretary to—

(a) any person who has been served with a notice pursuant to subregulation (3)(a);

(b) the persons or bodies to whom recommendations have been addressed in that report;

(c) the Director-General;

(d) the International Maritime Organisation; and

(e) any other person or organization whom the Cabinet Secretary considers may find the report useful or of interest.

(8) Where an inquest or inquiry into a fatal accident is to be held following an accident which has been the subject of an investigation, a draft report may be made available in confidence to the presiding officer having the conduct of the inquest by the Cabinet Secretary.

(9) If any part of the report or analysis in the draft report is based on information obtained pursuant to an inspector’s powers under Section 411 of the Act, the report shall be inadmissible in any judicial proceedings whose purpose or one of whose purposes is to attribute or apportion liability or blame unless a Court or tribunal, having regard to the factors mentioned in regulation 11(5)(b) or (c), determines otherwise.

(10) In this regulation, “judicial proceedings” includes any civil or criminal proceedings before any court, tribunal or person having by law the power to hear, receive and examine evidence on oath.
13. (1) The Director-General may, at his discretion and to implement any lessons learned, from time to time publish a collective summary report of inquiry into accidents which have not been the subject of a report published under regulation 12(1).

(2) Upon application, a copy of the report, or extracts thereof, of any accident which has been the subject of an inquiry may be made available to any person requesting it who satisfies the Director-General of his legitimate interest.

(3) A summary shall not be published or otherwise made available where prosecution against any person in connection with the subject accident has begun, unless the Director-General is satisfied that nothing in its content would prejudice a fair trial.

(4) The Director-General may submit a report to the Cabinet Secretary on any matter arising from his analysis of marine accident inquiry.

14. (1) The Director-General may as a result of one or more investigations, whether or not completed, at any time make recommendations as to how future accidents may be prevented.

(2) The actions recommended shall be addressed to those persons or bodies who, in the opinion of the Director-General, are most fitted to implement them.

(3) Recommendations shall be made publicly available if the Director-General considers that to do so is in the interests of safety or preventing pollution.

(4) Any person to whom a recommendation is addressed pursuant to subregulation (2) shall, without delay—

(a) take that recommendation into consideration;

(b) send to the Director-General—

(i) details of the measures, if any, he has taken or proposes to take to implement the recommendation and, in a case where he proposes to implement measures, the timetable for securing that implementation, or

(ii) an explanation as to why the recommendation is not to be the subject of measures to be taken to implement it,

and any details or timetable pursuant to sub-paragraph (i) or explanation pursuant to sub-paragraph (ii) shall be provided to the Director-General within 28 days following receipt of the recommendation; and

(c) give notice to the Director-General if at any time any information provided to the Director-General in pursuance of sub-paragraph (4)(b)(i) concerning the measures he proposes to take or the timetable for securing their implementation is rendered inaccurate by any change of circumstances.

(5) Subject to subregulations (6) and (7) the Director-General shall, annually or at such other intervals as he sees fit, make information publicly available in respect of the matters, including any explanation, mentioned in subregulation (4)(b) and (c) which have been communicated to him and shall inform the Cabinet Secretary of those matters.
(6) The Director-General shall not publish information under paragraph (5) unless he has first notified any person mentioned in the information and considered any representations relating to the information which may be made to him in accordance with subregulation (7) by or on behalf of any person so notified, and amended the information in such manner as he thinks fit.

(7) Any representations made pursuant to subregulation (6) shall be in writing and shall be served on the Director-General within twenty-eight days of receipt of the notification referred to in that subregulation or within such further period as may be allowed under regulation 15.

15. (1) The Cabinet Secretary shall have the power to extend the period of twenty-eight days prescribed in regulation 12(5), but shall do so only if he considers that there are good reasons warranting such an extension, having regard to the requirement in regulation 12(1) for a report of an investigation to be made available in the shortest time possible.

(2) The Director-General may extend the period of twenty-eight days prescribed in regulation 14(7) where he considers it appropriate to do so.

(3) The powers under this regulation may be exercised notwithstanding that the prescribed period has expired.

16. Any notice or other document required or authorized by any provision of these Regulations to be served on or given to any person may be served or given:

(a) by delivering it to that person;

(b) by leaving it at his usual or last-known residence or place of business, whether in Kenya or elsewhere;

(c) by sending it to him by post at that address; or

(d) by sending it to him at the address by telex, facsimile, or other means which produces a document containing a text of the communication, or by electronic mail in which event the document shall be regarded as having been served when it is sent.

17. (1) A person shall commits an offence if—

(a) being a person mentioned in regulation 6(1), (2)(a) or (b), he fails without reasonable cause to report an accident as required by regulation 6, or

(b) being a master or ship's owner, he fails without reasonable cause to comply with regulation 6(5), or

(c) being a person referred to in paragraph (a), he fails without reasonable cause to provide information as required by regulation 7(3), or

(d) he falsely claims to have any additional information or new evidence pertaining to any accident or serious injury, and
such person shall be liable upon conviction to a fine not exceeding two hundred thousand or to imprisonment for a person not exceeding two years or both such fine and imprisonment.

(2) If any person fails without reasonable cause to comply with any requirement, duty or prohibition in regulation 9(1), (2) or (5) to (7), such person commits an offence and shall be liable upon conviction to a fine not exceeding a fine not exceeding five hundred thousand or to imprisonment for a period not exceeding five years or both such fine and imprisonment.

If any person without reasonable cause discloses or permits to be disclosed any information in contravention of regulations 11(1) or 12(6), or makes available any documents or records in contravention of regulation 12(2), such person commits an offence and shall be liable upon conviction to a fine not exceeding two hundred thousand shillings or to imprisonment for a period not exceeding two years or both such fine and imprisonment.

18.(1) If any person—

(a) admits to the Director-General that he has failed to comply with any provision of these regulations or the Act, or that he has failed to comply with any such provision with which it was his duty to comply;

(b) agrees to abide by the decision of the Director-General; and

(c) deposits with the Director-General such sum as may be required of him, but not exceeding the maximum fine which may be imposed upon conviction for the failure to comply in question,

the Director-General may, after such an enquiry as it deems necessary, determine the matter summarily and may, without legal proceedings, order by way of a penalty the whole or any part of the said deposit to be forfeited.

(2) There shall be the right of appeal to the Cabinet Secretary from a determination or order by the Director-General under sub-regulation (1) whereby a penalty exceeding fifty thousand shillings is imposed, provided such right is exercised within a period of three months from the date of such determination or order.

(3) The imposition of a penalty under sub-regulation (1) shall not be deemed to be a conviction of a criminal offence, but no prosecution for the relative offence shall thereafter be competent.

(4) Nothing in this regulation shall in any way affect liability to forfeiture of ships, shares therein or goods.

Made on the 22nd May, 2014.

M.S.M. KAMAU,
Cabinet Secretary for Transport and Infrastructure.