

CAYMAN ISLANDS



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THE MERCHANT SHIPPING LAW (2016 REVISION)

**MERCHANT SHIPPING (MARINE CASUALTY REPORTING AND
INVESTIGATION) REGULATIONS, 2018**

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ARRANGEMENT OF REGULATIONS

1. Citation
2. Definitions
3. Application
4. Objective of a marine safety investigation
5. Duties to report accidents
6. Preliminary assessments
7. Decisions regarding a marine safety investigation
8. Safety investigation for very serious marine casualty
9. Contents of a marine safety investigation
10. Subsequent or re-opened marine safety investigations
11. Preservation of evidence
12. Preservation of evidence - powers and duties of CEO
13. Conduct of a marine safety investigation
14. Discontinuing a marine safety investigation
15. Cooperation with other marine safety investigation authorities
16. Disclosure of evidence
17. Disclosure of records
18. Reports of marine safety investigations
19. Release of marine safety reports
20. Disclosure of confidential information
21. Publication of marine safety report
22. Admissibility in judicial proceedings of information obtained using inspector's powers
23. Ministerial oversight
24. Offences
25. Transitional provision

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THE MERCHANT SHIPPING LAW (2016 REVISION)

MERCHANT SHIPPING (MARINE CASUALTY REPORTING AND INVESTIGATION) REGULATIONS, 2018

The Cabinet, in exercise of the powers conferred by sections 173 and 463 of the Merchant Shipping Law (2016 Revision), makes the following Regulations -

1. These Regulations may be cited as the Merchant Shipping (Marine Casualty Reporting and Investigation) Regulations, 2018. Citation

2. (1) In these Regulations - Definitions

“accident” means a marine incident, a marine casualty or a very serious marine casualty;

“Casualty Investigation Code” means the Code of the International Standards and Recommended Practices for a Marine Safety Investigation into a Marine Casualty or Marine Incident, adopted by the IMO as the annex to resolution MSC.255(84) on 16 May 2008, as amended from time to time;

“CEO” means the Chief Executive Officer of the Maritime Authority appointed under section 9 of the Maritime Authority Law (2013 Revision);

“Code ship” means a ship subject to regulation 6 of chapter XI-1 of the Safety Convention;

“inspector” means an inspector of marine casualties appointed under section 430 of the Law and includes a person appointed under regulation 13(2) to assist an inspector;

“senior surviving officer” means the senior surviving officer in the deck department or, if there is no surviving officer in the deck department, whoever is the senior surviving engineer officer; and

“serious injury” means an injury which is sustained by a person, resulting in incapacitation where the person is unable to function normally for more than seventy-two hours, commencing within seven days from the date when the injury was suffered.

(2) For the purpose of these Regulations, a Cayman Islands ship includes a ship not registered under the law of any State but eligible for registration in the Cayman Islands under the Law.

(3) A term used in these Regulations that is not defined in the Law or paragraph (1) has the same meaning that it has in the Casualty Investigation Code.

Application

3. These Regulations apply in respect of accidents involving or occurring on board -

- (a) a Cayman Islands ship;
- (b) a Code ship which was in Cayman Islands waters at the time of the accident; or
- (c) any ship where, in the opinion of the Minister or the CEO, the Cayman Islands is a substantially interested state.

Objective of a marine safety investigation

4. (1) The sole objective of a marine 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 is not be the purpose of a marine safety investigation to determine liability nor, except so far as is necessary to achieve its objective, to apportion blame.

Duties to report accidents

5. (1) Subject to paragraph (5), when an accident occurs the following persons associated with the ship shall notify the CEO as soon as practicable following the accident -

- (a) the master, or if the master has not survived, the senior surviving officer; and
- (b) the ship’s owners unless they have ascertained to their satisfaction that the master or the senior surviving officer has already reported the accident.

(2) A person giving a notification in accordance with paragraph (1) must, in so far as is practicable, include the information set out in the Chapter 5 of the Casualty Investigation Code.

(3) In addition to the notification under paragraph (1), the person specified in that paragraph shall, so far as is reasonably practicable, ensure that -

- (a) the circumstances of the accident are examined; and
- (b) a report giving the findings of such examination and stating any measures taken or proposed to be taken to prevent a recurrence of that type of accident is provided to the CEO as soon as is practicable.

(4) If the accident reported under paragraph (1) is a marine casualty or a very serious marine casualty, the CEO shall notify any state that the CEO considers to be a substantially interested state, without delay.

(5) This regulation does not apply in relation to the following Cayman Islands ships -

- (a) a pleasure vessel of less than twenty-four meters in length;
- (b) a recreational craft which is hired on a bareboat basis without a professional master, skipper or crew; and
- (c) a vessel regulated by the Port Authority of the Cayman Islands.

6. (1) In the case of an accident in relation to a Code ship, the CEO shall carry out a preliminary assessment in order to decide whether or not a marine safety investigation shall be conducted.

Preliminary assessments

(2) When carrying out a preliminary assessment, the CEO shall take into account -

- (a) the seriousness of the accident;
- (b) the type of vessel and cargo involved;
- (c) the potential for the findings of a marine safety investigation to lead to the prevention of future accidents; and
- (d) any other factor the CEO considers relevant.

(3) In any preliminary assessment conducted under this regulation, the CEO shall decide, having regard to the objective set out in regulation 4, whether it is appropriate in the circumstances to conduct a marine safety investigation leading to the publication of a report.

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

Decisions regarding a marine safety investigation

(2) Before deciding whether a marine safety investigation shall be carried out, the CEO may obtain such information as the CEO considers necessary concerning the accident and any remedial action taken as a result.

(3) Any persons who are in possession of information requested by the CEO for the purposes of paragraph (2) shall provide the information to the best of their ability and knowledge.

(4) The CEO may decide not to carry out a marine safety investigation in relation to an accident if satisfied that -

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

(5) If the CEO decides that a marine safety investigation into a marine casualty or marine incident in relation to a Code ship shall not be carried out, the CEO shall record the decision and the reasons for it.

Safety investigation for very serious marine casualty

8. The CEO shall ensure that a marine safety investigation is carried out in relation to a very serious marine casualty in relation to a Code ship.

Contents of a marine safety investigation

9. (1) A marine safety investigation shall include -

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

(2) A marine safety investigation may be extended to cover the following events, circumstances and issues, if in the opinion of the CEO, they are relevant to future safety -

- (a) all events and circumstances preceding and subsequent to the accident;
- (b) issues involving salvage and pollution connected with the accident; or
- (c) the conduct of search and rescue operations.

(3) This regulation does not limit the scope of an investigation.

Subsequent or re-opened marine safety investigations

10. (1) Notwithstanding a decision not to conduct a marine safety investigation, the Minister may at any subsequent time direct that a marine safety investigation be conducted if satisfied that there is a good reason in the interests of future safety to do so.

(2) The Minister may cause a marine safety investigation to be re-opened if, following completion or discontinuation of the investigation, new and important evidence is discovered which, in the Minister's opinion, may -

- (a) have a material effect on any safety recommendations made; or

(b) result in future safety recommendations.

(3) Any marine safety investigation may be re-opened either in whole or in part and if re-opened, shall be subject to and conducted in accordance with these Regulations.

11. (1) Following an accident involving a Code ship to which regulations 3 and 5 apply, the persons associated with the ship shall, so far as is reasonable and practicable, ensure that the following are kept and that no alteration is made to any recordings or entries in them -

Preservation of evidence

- (a) all charts, including electronic charts;
- (b) all logbooks;
- (c) all recorded information relating to the period preceding, during and after an accident, howsoever recorded or retained, including information from a voyage data recorder or a video recorder; and
- (d) all documents or other records which might reasonably be considered pertinent to the accident.

(2) In the case of an accident involving a Code ship to which regulations 3 and 5 apply, the persons associated with the ship shall also ensure that -

- (a) all information from a voyage data recorder or recording system relating to the circumstances of the 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 a marine safety investigation is left undisturbed, in so far as it is reasonable and practicable to do so.

(3) The persons referred to in paragraphs (1) and (2) associated with the ship are -

- (a) the master, or if the master has not survived, the senior surviving officer; and
- (b) the ship's owners unless they have ascertained to their satisfaction that the master or senior surviving officer has taken the actions required by paragraphs (1) and (2).

(4) The duties of the persons referred to in paragraphs (1) and (2) associated with the ship continue until they are notified -

- (a) by the CEO that no marine safety investigation shall take place or that the investigation is complete; or
- (b) by the CEO in writing that they are no longer required to carry out those duties.

Preservation of evidence
- powers and duties of
CEO

12. (1) The CEO shall take steps to prohibit persons from gaining access to, or interfering with any ship, ship's boat or other equipment involved in an accident pending any marine safety investigation.

(2) Following an accident the CEO may, if it is considered necessary for the collection or preservation of evidence in connection with any marine safety investigation or preliminary assessment, require any of the following persons associated with a ship to ensure that the ship be accessible to any inspector engaged in the investigation of the accident until the process of collecting or preserving evidence has been completed to the satisfaction of the CEO -

- (a) the master or, if the master has not survived, the senior surviving officer; and
- (b) the ship's owners.

(3) The CEO shall not require a ship to remain in Cayman Islands waters any longer than is necessary for the collection or preservation of the evidence mentioned in this regulation and shall take all reasonable steps to ensure that such evidence is collected or preserved expeditiously.

Conduct of a marine
safety investigation

13. (1) If the Minister or the CEO causes a marine safety investigation to be held, it shall be carried out by one or more inspectors appointed by the Minister under section 430 of the Law.

(2) The CEO may also appoint one of or more persons who have special qualifications or experience to assist inspectors and such persons shall have the powers conferred on an inspector by section 422 of the Law.

(3) Every person required to attend before an inspector shall be allowed the reasonable expense of attending, which expense is payable by the Minister.

(4) When conducting a marine safety investigation an inspector shall take into account the provisions of the IMO guidelines on the fair treatment of seafarers, contained in the Annex to Assembly Resolution A.1056(27), adopted on 30 November, 2011.

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

Discontinuing a marine
safety investigation

14. (1) Subject to paragraphs (2) and (3), the CEO may, at any time after its commencement, decide to discontinue a marine safety investigation of an accident and shall record the reasons for discontinuing the investigation.

(2) Paragraph (1) does not apply to a marine safety investigation of a very serious marine casualty involving a Code ship.

(3) The CEO shall discontinue a marine safety investigation in relation to an accident if the CEO is of the opinion that the accident occurred due to a deliberate act or omission which had the intention to cause harm to the safety of a ship, a person or the environment.

(4) Whenever a marine safety investigation is discontinued in accordance with this regulation, the CEO shall report to the Minister the reasons for the CEO's opinion referred to in paragraph (3).

15. (1) A marine safety investigation commenced under regulation 7 or 8 shall, where appropriate, be conducted in co-operation with other substantially interested States.

Cooperation with other
marine safety
investigation authorities

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

(3) Where a marine safety investigation has been commenced, the CEO and any other States involved shall agree within the shortest possible time as to -

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

(4) For the purposes of this regulation -

- (a) a substantially interested State has equal rights and access to witnesses and evidence involved in a marine safety investigation; and
- (b) any representations that a substantially interested State may make to the lead investigating State shall be taken into consideration.

(5) If a substantially interested State is conducting a separate investigation into an accident that is subject to a marine safety investigation under regulation 13, the CEO shall exchange evidence and information with that State for the purposes, as far as possible, of reaching shared conclusions.

(6) Paragraphs (4)(a) and (5) only apply if the CEO is satisfied that -

- (a) the substantially interested State will comply with the requirements of the Casualty Investigation Code; and
- (b) any evidence or information provided by the CEO will not be disclosed in any criminal, civil or administrative proceedings.

Disclosure of evidence 16. Except as provided in regulation 15(4)(a) and (5), no evidence obtained as part of a marine safety investigation shall be made available to any other investigation of a criminal, civil administrative or disciplinary nature.

Disclosure of records 17. (1) Subject to paragraphs (2) to (6), no person shall disclose the name, address or other details of anyone who has given evidence to an inspector.

(2) Subject to paragraphs (3) to (6), no person shall make available for purposes other than a marine safety investigation the following documents and records whether held electronically, mechanically or otherwise, unless the 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 a marine safety investigation, together with any notes or recordings of witness interviews;
- (b) medical or confidential information regarding persons involved in an accident or marine casualty;
- (c) any report made under regulation 5(3);
- (d) copies of the report other than the final report except as mentioned in paragraph (4) or (5) or regulation 19(1)(a);
- (e) all correspondence received by the CEO or an inspector from parties involved in a marine safety investigation;
- (f) evidence from voyage data recorders;
- (g) the notes made by an inspector or person appointed under regulation 13(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) an inspector's opinions expressed in the analysis of information.

(3) The Court shall not order the disclosure of a document or record referred to in paragraph (2) unless it is satisfied that in the interests of justice disclosure outweighs any prejudice, or likely prejudice, to -

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

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

(5) 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.

(6) This regulation is without prejudice to any rule of law which authorizes 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.

18. (1) The CEO shall make every effort to make a report of a marine safety investigation publicly available in the shortest possible time, but in any case no later than one year after the date of receiving notification of the accident.

Reports of marine safety investigations

(2) A marine safety investigation report shall contain, but need not be limited to -

- (a) factual information relating to the accident;
- (b) conclusions relating to the facts of the evidence;
- (c) where facts cannot be clearly established, analysis and professional judgement to determine the probable facts;
- (d) recommendations for future safety where appropriate.

(3) Where the CEO is of the view that a marine safety investigation will not have the potential to lead to the prevention of future accidents then a simplified report may prepared.

19. (1) A marine safety report shall not be made publicly available until the CEO has -

Release of marine safety reports

- (a) served a notice, accompanied by a draft copy of the report, upon any person that could be adversely affected by the report; and
- (b) considered any representations relating to the facts and analysis contained in the report by persons or organisations served a notice under this regulation.

(2) The representations referred to in paragraph (1)(b) shall be in writing and be served on the CEO within thirty days of the notice referred to in that paragraph.

(3) The CEO may extend the period of thirty days prescribed in paragraph (2), even if it has expired, where the CEO considers it appropriate to do so having regard to the requirements in regulation 18(1).

(4) The CEO may give a draft marine safety report to any person that the CEO considers may have significant interests, rights or legitimate expectations with respect to the outcome of the marine safety investigation.

- (5) The CEO may make a draft report available in confidence to -
 - (a) a Board appointed under section 430(2) of the Law that is conducting a formal investigation under section 431 of the Law of the accident; or
 - (b) a coroner holding an inquest into the accident.

(6) The CEO may not supply a substantially interested state with a draft marine safety report unless that State has agreed, in writing -

- (a) to comply with the provisions of Chapter 13 of the Casualty Investigation Code; and
- (b) not to disclose the draft report in any criminal, civil or administrative proceedings.

Disclosure of confidential information

20. (1) Subject to paragraph (2) or a Court order, no person shall disclose, or permit to be disclosed to any person, information which has been furnished to them -

- (a) by or on behalf of the CEO in advance of the publication of a report, the confidentiality of which is protected by regulation 17; or
- (b) in accordance with regulation 19(4) or (5).

(2) Information referred to in paragraph (1) may be disclosed -

- (a) to any person, with the prior consent in writing of the CEO; or
- (b) to such advisers as are necessary in order to make representations to the CEO referred to in regulation 19(1)(a).

(3) An adviser who receives information in order to make representations to the CEO is subject to the duty not to disclose the information.

Publication of marine safety report

21. (1) A marine safety report may be published in such manner as the CEO sees fit.

(2) When making the marine safety report publicly available, the CEO shall give a copy of the report to -

- (a) any person who has been served a notice in accordance with paragraph 19(1)(a);
- (b) those persons or bodies to whom recommendations have been addressed in that report;
- (c) the IMO; and
- (d) any person that the CEO considers may find the report useful or of interest.

(3) The CEO may from time to time publish safety information relating to an on-going marine safety investigation.

(4) The CEO may make recommendations relating to an on-going marine safety investigation publicly available before the investigation is complete if the CEO considers it to be in the interests of safety or preventing pollution.

22. (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 use of an inspector's powers under section 422 of the Law, 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.

Admissibility in judicial proceedings of information obtained using inspector's powers

(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 sections 422 of the Law; 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.

23. (1) The Minister may appoint one or more persons to oversee marine safety investigations on the Minister's behalf who -

Ministerial oversight

- (a) are independent of all parties involved in a marine safety investigation;
- (b) are independent of the management and functioning of the Maritime 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;
- (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 Casualty Investigation Code;
- (c) evaluate -
 - (i) all draft marine safety investigation reports taking into account the requirements of chapter 13 of the Casualty Investigation Code; and
 - (ii) all marine safety investigation reports taking into account the requirements of chapter 14 of the Casualty Investigation Code; and
- (d) report on the person's findings in relation to paragraphs (a) to (c) to the Minister.

Offences

24. (1) A person commits an offence and is liable on summary conviction to a fine of ten thousand dollars if that person -

- (a) being a person mentioned in regulation 5(1), fails without reasonable cause -
 - (i) to report an accident as required by regulation 5 or
 - (ii) to provide information as required by regulation 5(2) or 7(3);
- (b) falsely claims to have any additional information or new evidence pertaining to any accident;
- (c) discloses any evidence or information contrary to regulation 16, 17(1) or 17(2); or
- (d) does not comply with a requirement under section 422 of the Law imposed by a person appointed under regulation 13(2).

(2) A person who fails without reasonable cause to comply with any requirement, duty or prohibition in regulation 11(1), 11(2) or 12(2) commits an offence and is liable on summary conviction to fine of fifteen thousand dollars.

Transitional provision

25. Any marine safety investigation which has not been completed when these Regulations come into force shall continue as if it had been commenced under these Regulations.

Made in Cabinet the 25th day of September, 2018.

Davina Wilson

Acting Clerk of the Cabinet.