

**DRAFT**

**PROTOCOL AMENDING THE AGREEMENT  
ESTABLISHING THE INTER- GOVERNMENTAL  
STANDING COMMITTEE ON SHIPPING (ISCOS)**

*ISCOS SECRETARIAT*

*MOMBASA, KENYA*

*Sunday, August 23, 2015*

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## PREAMBLE

We, the Contracting Parties to this Protocol, hereby declare as follows:

**RECOGNIZING** the social, political and economic changes requiring review of roles by institutions and organizations in the region, and the importance of co-ordinating, harmonizing, and integrating the activities of national maritime administrations and regulatory authorities, port authorities, maritime training institutions and maritime associations in the region for the promotion of harmonious growth of their maritime economies and the expansion of maritime trade;

**INSPIRED** by the African Maritime Transport Charter adopted within the framework of the Organization for African Unity(OAU), predecessor of the African Union (AU), on December 15th 1993 aimed at fostering co-operation in maritime transport sector among African countries as a means of developing the sector;

**DETERMINED** to create an enabling environment for investments and the promotion of private sector participation in maritime commerce in the region, and strengthen their vision of solidarity by means of building an effective partnership between governments , private sector, and the civil society, in particular women and youth, in order to strengthen maritime institutions in the region;

**HAVE AGREED** to transform the Intergovernmental Standing Committee on Shipping (ISCOS) by amending the Agreement as follows:-

**ARTICLE I**  
**Interpretations and Abbreviations**

**(1) Interpretations:**

In this protocol, except where the context otherwise requires,

(a) **“Agreement”** means the Agreement Establishing ISCOS signed by the Member States on 16th July, 1987;

(b) **“Assembly”** means the Assembly of the organization established under Article V and VI of this Protocol;

(c) **“Associate Member” means** organizations associated with maritime matters as defined in Article III (b) of this protocol;

(d) **“Contracting Parties”** means Member States that have ratified/acceded to this Agreement in accordance with the provisions of this Protocol;

(e) **“Deputy Secretary General”** means the Deputy Secretary General of the organization established under paragraph 11 of article 9 of this Protocol;

(f) **“Directors”** mean the Directors of the organization established under Article IX of this Protocol;

(g) **“Co-ordination Committee”** means the Co-ordination Committee of the organization established in accordance with Article V and VII of this Protocol;

(h) **“Financial Year”** means Financial Year referred to in the Agreement under Article X(b);

(i) **“Founder Members”** means the Governments of the Republics of Kenya, Uganda, Zambia and the United Republic of Tanzania;

(m) “**Freight Forwarder**” means a person engaged at a fee, either as an agent for other transport operations or on his own account, in the management of transport services and related documentation;

(n) “**Full Members**” means Governments who are members of the organization in accordance with Article III of this Protocol;

(o) “**Gender**” means the role of women and men in society;

(p) “**Landlocked Countries**” means countries without a sea coast as defined by UNCLOS, 1982;

(q) “**Member States**” means the Governments who are contracting parties to the Agreement;

(r) “**Minister**” means in relation to a contracting party, a person appointed as a Minister of the Government of that contracting state responsible for maritime affairs;

(s) “**Multimodal Transport**” means the transport of goods and services from one point to another by two or more modes of transport on the basis of a single contract of carriage issued by the person organizing such services and while such a person assumes responsibility of the whole operation and also include any other equipment or facility which may hereafter be used;

(t) “**Organization**” means the Intergovernmental Standing Committee on Shipping (ISCOS);

(u) “**Organs**” means the organs of the organization as established under Article V of this Protocol;

(v) “**Protocol**” means this protocol that amends the Agreement Establishing the Intergovernmental Standing Committee on Shipping (ISCOS) dated 16th July, 1987;

(w) “**Private Sector**” means the part of the economy that is not owned or directly controlled by a state;

(x) “**Region**” for the purposes of this Protocol means Eastern, Central and Southern Africa as defined by the A U;

(y) “**Secretariat**” means the Secretariat of the organization as established under Article V and IX of this Protocol;

(z) “**Secretary General**” means the Secretary General of the organization established under paragraph 8 of Article IX of this Protocol;

(aa) “**Shipper**” means a person or company who enters into a contract with a liner conference, shipping line or shipowners for carriage of goods;

(ab) “**Technical Committee**” means the Technical Committee of the organization established under Article V and VIII of this Protocol;

## **(2) Abbreviations:**

(a) “**AU**” means the African Union;

(b) “**IMO**” means the International Maritime Organization;

(c) “**ISCOS**” means the Inter-Governmental Standing Committee on Shipping;

(d) “**MTOs**” means Multimodal Transport Operators;

(e) “**NEPAD**” means New Partnership for African Development;

(f) “**OAU**” means the Organization for African Unity;

(g) “**RECs**” means Regional Economic Commissions.

(h) “**UNCLOS**” means the United Nations Convention on the Law of the Sea, 1982.

## **ARTICLE II**

### **Objectives**

Article II of the Agreement is amended by adding the following:

(a) serve the region and the international community as one stop center of excellence for regional maritime matters and total logistics;

(b) ensure that the region is served by adequate and competitive shipping services;

(c) promote public and private sector investments in international and coastal shipping services and inland waterways;

(d) co-ordinate and promote the development of the maritime transport sector within the region and its integration into African region as whole;

(e) facilitate the contracting parties to ratify and implement relevant international maritime conventions and agreements on, among others, shipping, safety, security, marine pollution and training;

(f) promote and fulfill at regional level, the aims and aspirations of the African Maritime Charter, African Union, Lagos Plan of Action, New Partnership for Africa Development (NEPAD), and other Regional Economic Communities (RECs) on matters related to shipping and maritime transport and total logistics.

### **ARTICLE III**

#### **Membership**

Article III of the Agreement is amended by deleting the provisions of the said Article and replacing the same with the following:

Membership of the Organization shall be of two categories:

(a) **Full Members:** For this category, Membership shall be open to Eastern, Central and Southern African States or any other state as the Assembly may determine in accordance with Article VI paragraph 3.2 of this Protocol ;

(b) **Associate Members:** For this category, Membership shall be open to organizations associated with maritime activities and shall include but not limited to: Ports/harbors, commodity organizations, national and regional shipping lines, transporters, maritime training institutions, terminal operators, and other maritime related organizations;

(c) Application for membership shall be made by way of an official written request to the Assembly.

(d) New members shall be admitted by decision of the Assembly in accordance with Article VI paragraph 3.2 of this Protocol.

(e) For the Associate Members, the Assembly shall issue a certificate of acceptance to all those which have qualified for Membership in (d) above.



(f) the certificate of acceptance issued in (e) above shall be evidence of Membership of ISCOS for the organization appearing in the said certificate.

## **ARTICLE IV**

### **Functions**

Article IV of the Agreement is amended by adding new sub-clauses immediately after sub-clause (e) the following:

(f) undertaking consultations with stakeholders for the adoption of common position by contracting parties on maritime matters and/or in multilateral negotiations with third party countries or international and regional maritime organizations;

(g) promoting various bodies, and activities which are likely to facilitate the development of the maritime and inland waterways sectors and in particular, acting as an early warning center on shipping matters, and providing statistical and economic analysis of the maritime transport and inland waterways sectors;

(h) encourage the development and strengthening of national shipper associations, and other institutions in the member states;

(i) promoting mechanisms and developing strategies aimed at improving the flow of traffic through the ports;

(j) participating in strengthening intra-regional cooperation for each category involved in maritime transport: shipping companies, ports and port operators, shippers, clearing and forwarding agents and cargo consolidators;

(k) intensifying consultations between the contracting parties and cooperation between the maritime administrations with a view to harmonizing and improving the operating conditions of the entire maritime transport system;

(l) defining and advising contracting parties regarding sector based policies and common standards in the following fields:

i. shipping services;

ii. development of indigenous Multimodal Transport Operators (MTOs);

iii. port operations;

iv. modalities of enhancing services to landlocked countries.

(m) advising contracting parties regarding vessel inspection requirements with the view to improving the safety of shipping and protection of the marine, river and lake environment;

(n) promoting, articulating and co-coordinating effective partnership between governments and private sector in enhancing investment in and management of deep-sea, coastal, multimodal, and inland waterways services;

(o) facilitating the development and growth of a viable/efficient regional deep sea and coastal shipping industry, inter alia, ship owning, registration, operation, chartering and promotion of joint ventures, and alliances to achieve economies of scale;

(p) advising contracting parties on commercial implications of the maintenance of the safety and security of maritime transport services including advising on

matters relating to integrated coast guard services , port state control and joint search and rescue operations;

(q) strengthening maritime training institutions and harmonizing training programs for both sea going and shore based personnel;

(r) advising contracting parties on ways and means of maintaining a competitive maritime and inland waterways transport service with a view to effectively contributing to poverty alleviation in the region;

(s) sensitizing the contracting parties on matters of development of human resources, gender matters in shipping and HIV Aids scourge and any other pandemics in the maritime sector;

(t) providing technical assistance to contracting parties in adopting/acceding to the relevant maritime conventions, particularly those concerning safety of life and property at sea, carriage of goods by sea, oil pollution, marine environment protection, ship and port facility security;

(u) co-ordinating and facilitating shipper organizations in freight cost consultations/negotiations with terminal and transport operators;

(v) promoting the establishment of regional shipping lines with private sector participation;

(w) encouraging contracting parties to establish open-ship registers in order to attract investment in shipping;

(x) carrying out any other function as Members may direct from time to time in the attainment of the objectives of the organization.

**ARTICLE V**  
**Organs**

Article V of the Agreement is amended by deleting the provisions of the said Article and replacing the same with the following:

1. There shall be established the organs of the organization as follows:
  - (a) The Assembly;
  - (b) The Co-ordination Committee;
  - (c) The Technical Committees;
  - (d) The Secretariat.
2. There shall be established any other organs as the Assembly may determine.
3. The said organs of the organization shall perform the functions and act within the limits of the powers conferred upon them by or under the Agreement.
4. In the appointment of staff and composition of the organs of the organization, gender balance will be considered.

**ARTICLE VI**  
**Assembly**

Article VI of the Agreement is amended by deleting the provisions of the said Article and replacing the same with the following:

1. **Composition:**

1.1 The Assembly shall consist of:

(a) **Full Members:** comprising Ministers responsible for maritime transport or any other ministers or plenipotentiaries designated by the Governments. The Minister shall for purposes of the meeting have all the powers, duties and responsibilities of the member for whom that person is acting; and

(b) **Associate Members:** Heads or the designated officers of organizations mentioned in Article IV paragraph (b) of this protocol. The designated officer shall for purposes of the meeting have all the powers, duties and responsibilities of the member whom that person is representing.

1.2. The Assembly shall be the highest organ of the organization.

## 2. **Functions of the Assembly**

2.1 The Assembly shall:

(a) formulate the general policies of the organization;

(b) determine the appropriate ways and means of achieving the objectives set by the organization;

(c) constitute and dissolve Technical Committees on recommendation of the Co-ordination Committee. The Assembly shall also define their composition, mandate and priorities on the recommendation of the Co-ordination Committee;

(d) consider applications for membership, withdrawal, suspension and expulsion of a member;

(e) appoint the Secretary General and the Deputy Secretary General and approve their terms of service;

(f) review confidential reports on the general performance of the Office of the Secretary General;

(g) appoint an External Auditor for the organization;

(h) approve budget estimates, sources of funds and work plans;

(i) approve Audited Accounts;

(j) approve financial and other staff regulations;

(k) consider any other report of the Co-ordination Committee;

(l) make its own rules of procedure;

(m) make amendments to the Agreement;

(n) resolve matters that may be referred to it;

(o) decide, where necessary, on the dissolution of the organization.

2.2 The Assembly may delegate some of its powers to the specific organs of the organization except 2.1(a), (e), (f), (g), (m), (n) and (o).

### **3. Meetings of the Assembly**

3.1 The Assembly shall :

(a) meet once a year and may hold extra-ordinary meetings at the request of a Member or the Secretary General in consultation with the Chairperson of the Assembly;

(b) elect its own Chairperson, 1st and 2nd Vice- Chairperson and a Rapporteur from its full members who will serve for a period of two years on rotation basis;

(c) have a simple majority of Full Members as its quorum;

3. 2 All decisions of the Assembly shall be by simple majority of Full Members. If the Assembly decides to vote, the Chairperson will have a casting vote in the event of a stalemate. Associate Members shall have no voting right;

3.3 The Chairperson shall have the following powers:

(a) convene and chair meetings of the Assembly;

(b) participate in the mobilization of funding from the Contracting Parties, development partners and other sources in consultation with the Secretary General;

(c) carry out any function as the Assembly may determine.

## **ARTICLE VII**

### **Co-ordination Committee**

Article VII of the Agreement is amended by deleting the provisions of the said Article and replacing the same with the following:

#### **1. Composition:**

1.1 The Co-ordination Committee shall comprise of representatives from contracting parties as provided for in Article IV of this Protocol as follows:

(a) **Full Members:** Permanent Secretaries or equivalent as the case may be or their designated representatives who shall be senior officers of the Government. The Officer shall for purposes of the meeting have all the powers, duties and responsibilities of the member for whom that person is acting.

(b) **Associate Members:** Senior Officers appointed to serve on the Co-ordination Committee by the respective Heads of organizations mentioned in Article III(b) of this protocol and shall for purposes of the meeting, have all the powers, duties and responsibilities of the member for whom that person is acting.

## **2. Functions of the Co-ordination Committee**

2.1 The Co-ordination Committee shall:

(a) elect the Chairperson and Vice Chairperson, who shall serve for a period of two years and shall be eligible for re-election for a further period of two years. The Chairmanship shall rotate, in turn, among Full Members.

(b) meet at least once in every six months;

(c) scrutinize and propose candidates for the post of Secretary General;

(d) appoint senior staff and approve their terms of service;

(e) prepare and submit confidential reports on the general performance of the office of the Secretary General to the Assembly;

(f) prepare and submit technical and other reports for approval by the Assembly;



(g) prepare the agenda for and submit reports to the Assembly for approval;

(h) consider budget estimates and work plans and submit them to the Assembly for approval;

(i) consider the reports of the internal auditor in accordance with the financial regulations of the organization;

2.2 The Chairperson of the Co-ordination Committee shall:

(a) chair meetings of the Co-ordination Committee;

(b) present progress and technical reports to the Co-ordination Committee and the Assembly;

(c) perform any other functions as may be assigned to it by the Assembly.

2.3 All decisions of the Co-ordination Committee shall be by simple majority of Full Members but in the event that the Co-ordination Committee decides to vote, then the Chairperson will have a casting vote. Associate Members shall have no voting right.

## **ARTICLE VIII**

### **Technical Committees:**

The Agreement is further amended by introducing a new Article immediately after Article VII of the Agreement the following:

## **1. Composition:**

1.1 There shall be Technical Committees established by the Assembly. The Technical Committees shall be composed of representatives from Full Members and Associate Members designated for that purpose.

1.2 The following shall be the Technical Committees of the organization:

### **(a) Technical Committee on Finance, Administration and Resource Mobilization:**

The Committee shall perform the following functions:

- i. assist the Secretary General in preparation of budgets and for approval by the higher organs;
- ii. receive and review financial reports;
- iii. develop and implement a resource mobilization strategy;
- iv. short listing of candidate for recruitment;
- v. reviewing staff annual appraisal reports;
- vi. constitution of tender committees;
- vii. reviewing staff welfare matters;
- viii. handling disciplinary cases.

### **(b) Technical Committee on Trade Facilitation:**

The Committee shall perform the following functions:

- i. freight rates negotiations with all providers of transport services;
  - ii. maintenance and operation of the databank;
  - iii. liaison with commodity organizations, Cargo interests and transporters; and
  - iv. monitoring and evaluation of and advising on port performance; and
- V Promotion of technical efficiency, market competitiveness of ports and other maritime and shipping services.

**(c) Technical Committee on Maritime Safety, Security and Marine Environment;**

The Committee shall perform the following functions:

- i. promoting the development of national contingency plans for pollution preparedness and response;
- ii. promote co-operation and exchange of data and information on the Port State Control activities through the Indian Ocean Memorandum of Understanding;
- iii. establishment and promotion of a regional framework for prevention of marine pollution;
- iv. effective co-ordination of national mechanisms for implementation of international conventions on marine safety, security and marine environment related matters;

v. strengthen the preparedness of the contracting parties and to facilitate co-operation among them in order to combat pollution by oil and other harmful substances in cases of marine emergencies; and

vi. assist Member States, in the development of their own national capabilities to combat pollution by oil and other harmful substances and to co-ordinate and facilitate information exchange, technological co-operation and training.

**(d) Technical Committee on Legal, Membership and Credentials, and International Relations.**

The Committee shall perform the following functions:

i. advise the organization on legal matters;

ii. advise the Member States on modalities of ratifying and implementing IMO and other conventions on shipping and maritime affairs;

iii. encourage and assist the Member States in setting up maritime administrations and co-ordinating the work of the maritime administrations;

iv. develop a strategy for new ISCOS membership recruitment; and

v. receive and verify the credentials of officials attending meetings of the organization.

1.3 The Assembly shall establish such additional technical committees as may be necessary for the attainment of the objectives of this Agreement.

1.4 The Technical Committees shall meet as often as necessary for the proper discharge of their functions and shall determine their own rules and procedures.

1.5 The Technical Committees may decide to form sub-committees to address specialized issues.

1.6 The reports of the Technical Committees shall be submitted to the Co-ordination Committee.

1.7 The quorum of Technical Committees shall be by simple majority.

## **2. General Functions of Technical Committees:**

2.1 Each Technical Committee shall:

(a) be responsible for the preparation of a comprehensive implementation program with respect to its sector;

(b) monitor and keep under constant review the implementation of co-operation programs with respect to its sector;

(c) for the purposes of (a) and (b) of this Article, request the Secretary General to carry out specific investigations;

(d) submit from time to time reports and recommendations to the Co-ordination Committee, either on its own initiative or upon the request of the Co-ordination Committee, concerning the implementation of the Agreement; and

(e) have such other functions as are assigned to it by the Assembly or any other organ under the Agreement.

## **ARTICLE IX**

### **The Secretariat**

Article VIII of the Agreement is amended by deleting the provisions of the said article and replacing the same with the following:

1. The Secretariat shall be headed by the Secretary General of the Organization, who shall be appointed by the Assembly to serve in such office for a term of five years and shall be eligible for reappointment for only a further period of five years.
2. The Secretary General shall be the chief executive officer of the organization and shall represent the organization in the exercise of its legal personality;
3. There shall be in addition to the Secretary General, a Deputy Secretary General who shall be appointed by the Assembly, and such other staff of the Secretariat as the Committee may determine.
4. The terms and conditions of service of the Secretary General and the Deputy Secretary General shall be determined by the Assembly. The terms and conditions of service of other staff of the Secretariat shall be determined by the Coordinating Committee.
5. In appointing staff for the Secretariat, regard will be had to the paramount importance of security, highest standard of integrity, efficiency and technical competence to the desirability of maintaining the principle of equal opportunity and an equitable distribution of appointments to such offices among the citizens of all the Member States.
6. In the performance of their duties the Secretary General, the Deputy Secretary General and the staff of the Secretariat shall not seek or receive instructions, outside the laid down procedure, from any contracting parties or from any other authority external to the organization. They shall refrain from any action which

may adversely reflect on their positions as international civil servants and shall be responsible only to the organization.

7. Each contracting party undertakes to respect the international character of the responsibilities of the Secretary General, the Deputy Secretary General and other staff of the Secretariat and shall not seek to unduly influence them in the discharge of their responsibilities.

**8. The Secretary General shall:**

(a) service and assist the organs of the organization in the performance of their functions;

(b) submit reports in consultation with the Technical Committees on the activities of the organization to the Co-ordination Committee and the Assembly;

(c) subject to the provisions of the agreement, be responsible for the administration and finances of the organization;

(d) submit the budget of the organization, to the Co-ordination Committee through the Technical Committee on Finance, Administration and Resource Mobilization;

(e) act as Secretary to the Assembly and the Co-ordination Committee;

(f) ensure that the objectives set out in the Agreement are attained and shall either on his own initiative or on the basis of a complaint , investigate a presumed breach of the provisions of the Agreement and report to the Committee in accordance with an investigative procedure to be determined by the Committee;

(g) keep the functioning of the organization under continuous assessment and may act in relation to any particular matter which appear to merit assessment either on his/her own initiative or upon the request of contracting parties where appropriate and report the result of his assessment to the contracting parties or the organs of the organization;

(h) promote the adoption of joint positions by the Contracting Parties in multilateral negotiations with third countries or international organizations;

(i) on his/her own initiative or as may be assigned to him/her by the Assembly or the Committees, undertake such work and studies and perform such services as relate to the aims of the organization and to the implementation of the provisions of the Agreement; and

(j) for the performance of the functions conferred upon him/her, by this Article collect information and verify matters of fact relating to the functioning of the organization and for that purpose may request contracting parties to provide information relating thereto.

9. The contracting parties agree to co-operate with and assist the Secretary General in the performance of his functions set out in paragraph 8 of this Article and agree in particular to provide any information which may be requested under sub paragraph (j) of paragraph 8 of this Article;

10. There may be established such sub regional offices or branch offices of the Secretariat in the Member States as the Assembly may determine;

**11. The Deputy Secretary General shall:**

(a) be appointed by the Assembly for a period of 5 years and shall be eligible for reappointment for another term of five (5) years only;



(b) deputize for the Secretary General;

(c) be in charge of programmes, Administration and any other duties that may be delegated to him/her by the Secretary General and shall assist the Secretary General in the execution of functions; and

(d) perform such other duties as may be prescribed by the Assembly.

12. **Directors** shall be appointed;

(a) by the Co-ordination Committee for a three(3) years term renewable for another two(2) terms only, and

(b) upon receipt of a positive performance evaluation report of the candidate.

## **ARTICLE X**

### **FINANCES**

Article X of the Agreement is amended by adding the following provision immediately after paragraph 5:

(6) The Associate members shall pay a certain amount of money as their contribution towards ISCOS as shall be determined by the Assembly.

## **ARTICLE XI**

### **Miscellaneous Amendments**

(1). The Agreement is amended by adding the following Article immediately after Article XVII of the Agreement:

(a). The word "**Government(s)**" shall read "**contracting party(s)**" wherever it appears in the Agreement;

(b). “**Council of Ministers**” shall read “**Assembly**” where ever it appears in the Agreement;

(c) “**Committee of Representatives**” shall read “**Coordination Committee**” where ever it appears in the Agreement;

(2). All those provisions of the Agreement which have not been expressly amended, replaced, annulled, or altered in any manner by this protocol shall retain their meaning and character and shall remain binding on the contracting parties.

(3). The Agreement is further amended by re-numbering the Articles therein accordingly taking into account the changes effected by the protocol.

## **ARTICLE XII**

### **Ratification**

Article XV of the Agreement is amended by deleting (a) and (b) and also by introducing a separate Article on Ratification and Entry into Force as follows:

#### **Ratification**

This Protocol shall be ratified by the Member states in accordance with provisions of the Agreement

## **ARTICLE XIII**

### **Entry into Force**

1. This protocol shall enter into force ninety days (90) after the depository of the instruments of ratification by three founder members.

2. This Protocol shall form part of the Agreement Establishing ISCOS of 16<sup>th</sup> July 1987. The two documents (Agreement Establishing ISCOS of 16<sup>th</sup> July 1987

hereto attached as an appendix and this Protocol), shall be read and construed as one single document.

**ARTICLE XIV  
RESERVATIONS**

No reservations shall be made to provisions of this protocol.

**IN WITNESS WHEREOF** the undersigned duly authorized by their respective Governments have signed this Protocol.

**DONE** in one original in the English Language at Mombasa in the Republic of Kenya this .....day of .....Two Thousand and Six.

.....  
**MINISTER FOR TRANSPORT  
FOR THE REPUBLIC OF KENYA**

.....  
**MINISTER FOR INFRASTRUCTURE DEVELOPMENT  
FOR THE UNITED REPUBLIC OF TANZANIA**

.....

**MINISTER FOR WORKS, HOUSING AND COMMUNICATIONS  
FOR THE REPUBLIC OF UGANDA.**

.....

**MINISTER FOR TRANSPORT AND COMMUNICATIONS  
FOR THE REPUBLIC OF ZAMBIA**