

## **P&I ASSOCIATES (PTY) LTD**

### **SOLAS VI Regulation 2 Amendment: Verification of the Gross Mass of Packed Containers**

#### **SOUTH AFRICA**

South Africa has now signed and accepted into Law the SOLAS VI Regulation 2 Amendment: Verification of the Gross Mass of Packed Containers.

We attach Marine Notice No. 18 of 2016 which incorporates the regulation into South African Law under our Merchant Shipping Act of 1951 and the Merchant Shipping Cargo Stowage Regulations of 2004.

The SOLAS amendment places the responsibility of providing verified gross mass of a packed container on the shipper, prior to it being loaded on board a ship.

The main principles of the guidelines are as follows:

a. The shipper is responsible for obtaining and providing the verified gross mass of a packed container;

and

b. A container partially or fully packed should not be loaded onto a ship to which the SOLAS Convention applies unless the Master or his representative and the terminal representative have obtained, in advance of a vessel loading, the verified actual gross mass of the container.

The SOLAS requirements regarding the verified gross mass of a container carrying cargo (SOLAS regulations VI/2) are expected to enter into force in South Africa in July 2016.

The South African Maritime Safety Authority (SAMSA), an agency of the Department of Transport, and they will enforce the amended SOLAS requirements and Merchant Shipping Carriage of Cargo Regulations through:

- Port State Control Inspections;
- Ad hoc inspections;
- Continuous auditing of SAMSA appointed third parties; and
- Reporting of non-conforming containers and/or cargo information by third parties.

Breach of the regulations will result in penalties.

The Merchant Shipping Carriage of Cargoes Regulations, 2004 states the following:

- Cargo information

*“5. (6) Every shipper or forwarder commits an offence who—*

*(a) fails to provide appropriate cargo information as required by this regulation;*

*(b) furnishes cargo information that he or she knows to be false; or*

*(c) recklessly furnishes cargo information that is false”*

- Penalties and Defences (as amended)

15. (1) *A person who commits an offence in terms of these regulations is liable on conviction to a fine or to imprisonment for a period not exceeding 12 months*

(2) *In proceedings for an offence in terms of these regulations it is a defence to prove that the accused took reasonable precautions and exercised due diligence to avoid the commission of the offence.*

If SAMSA or one of the appointed third parties identifies that a shipper has mis-declared the gross mass of a packed container, SAMSA may:

- Require that the SAMSA appointed third party suspend or revoke the shipper's approval. It will then be necessary for the shipper to use Method 1 (set out in the attached Marine Notice) to verify the gross mass of a packed container; and/or
- Require an Admission of Contravention to be signed and paid, failing which, the alleged contravention will be prosecuted.

The Marine Notice also sets out the requirements for shippers domiciled in South Africa, and for shippers domiciled outside of South Africa and these requirements must be met failing which the shippers can be prosecuted.

Shippers that are domiciled in countries that are not signatories to the SOLAS convention, that ship cargo through South African ports, will have to comply with the SOLAS Regulations and by providing the verified gross mass of the container using Method 1 or Method 2 as set out in the Marine Notice. Reference should be made to the relevant provisions contained in sections 11 and 12 of the marine notice. A container may not be loaded onboard a vessel if the verified gross mass has not been provided.

The Marine Notice also provides guidance with regard to any discrepancies in gross mass and in order to prevent potential delays and congestion in the port, the Master or his representative and the terminal representative may obtain the verified gross mass of the packed container on behalf of the shipper. The verified gross mass so obtained should be used in the preparation of the shiploading plan. Whether and how to do this should be agreed between the commercial parties, including the apportionment of the costs involved.

Ultimately, and in conformance with the Code of Safe Practice for Cargo Stowage and Securing, the ship's Master should accept the cargo on board his ship only if he is satisfied that it can be safely transported. There is no provision in the SOLAS regulations that limits the principle that the Master retains the ultimate discretion in deciding whether to accept a packed container for loading onto his ship. The availability of the verified gross mass of a packed container, to both the terminal representative and to the Master or his representative, must be provided sufficiently in advance by the shipper and/or his representative, for the verified gross mass to be used in the ship stowage plan. It should be noted that this is a prerequisite for a container to be loaded onto a ship to which the SOLAS regulations apply. It does, however, not constitute an entitlement for loading.

Marine Notice number 19 of 2016, attached, will also come into force in July 2016. This Marine Notice provides the details of the companies accredited by SAMSA to approve shippers using Method 2 as stated in Marine Notice No. 18 of 2016, to verify the gross mass of a packed and sealed container.

Issued at Durban, 5<sup>th</sup> May 2016 by Michael Heads for P&I Associates (Pty) Ltd.