

Government Notice No. 140 of 2017

THE MERCHANT SHIPPING ACT

**Regulations made by the Minister under section 228
of the Merchant Shipping Act**

1. These regulations may be cited as the Merchant Shipping (Preliminary Inquiries and Formal Investigations of Shipping Casualties) Regulations 2017.

2. In these regulations –

“Act” means the Merchant Shipping Act;

“Code” means the Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident (Casualty Investigation Code) of the Organisation;

“report” means a report referred to in section 105(1) of the Act;

“substantially interested State” means a State –

- (a) which is the flag State of a ship that is the subject of a preliminary inquiry or formal investigation;
- (b) where a shipping casualty has occurred within its internal waters or territorial sea;
- (c) where a shipping casualty caused, or threatened, serious harm to the environment of that State, or within those areas over which the State is entitled to exercise jurisdiction as recognised under international law;
- (d) where the consequences of a shipping casualty caused, or threatened, serious harm to that State or to its artificial islands, installations, or structures over which it is entitled to exercise jurisdiction;

- (e) where, as a result of a shipping casualty, nationals of that State lost their lives or received serious injuries;
 - (f) that has at its disposal important information that may be of use to a preliminary inquiry or formal investigation; or
 - (g) that, for some other reason, establishes an interest that is considered significant by the investigating State.
- 3. (1) A preliminary inquiry of a shipping casualty shall be conducted in accordance with section 10 of the Act and may be undertaken in collaboration with a substantially interested State.
 - (2) Where the Director or a surveyor designated by him conducts a preliminary inquiry, the Director or surveyor may act in coordination with a substantially interested State.
- 4. A formal investigation of a shipping casualty shall be held in accordance with section 11 of the Act.
- 5. (1) The object of a preliminary inquiry or formal investigation of a shipping casualty shall be to determine the causes and factual circumstances associated with the casualty with a view to preventing shipping casualties.
 - (2) It shall not be the object of a preliminary inquiry or formal investigation to determine fault or liability.
- 6. (1) For the purpose of section 105(2) of the Act, a report of an accident or damage to a ship shall include, if any –
 - (a) the name and address of the owner, operator, agent and representative person of the ship;

- (b) the name of the master, skipper or person in charge of the ship;
- (c) the date and time of the accident or damage;
- (d) the ports of departure and destination of the ship;
- (e) the geographical position where the damage or accident occurred;
- (f) the IMO number, call sign, port of registry of the ship;
- (g) the weather conditions at time of the accident or damage;
- (h) details of loss, damage or injury suffered by the ship, property and individuals.

(2) Where an accident occurs, or damage is caused to a ship, the owner or Master shall, in accordance with section 105(1) of the Act, transmit to the Director or to a proper officer a report of the accident or damage, together with the information specified in paragraph (1).

7. (1) The Director shall, on receipt of any report, cause a preliminary inquiry to be conducted and may, for that purpose, designate a surveyor.

(2) Any person conducting a preliminary enquiry shall, *inter alia* –

- (a) review, analyse and collate all the information received to determine the factual circumstances and probable causes of the accident or damage;

- (b) notify interested parties and substantially interested States of the inquiry;
- (c) examine witnesses and collect information;
- (d) take into account the Code; and
- (e) where appropriate, probe into matters of salvage, mitigation of pollution damage, and search and rescue operations.

(3) Upon completion of the preliminary inquiry, a report thereon shall be submitted to the Minister within 7 days of the completion of the inquiry.

(4) The report referred to in paragraph (3) shall, *inter alia*, contain the findings, in particular, the factual circumstances and probable causes of the accident or damage, and conclusions of the inquiry, including any recommendations regarding prevention of similar accident or damage.

(5) In the preparation of the report, account may be taken of the provisions of the Code.

(6) The Director may send a copy to the substantially interested States and to the Organisation.

(7) (a) The Director may, where new information or evidence relating to any accident or damage is discovered, re-open a preliminary inquiry which could have a material effect on any safety recommendations made, or if he deems it necessary in the interests of prevention of future similar accident or damage.

(b) Any re-opened preliminary inquiry shall be conducted in accordance with these regulations.

8. (1) The Director shall keep all information, statements and records obtained during the conduct of a preliminary inquiry and refrain from releasing all such material other than to a competent authority involved in the inquiry, or upon being ordered by a Court of Investigation in the course of a formal investigation conducted under section 11 of the Act or otherwise by order of a competent court in the course of other judicial proceedings.

(2) The material referred to in paragraph (1) above may include –

- (a) oral or written statements given by persons, whether
or not as witnesses, and whether or not given under oath in the course of the preliminary inquiry;
- (b) communications between persons involved in the operation of a ship which is the subject of the preliminary inquiry;
- (c) medical or private information regarding persons involved in the operation of the ship;
- (d) opinions expressed during the conduct of the preliminary inquiry;
- (e) any document submitted by any person directly or indirectly involved in the inquiry.

(3) The Director shall maintain in his custody and possession, all records of proceedings of inquiries for future reference, including the material which he may be

required to release pursuant to a court order pursuant to paragraph (1).

- 9.** For the proper conduct of a preliminary inquiry, the Director may –
- (a) cause the operation of a ship involved in a shipping casualty to be stopped where he considers that the operation of the ship poses a hindrance to the conduct of the preliminary inquiry; or
 - (b) detain a ship until the completion of the preliminary inquiry.
- 10** (1) Where the Director deems it necessary, he may prevent the wreck resulting from a shipping casualty situated anywhere within the Mauritius waters from being removed.
- (2) Where a wreck resulting from a shipping casualty poses a threat to the safety of shipping or to the marine environment in the territorial sea, the Director shall exercise his powers in accordance with section 140 of the Act.
- (3) The Director may take into custody a wreck or any part thereof for the purposes of a preliminary inquiry until it is no longer necessary for him to retain such custody.
- 11.** (1) Where a substantially interested State is in the process of conducting a marine safety investigation pursuant to the Code in parallel with a preliminary inquiry or formal investigation under these regulations, the Director or Court of Investigation, as the case may be, may invite a representative of any interested party or the substantially interested State to participate as an observer in the proceedings conducted under these regulations.

(2) Where a marine safety investigation is being conducted under paragraph (1), the Director or Court of Investigation, as the case may be, may, as provided for in chapter 9 of the Code, and insofar as it is possible to do so, avoid any conflicts in timing of the proceedings in Mauritius or on demands upon witnesses and access to evidence.

12. Any person who –

- (a) without reasonable cause, fails to report a shipping casualty;
- (b) falsifies any information in connection with the reporting of a shipping casualty;
- (c) falsely claims to have any additional information or new evidence pertaining to any shipping casualty,

shall commit of an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees.

13. These regulations shall come into operation on 1 July 2017.

Made by the Minister on 19 June 2017.
