



BERMUDA

MERCHANT SHIPPING (ACCIDENT REPORTING AND INVESTIGATION)
REGULATIONS 2021

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The Minister responsible for Maritime Administration, in exercise of the powers conferred by section 228 of the Merchant Shipping Act 2002, makes the following Regulations:

Citation

1 These Regulations may be cited as the Merchant Shipping (Accident Reporting and Investigation) Regulations 2021.

Interpretation

2 (1) In these Regulations—

“access” means the process of embarking on or disembarking from a ship, by whatever means employed;

“accident” has the meaning given in regulation 3;

“Authority” means the Bermuda Shipping and Maritime Authority (BSMA) established under section 3 of the Bermuda Shipping and Maritime Authority Act 2016;

“Bermuda ship” means a ship registered in Bermuda or a ship that is not registered under the law of any State but is eligible for registration in Bermuda under the Act;

“Chief Executive Officer” or “CEO” means the Chief Executive Officer appointed under section 25 of the Bermuda Shipping and Maritime Authority Act 2016;

“IMO” means the International Maritime Organization;

“IMO Code” means the Code for the Investigation of Marine Casualties and Incidents annexed to Resolution A.849 (2.0) of the IMO Assembly of 27th November 1997 as amended;

“IMO guidelines” means the Resolution and guidelines on fair treatment of seafarers in the event of a maritime accident;

“incapacitation” means a person’s inability to undertake their full range of normal activities;

“inspector” means the Chief Marine Surveyor or a person appointed by the Minister under section 228(1) of the Act and in the context of the safety investigation of a particular accident, includes any person appointed to investigate that accident under regulation 11(2);

“Marine Accident Investigation Branch” (MAIB) means the Marine Accident Investigation Branch of the United Kingdom;

“member State” means a member state of the IMO;

“pleasure vessel” means—

(a) any vessel which is—

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- (i) wholly owned by an individual or individuals and used only for the sport or pleasure of the owner or the immediate family or friends of the owner;
or
- (ii) owned by a body corporate and used only for the sport or pleasure of employees or officers of the body corporate, or their immediate family or friends, and is on a voyage or excursion which is one for which the owner is not paid for or in connection with operating the vessel or carrying any person, other than as a contribution to the direct expenses of the operation of the vessel incurred during the voyage or excursion;
or
- (b) any vessel which is wholly owned by or on behalf of a members' club formed for the purpose of sport or pleasure, and which, at the time it is being used, is used only for the sport or pleasure of members of that club or their immediate family, and for the use of which any charges levied are paid into club funds and applied for the general use of the club; and no payments other than those mentioned, are made by or on behalf of the users of the vessel, other than by the owner,

and in this definition, "immediate family" means in relation to an individual, the husband, wife or civil partner of the individual, and a brother, sister, ancestor or lineal descendant of that individual or of that individual's husband, wife or civil partner;

"preliminary assessment" means a preparatory evaluation by the CEO which is intended to establish the likely causes and circumstances of an accident, with a view to deciding whether or not a safety investigation should be undertaken;

"safety investigation" means an investigation or inquiry into an accident conducted with the objective of preventing future accidents;

"senior surviving officer" means the senior surviving officer in the deck department and if there is no surviving officer in the deck department; then whoever is the senior surviving officer between—

- (a) the senior surviving engineer officer; and
- (b) the senior surviving electro-technical officer;

"serious injury" means—

- (a) any fracture, other than to a finger, thumb or toe;
- (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;

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- (f) any injury to a person employed or carried on board a ship which occurs on board or during access which results in incapacitation for more than three consecutive days excluding the day of the accident; or
- (g) any other injury—
 - (i) leading to hypothermia or unconsciousness;
 - (ii) which requires resuscitation; or
 - (iii) requiring admittance to a hospital or other medical facility as an in-patient for more than twenty-four hours;

“severe pollution” shall have the same meaning as that set out by the IMO in MEPC 37/22 and MSC/MEPC3/Circ.3;

“ship’s boat” includes a life-raft, painting punt and any boat normally carried by a ship;

“substantially interested State” shall have the same meaning as that set out in paragraph 2.20 of the IMO Code Casualty Related Matters MSC-MEPC.3/circ. 2. of 13th June 2008;

“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 by the owner (whether on behalf of the owner or some other person, or on their own behalf), a reference in these Regulations to the owner shall be construed as including a reference to that person.

Meaning of “accident”

3 (1) Subject to paragraph (2), for the purposes of these regulations and of section 228 of the Act, “accident” means—

- (a) a marine casualty, which is an event or sequence of events that has resulted in any of the following and has occurred directly by or in connection with the operation of a ship involving—
 - (i) the death of, or serious injury to a person;
 - (ii) the loss of a person from a ship;
 - (iii) the loss, presumed loss or abandonment of a ship;
 - (iv) material damage to a ship;
 - (v) the stranding or disabling of a ship, or the involvement of a ship in a collision;
 - (vi) material damage to marine infrastructure external of a ship, that could seriously endanger the safety of the ship, another ship or any individual; or
 - (vii) pollution, or the potential for such pollution to the environment caused by damage to a ship or ships;

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- (b) a very serious marine casualty, which is an event or sequence of events that has resulted in any of the following and has occurred directly by or in connection with the operation of a ship involving—
 - (i) the total loss of a ship;
 - (ii) loss of life; or
 - (iii) severe pollution;
- (c) a serious marine casualty, which is an event or sequence of events that has occurred directly by or in connection with the operation of a ship but which does not qualify as a very serious marine casualty, that involves—
 - (i) fire;
 - (ii) explosion;
 - (iii) collision;
 - (iv) grounding;
 - (v) contact;
 - (vi) heavy weather damage; or
 - (vii) ice damage, or a suspected hull defect resulting in any of the following—
 - (A) the immobilisation of the main engines;
 - (B) extensive accommodation damage;
 - (C) severe structural damage including penetration of the hull under water, rendering the ship unfit to proceed;
 - (D) pollution; or
 - (E) a breakdown that necessitates towage or shore assistance; or
- (d) a marine incident, which is an event or sequence of events other than those listed in sub-paragraphs (a) to (c) which has occurred directly in connection with the operation of a ship that endangered, or if not corrected, would endanger the safety of a ship, its occupants or any other person or the environment.

(2) An accident does not include a deliberate act or omission with the intention to cause harm to the safety of a ship, an individual or the environment.

Application

- 4 (1) These regulations apply to all accidents involving or occurring on board—
- (a) any Bermuda ship, except that regulation 6 does not apply in relation to—
 - (i) a pleasure vessel;

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- (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 on an inland waterway and is less than 8 metres overall in length unless, in the case of a craft or boat mentioned in sub-sub-paragraph (i) or (ii), the accident involves any of the following—
 - (A) explosion;
 - (B) fire;
 - (C) death;
 - (D) serious injury;
 - (E) capsize of a power-driven craft or boat; or
 - (F) severe pollution; or
- (b) any other ship within Bermuda or Bermuda waters, except that regulation 6, 10(1), (2) or (3) only apply in relation to such a ship, to which these Regulations apply, if—
 - (i) it is within the jurisdiction of a harbour master appointed or required to be appointed, under any enactment;
 - (ii) it is employed in carrying passengers to or from a port in Bermuda or a place mentioned in sub-sub-paragraph (i); or
 - (iii) an inspector, or other person acting on behalf of the CEO, requires that any of the evidence mentioned in regulation 10(1) or (2) be preserved; or
- (c) any ship which in the opinion of the CEO involves the substantial interests of Bermuda.

(2) A safety investigation may also be held under regulation 8 into an accident involving or occurring on board a ship which is not a Bermuda ship and which at the time of the accident, was not within Bermuda or Bermuda waters, if the Minister so determines.

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

Objective of a safety investigation

5 (1) The sole objective of a safety investigation into 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 such an investigation, to determine liability nor, except so far as is necessary to achieve its objective, to apportion blame.

(3) A safety investigation carried out under these Regulations shall be carried out in accordance with the IMO Code.

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Duty to report accidents and serious injuries

6 (1) When an accident occurs, the following persons associated with the ship shall notify the CEO as soon as is practicable following the accident and by the quickest means available—

- (a) the master or, if the master has not survived, the senior surviving officer; and
- (b) the ship's owner, unless they have ascertained to their satisfaction that the master or the senior surviving officer has reported the accident in accordance with sub-paragraph (a).

(2) In addition to any notification made under paragraph (1), the following persons shall notify the CEO 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 of any harbour, the harbour authority for that harbour; and
- (b) an official of the Authority, in respect of an accident within Bermuda waters.

(3) A person making a notification in accordance with paragraph (1) or (2) must, in so far as is practicable, include the information set out in the Schedule.

(4) In addition to making a notification under paragraphs (1) to (3), the persons specified in paragraphs (1) and (2)(a) and (b) must, 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 be taken to prevent a recurrence, shall be provided to the CEO as soon as is practicable.

(5) If the accident referred to in paragraph (1) is a marine casualty or a serious marine casualty, the CEO shall immediately notify any State that the CEO considers to be a substantially interested State.

Preliminary assessments

7 (1) The Minister shall appoint the CEO, as the independent person, under section 228 of the Act, to carry out a preliminary assessment in order to decide whether or not to undertake a safety investigation.

(2) In case of a serious marine casualty, in relation to a vessel, the Chief Marine Surveyor shall immediately inform the CEO.

(3) When carrying out a preliminary assessment, the CEO must take into account, but need not be limited to—

- (a) the seriousness of the accident;
- (b) the type of vessel or cargo involved; and
- (c) the potential for the findings of a safety investigation to lead to the prevention of future accidents.

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(4) For the purposes of a preliminary assessment, the powers in section 220 of the Act shall apply.

Ordering of a safety investigation

8 (1) Once a decision has been made to conduct an investigation, the CEO must ensure that a safety investigation is carried out in relation to any accident that is a very serious marine casualty as regards a vessel covered by these Regulations.

(2) The CEO may, on behalf of the Minister, cause a marine safety investigation to be carried out in relation to an accident which is a marine casualty or a marine incident.

(3) The CEO may appoint the Marine Accident Investigation Branch of the United Kingdom (MAIB), to undertake a safety investigation in relation to an accident that is a very serious marine casualty, having carried out a preliminary assessment in accordance with regulation 7(3) and (4).

(4) The safety investigation shall include but is not limited to—

- (a) the collection and analysis of evidence;
- (b) the identification of causal factors; and
- (c) where appropriate, the making of safety recommendations.

(5) Where the CEO has received a notification under regulation 6(1) or (2) or a report under paragraph (4) of that regulation, the CEO must decide whether or not a safety investigation should be carried out and shall publish details of that decision as soon as reasonably practical, in such manner as is seen fit.

(6) Before deciding whether a safety investigation should be carried out and if so, what form it should take, the CEO may obtain such information as the CEO considers necessary, concerning the accident and any remedial action taken as a result.

(7) Any person mentioned in regulation 6(1) or (2), as well as any other person who is in possession of information requested by an inspector for the purposes of paragraph (6), shall provide such information to the best of their ability and knowledge.

(8) In case of an accident to which regulation 3 applies, the CEO may decide not to carry out a safety investigation if satisfied, or it is otherwise established to the CEO's satisfaction, that—

- (a) any loss of life resulted from suicide or natural causes; or
- (b) any serious injury resulted from attempted suicide,

and in such circumstances, the CEO may discontinue any safety investigation which has already been commenced.

(9) Public notice that a safety investigation has been commenced may be given in such manner as the CEO may think fit, and may invite any persons who so desire, to present relevant evidence to an Inspector in such a manner and within such a time as is specified in the notice.

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(10) A safety investigation shall be started as promptly as is practicable by the CEO or the MAIB as the case may be after an accident occurs, and in any event not later than two months after the CEO has been notified of its occurrence.

Subsequent or reopened investigations

9 (1) Notwithstanding a decision not to investigate, the CEO may at any subsequent time undertake a safety investigation if satisfied that there is good reason in the interests of future safety, to do so.

(2) The CEO may re-open a safety investigation if, following its completion, new and important evidence is discovered which in the CEO's opinion, could have a material effect on any safety recommendations made.

(3) Any safety investigation may be re-opened either in whole or as to any part of it and a re-opened investigation shall be subject to and conducted in accordance with these Regulations.

Preservation of evidence

10 (1) Following an accident involving a ship to which regulation 4 applies and is reportable under regulation 6, the persons mentioned in paragraph (3) shall so far as is practicable, ensure that all—

- (a) charts;
- (b) log books;
- (c) recorded information relating to the period preceding, during and after an accident, howsoever recorded or retained, including information from a voyage data recorder and video recorders; 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 case of an accident involving a ship to which regulation 4 applies and is reportable under regulation 6, the persons mentioned in paragraph (3) must also 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, as far as practicable, left undisturbed.

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

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

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- (b) the ship's owner, unless the ship's owner has ascertained to their satisfaction that the master or senior surviving officer has taken the action in question.
- (4) The duty under paragraph (1) to ensure that documents, information or records are kept and not altered and to ensure under paragraph (2), that information is saved and preserved, or that equipment is left undisturbed, continues until—
- (a) published notification is received from the CEO, that no safety investigation is to take place or that the investigation has been completed;
 - (b) thirty days have passed since the CEO established that it has been decided to investigate the matter; or
 - (c) the CEO or an inspector carrying out the investigation gives written notification that they are no longer required.
- (5) Following an accident in Bermuda waters involving a ship which is not a Bermuda ship, the persons mentioned in paragraph (3) must comply with the requirements of paragraphs (1) and (2), if required to do so by or on behalf of the CEO.
- (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 CEO may, if it is considered reasonably necessary for the collection or preservation of evidence in connection with any safety investigation, including a preliminary assessment relating to the accident, require any of the master or, if the master has not survived, the senior surviving officer and the ship's owner, to ensure that a ship is accessible to any inspector engaged in the investigation of such accident, until the process of collecting or preserving evidence has been completed to the inspector's satisfaction.
- (8) The CEO shall not require a ship to which regulation 4(1)(a), (b) or (c) apply, to remain in Bermuda waters any longer than is necessary for the collection or preservation, as the case may be, of the evidence mentioned in paragraph (7) and shall take all reasonable steps to ensure that such evidence is collected or preserved expeditiously.
- (9) No requirement under paragraph (7) shall be made, unless the CEO has reasonable grounds for concern that if a ship to which regulation 4(1)(a), (b) or (c) applies, leaves Bermuda 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 the CEO or any inspector conducting such investigation.

Conduct of a safety investigation

11 (1) If the CEO decides in accordance with regulation 8(2), (4) and (5) that a safety investigation must be carried out, it must be undertaken by one or more 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 CEO may also appoint one or more persons who are not inspectors appointed under the Act, for the purpose of carrying out an investigation in circumstances

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where inspectors appointed under the Act are not conveniently available or where the persons appointed have special qualifications or experience, and such persons will have the powers conferred on an inspector by sections 220 and 228(8) of the Act.

- (3) A safety investigation may extend to cover, but need not be limited to—
- (a) all events and circumstances preceding the accident, together with subsequent events and circumstances;
 - (b) issues involving salvage and pollution connected with the accident; and
 - (c) the conduct of search and rescue operations,

if in the opinion of the CEO, they are relevant to future safety.

(4) Every person required to attend before an inspector must be allowed the reasonable expenses of attending, payable by the Minister.

(5) Any person, not being a solicitor or other professional legal adviser acting solely on behalf of the person required to attend, who—

- (a) has been allowed by an inspector to be present; or
- (b) has been nominated to be present by a person required to attend,

at a witness interview before an inspector, may at any time be excluded from being present by the inspector, with the agreement of the CEO, if both the inspector and CEO have substantial reason to believe that the person's 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 the CEO is satisfied, having regard to all the circumstances, that it is proper to exclude that person.

(6) Where a person nominated to be present has been excluded in accordance with paragraph (5), the person required to attend may be entitled to nominate another person to be present at the witness interview in place of the excluded person and paragraph (5) applies to that other person.

(7) Any document, record or information mentioned in regulation 10, properly required by an inspector to be produced for the purposes of a safety investigation (whether on board the ship involved or otherwise) may be retained by the inspector until the safety investigation is completed.

(8) In relation to any preliminary assessment which the CEO has conducted under regulation 7, the CEO must decide, having regard to the objective set out in regulation 5, whether it is appropriate in the circumstances, to conduct a safety investigation leading to the publication of a report.

(9) Subject to paragraph (10), the CEO may discontinue a safety investigation of any accident at any time, but he must give reasons for a decision to discontinue the safety investigation of an accident.

(10) Paragraph (9) will not apply to the safety investigation of an accident involving a vessel that is—

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- (a) a very serious marine casualty; or
- (b) a serious marine casualty,

where following a preliminary assessment undertaken in accordance with regulation 7(1) and (2), a decision is made to conduct a safety investigation.

(11) When an inspector is conducting a safety investigation into an accident, the inspector must take into account, the IMO guidelines on the fair treatment of seafarers.

(12) An inspector may record a witness interview of any person who is assisting a safety investigation carried out in accordance with these Regulations in any manner that the CEO considers reasonable.

(13) When the CEO is requested to assist another member State in a safety investigation in which Bermuda is not involved, then the costs of any such assistance provided, must be agreed between them.

Co-operation with other States

12 (1) A safety investigation commenced by the CEO under regulation 8 shall, where appropriate, be conducted in co-operation with—

- (a) another State; or
- (b) another substantially interested State.

(2) A substantially interested State shall be allowed to participate in a safety investigation at any stage of that investigation, by mutual agreement.

(3) Where a safety investigation has been commenced under paragraph (1), the CEO and any other States involved shall agree in the shortest possible time—

- (a) which of them shall lead the safety investigation; and
- (b) the procedures to be adopted for the purposes of such an investigation.

(4) For the purposes of this regulation, a substantially interested State has equal rights and access to witnesses and evidence involved in a safety investigation; and any representations that it may make to the lead investigating State must be taken into consideration for the purposes of the safety investigation.

(5) Where a substantially interested State has been allowed to participate in a safety investigation and no agreement in accordance with paragraph (3)(a) has occurred, then the CEO and such other member States or substantially interested States, or both, shall—

- (a) conduct parallel safety investigations;
- (b) exchange evidence and information with each other for the purposes, as far as possible, of reaching shared conclusions; and
- (c) in the case of two-member States conducting parallel safety investigations, notify the Minister, of the reasons for doing so.

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(6) The CEO may delegate the whole or any part of a safety investigation, to another member State by mutual agreement with the member State.

(7) Where an investigation conducted under these Regulations involves a ro-ro ferry or a high-speed passenger craft, the CEO shall enable a substantially interested State to participate or co-operate in accordance with the IMO Code.

(8) When a ro-ro ferry or high-speed passenger craft is involved in an accident in Bermuda waters, a safety investigation shall be started by the CEO, if Bermuda was the last point of departure.

(9) In the case of an accident to which paragraph (1)(b) applies, Bermuda remains responsible for the safety investigation unless it has been agreed with any other substantially interested State, that the other member State will be responsible for leading the safety investigation.

Disclosure of records

13 (1) Subject to the following paragraphs, the names, addresses or other details of anyone who has given evidence to an inspector must not be disclosed.

(2) Subject to paragraphs (4) and (7), the following documents or records whether held electronically, mechanically or otherwise must not be made available for purposes other than a safety investigation, unless a court orders otherwise—

- (a) subject to paragraph (3), all declarations or statements taken from persons by an inspector or supplied to an inspector in the course of an investigation, together with any notes or recordings of witness interviews;
- (b) medical or confidential information regarding persons involved in an accident;
- (c) any report made under regulation 6(4);
- (d) copies of the report other than the final report except as mentioned in regulation 14(4)(a), (5), or (12);
- (e) all correspondence received by the CEO and an inspector from parties involved in a safety investigation;
- (f) evidence from voyage data recorders;
- (g) the notes made by an inspector or person appointed under regulation 11(2), whether written or held electronically, along with any recordings or photographs;
- (h) all communications between persons having been involved in the operation of the ship or ships; and
- (i) inspector's opinions expressed in the analysis of information.

(3) A person who has given a declaration or statement to an inspector in the course of a safety investigation may make available a copy of their statement or declaration to another person as they see fit.

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(4) Any independent technical analysis commissioned by the CEO and opinions expressed in such analysis may be made publicly available if the CEO considers it appropriate to do so.

(5) Subject to paragraph (6), no order must be made under paragraph (2), unless the court is satisfied, having regard to the views of the CEO, that the interests of justice in disclosure outweigh any prejudice, or likely prejudice, to—

- (a) the safety investigation into the accident to which the document or record relates;
- (b) any future accident safety investigation undertaken in Bermuda; or
- (c) relations between Bermuda and any other State, or international organisation.

(6) 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 recorder or from other recording systems, pertinent to the accident, including voice recordings (other than any recordings mentioned in paragraph (2)(a)), video recordings and other electric or magnetic recordings and any transcripts made from such information or recordings, may be provided at the discretion of the CEO, to the police or other official authorities.

(8) Information obtained from a voyage data recorder may be provided at the discretion of the CEO, to the ship's owner.

Reports of safety investigations

14 (1) Subject to paragraph (4), the CEO must submit to the Minister, a report of any safety investigation conducted in accordance with regulation 11.

(2) The CEO must make every effort to make a report of a safety investigation publicly available—

- (a) in the shortest possible time or within twelve months of the date of an accident being notified to the CEO; and
- (b) in the case of a report to which it is not possible to produce such a report within that time, an interim report must be published within twelve months of the date of the accident being notified to the CEO.

(3) A report in relation to an accident must contain but need not be limited to—

- (a) the following information—
 - (i) a summary of the basic facts;
 - (ii) factual information;
 - (iii) ship's particulars;
 - (iv) voyage particulars;

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- (v) marine casualty or incident information; and
 - (vi) shore authority involvement and emergency response;
 - (b) conclusions relating to the facts of the evidence;
 - (c) where the facts cannot be clearly established, analysis and professional judgement to determine the probable facts; and
 - (d) recommendations for future safety, where appropriate.
- (4) A report must not be made publicly available until the CEO has—
- (a) served a notice under this regulation upon any person who, or organisation which, could be adversely affected by the report or, if that person is deceased, upon such person or persons as appear to the CEO, at the time it is proposed to serve notice in accordance with this paragraph, as best to represent the interests and reputation of the deceased in the matter;
 - (b) considered the representations relating to the facts or analysis contained in the report which may be made to the CEO in accordance with—
 - (i) paragraph (6) by or on behalf of the persons served with such notice; or
 - (ii) paragraph (7),and the report must be amended in such manner as the CEO thinks fit.
- (5) The notice referred to in paragraph (4)(a) shall be accompanied by a draft copy of the report.
- (6) The representations referred to in paragraph (4)(b) must be in writing and must be served on the CEO within thirty days of service of the notice referred to in paragraph (4) (b) or within such further period as may be allowed under regulation 17.
- (7) When a substantially interested State requests the CEO to supply it with a draft safety investigation report, the CEO must not do so unless that State has agreed in writing, to comply with Chapter 13 of the IMO Code.
- (8) Where the CEO is of the view that a safety investigation will not have the potential to lead to the prevention of future accidents, then a simplified report may be published in such manner as the CEO thinks fit.
- (9) For the purposes of regulation 14(2), a report may be published in such manner as the CEO sees fit.
- (10) Subject to any court order under regulation 13, no person shall disclose any information—
- (a) which has been furnished to them in accordance with paragraph (4); or
 - (b) which has otherwise been furnished to them by or on behalf of the CEO in advance of the publication of a report and whose confidentiality is protected by regulation 13,

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or permit such information to be disclosed, except with the prior consent in writing of the CEO, to any other person, except to such advisers as are necessary in order to make representations to the CEO referred to in paragraph (4)(b), and those advisers must similarly be subject to the duty not to disclose the information or permit it to be disclosed.

(11) A copy of the report when made publicly available, must be given by the CEO to—

- (a) any person who has been served with a notice in accordance with paragraph (4)(a);
- (b) those persons or bodies to whom recommendations have been addressed in that report;
- (c) the Minister;
- (d) the IMO; and
- (e) any person or organisation whom the CEO considers may find the report useful or of interest.

(12) Where an inquest or fatal accident inquiry is to be held following an accident which has been subject to a safety investigation, a draft report may be made available in confidence, to the coroner by the CEO.

(13) If any part of any document or analysis it contains, to which this paragraph applies is based on information obtained in accordance with an inspector's powers under sections 220 and 228(8) of the Act, that part is inadmissible in any judicial proceedings whose purpose or one of whose purposes is to attribute or apportion liability or blame, unless a court, having regard to the factors mentioned in regulation 12 (5)(b) or (c), determines otherwise.

(14) For the purposes of this regulation, the documents are any publication produced by the CEO, as a result of a safety investigation.

(15) For the purposes of these Regulations, where any inspector is required to attend judicial proceedings, the inspector is not required to provide opinion, evidence or analysis of information provided to them, or to provide information obtained in accordance with an inspector's powers under sections 220 and 228(8) of the Act, where the purpose or one of the purposes of those proceedings is to attribute or apportion liability or blame, unless a court, having regard to all the factors mentioned in regulation 13(5)(b) or (c) determines otherwise.

(16) In this regulation "judicial proceedings" include any civil or criminal proceedings before any court, or person having by law the power to hear, receive and examine evidence on oath.

Publications other than reports of safety investigations

15 (1) The CEO may from time to time publish collective short reports of accidents which have not been the subject of a report published under regulation 14(1).

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(2) The CEO may submit a report to the Minister on any matter arising from the CEO's analysis of marine accident investigations.

Recommendations

16 (1) The CEO may at any time make recommendations as to how future accidents may be prevented.

(2) The actions recommended shall be addressed to those persons who, in the opinion of the CEO, are most suitable to implement them.

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

(4) Any person to whom a recommendation is addressed in accordance with paragraph (2) must, as soon as is reasonably practical—

(a) take that recommendation into consideration;

(b) send to the CEO—

(i) details of the measures, if any, that they have taken or propose to take to implement recommendations, and 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 under sub-sub-paragraph (i) or explanation under sub-sub-paragraph (ii) must be provided to the CEO within thirty days following receipt of the recommendation; and

(c) give notice to the CEO if at any time any information provided to the CEO in accordance with paragraph (4)(b)(i) concerning the measures they propose to take or the timetable for securing their implementation is rendered inaccurate by any change of circumstances.

(5) Without prejudice to paragraph (1), if the CEO is of the view that at any stage of a safety investigation, urgent action is required to be taken so as to prevent the risk of further accidents occurring, then the CEO may inform the Minister as soon as possible, as regards what urgent action should be taken by other States or other relevant parties.

Extension of time

17 (1) The CEO may extend the period of thirty days prescribed in regulation 14(6), if the CEO considers that there are good reasons to do so having regard to the requirements in regulation 14(2), for a report of a safety investigation to be made available in the shortest time possible.

(2) The CEO may extend the period of thirty days prescribed in regulation 16(4), where the CEO considers it appropriate to do so.

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

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Service of documents

18 Any notice or other document required or authorised by 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 their usual or last known residence or place of business, whether in Bermuda or elsewhere;
- (c) by sending it to them by post at that address; or
- (d) by sending it to them by 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.

Admissibility in judicial proceedings

19 (1) If any part of a publication produced by the CEO as a result of a marine safety investigation, or any analysis or conclusion reached in the publication is based on information obtained through the use of an inspector's powers under section 220 of the Act, that part, analysis or conclusion is inadmissible in any judicial proceedings whose purpose or one of whose purposes is to attribute or apportion liability or blame.

(2) For the purposes of these Regulations, an inspector who is required to attend judicial proceedings shall not, at those proceedings, provide—

- (a) information that was obtained through use of the inspector's powers under section 220 of the Act; or
- (b) opinion evidence or analysis based on such information,

and any evidence provided in breach of this paragraph is inadmissible in the proceedings.

(3) In this regulation "judicial proceedings" include any civil or criminal proceedings before any court of competent jurisdiction or person having by law the power to hear, receive and examine evidence on oath.

Ministerial oversight

20 (1) The Minister may appoint one or more persons to oversee safety investigations on the Minister's behalf who—

- (a) are independent of all parties involved in a marine safety investigation;
- (b) are independent of the management and functioning of the Authority; and
- (c) have requisite skills and knowledge in maritime matters and the conduct of marine safety investigations.

(2) A person appointed under paragraph (1) shall—

- (a) evaluate all accidents reported to the CEO and determine if a marine safety investigation has been conducted as required by these Regulations;

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- (b) evaluate the conduct of any marine safety investigation with respect to –
 - (i) the impartiality and objectivity of any inspector conducting the investigation;
 - (ii) any external direction that may be present; and
 - (iii) the requirements of the IMO Code;
- (c) evaluate—
 - (i) all draft marine safety investigation reports, taking into account the requirements of chapter 13 of the IMO Code; and
 - (ii) all marine safety investigation reports, taking into account the requirements of chapter 14 of the IMO Code; and
- (d) report on the person's findings in relation to paragraphs (a) to (c), to the Minister.

Penalties

- 21 (1) A person commits an offence if—
- (a) being a person mentioned in regulation 6(1), (2)(a) or (b), they fail without reasonable cause to report an accident as required by regulation 6;
 - (b) being a person referred to in sub-paragraph (a), they fail without reasonable cause to provide information as required by regulation 6(3); or
 - (c) they falsely claim to have any additional information or new evidence pertaining to any accident,

and is liable on summary conviction to a fine not exceeding \$10,000.

(2) If any person fails without reasonable cause to comply with any requirement, duty or prohibition in regulation 10(1), (2), (6) or (7), he commits an offence and is liable on summary conviction, to a fine not exceeding \$10,000 and on conviction on indictment, to an unlimited fine.

(3) If any person without reasonable cause discloses or permits to be disclosed, any information in contravention of regulation 13(1) or 14(10), or makes available, any documents or records in contravention of regulation 13(2), he commits an offence punishable on summary conviction, to a fine not exceeding \$10,000.

Revocation and savings

22 (1) The Merchant Shipping (Accident Reporting and Investigation) Regulations 2019 are revoked.

(2) Any investigation commenced under the Merchant Shipping (Accident Reporting and Investigation) Regulations 2019 which has not been completed, shall continue as if it had been started under these Regulations.

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SCHEDULE

(regulation 6(3))

MARINE CASUALTY OR INCIDENT NOTIFICATION DATA

- (a) name of ship and IMO official or fishing vessel number including flag of the country of registration;
- (b) type of ship;
- (c) date and time of the accident;
- (d) latitude and longitude of geographical position in which the accident occurred;
- (e) name and port of registry of any other ship involved;
- (f) number of people killed or seriously injured and associated type or types of casualty;
- (g) brief details of the accident including ship, cargo or any other damage;
- (h) if the ship is fitted with a voyage data recorder, the make and model of the recorder;
- (i) ports of departure and destination;
- (j) traffic separation scheme as appropriate;
- (k) place on board;
- (l) the nature of any pollution that occurs as a result of an accident.

Made this 7th day of July 2021

Minister of Transport

[Operative Date: 08 July 2021]