
Government Notice No. 67 of 2018

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 (International Safety Management) (ISM Code) Regulations 2018.

2. Interpretation

In these regulations –

“Act” means the Merchant Shipping Act;

“audit” means a systematic and independent examination to determine whether the safety management system is suitable to meet the objectives set out in section 1 of the ISM Code, and, so far as the system has been operated, that the system has been implemented effectively, taking into account the Guidelines on the Implementation of the ISM Code by Administrations adopted by IMO pursuant to Assembly Resolution A.1022(26), as may be amended from time to time;

“company” –

(a) means the owner of a ship; and

(b) includes any other person or organisation that assumes the responsibility for the operation of the ship from the owner;

“Document of Compliance” means the Document of Compliance referred to in paragraph 4 of Chapter IX of SOLAS;

“ISM Code” means the International Management Code for the Safe Operation of Ships and for Pollution Prevention, as adopted by the International Maritime Organisation by Resolution A.741(18) and as amended by Resolution MSC 104(73);

“Safety Management Certificate” means the Safety Management Certificate referred to in paragraph 4 of Chapter IX of SOLAS;

“safety management system” means a structured and documented system which enables a company personnel to effectively implement the company safety and environmental protection policy.

3. Application and Compliance with ISM Code

(1) These regulations shall apply to –

- (a) every Mauritius ship referred to in paragraph (2), wherever they may be; and
- (b) every foreign ship referred to in paragraph (2) while in Mauritius waters.

(2) These regulations shall apply to –

- (a) passenger ships, including high speed crafts;
- (b) oil tankers, chemical tankers, gas carriers, bulk carriers and cargo high speed craft of gross tonnage of not less than 500; and
- (c) other cargo ships and mobile offshore drilling units of gross tonnage of not less than 500 and above.

(3) Every company shall, in respect of a ship under its responsibility, comply with the ISM Code.

(4) No company shall operate a ship unless –

- (a) it holds a valid Document of Compliance; and
- (b) there is in force in respect of that ship, a valid Safety Management Certificate.

(5) Where a company operates a ship, it shall ensure that a valid Safety Management Certificate and a copy of a valid Document of Compliance are, at all times, carried on board the ship.

(6) Every master shall operate his ship in accordance with the safety management system on the basis of which the Safety Management Certificate was issued.

(7) For the purpose of these regulations, a Document of Compliance or Safety Management Certificate shall be deemed not to be valid where it does not bear, in the case of a –

- (a) Document of Compliance, satisfactory annual audits; and
- (b) Safety Management Certificate, a satisfactory intermediate audit.

4. Designated person

(1) Every company shall designate a person who shall be responsible for monitoring the safe and efficient operation of each ship under its responsibility with particular regard to safety and the prevention of pollution.

(2) Every designated person shall, in particular –

- (a) take such steps as may be necessary to ensure compliance with the company safety management system on the basis of which the Document of Compliance was issued; and
- (b) ensure that proper provision is made for a ship to be so manned, equipped and maintained so that it is fit to operate in accordance with the safety management system and with statutory requirements.

(3) Every company shall ensure that the designated person –

- (a) is provided with sufficient authority and resources; and

(b) has appropriate knowledge and sufficient experience of the operation of ships at sea and in port, to enable him to comply with paragraphs (1) and (2).

5. Delegated Authority to Classification Societies

The Director may delegate –

- (a) the issue and endorsement of a Safety Management Certificate; and
- (b) the audit of companies and surveys of ships for the purpose of issue, endorsement or renewal of certificates,

to Classification Societies.

6. Document of Compliance

Where the Director is satisfied that a company which operates a Mauritius ship complies with the ISM Code, a Document of Compliance may be issued to that company for a period not exceeding 5 years and on such other terms and conditions as the Director may determine.

7. Safety Management Certificate

(1) Where the Director is satisfied that a Mauritius ship is operated by a company which is the holder of a Document of Compliance and that the company and its shipboard management comply with the safety management system, a Safety Management Certificate may be issued in respect of that ship for a period not exceeding 5 years and on such other terms and conditions as the Director may determine.

(2) (a) Where the Director is satisfied that a Mauritius ship is operated by a company which is the holder of a Document of Compliance accepted pursuant to subparagraph (b) and (c), and that its shipboard management complies with the safety management system, he may, in respect of that ship, issue a Safety Management

Certificate for a period not exceeding 5 years and on such other terms and conditions as he may determine.

(b) Where a company complies with the ISM code and operates ships which are registered in different flags and one of those ships is registered in Mauritius, the Director may accept a Document of Compliance issued by the competent authority of a flag where its other ships are registered.

(c) A country referred to in subparagraph (b) shall be a party to the Safety Convention.

(d) Any condition for the acceptance of a Document of Compliance under subparagraph (b) may include the audit of the company by a surveyor.

8. Interim Certificates

(1) Where a company is newly established, or the company assumes, for the first time, the responsibility for operating a ship which is not covered by a Document of Compliance the company already holds, an interim Document of Compliance may, subject to paragraph (2), be issued to facilitate the implementation of the ISM Code.

(2) An interim Document of Compliance shall be valid for a period of not more than 12 months and may be issued to a company where the company demonstrates –

- (a) that it has a safety management system which is in accordance with sections 1, 2 and 3 of the ISM Code; and
- (b) plans to implement a safety management system which meets the requirements of the ISM Code.

(3) (a) An interim Safety Management Certificate, shall be valid for a period of not more than 6 months, may, in respect of a new ship, be issued on delivery if –

- (i) a company takes the responsibility for the management of the ship which is new to the company; or
- (ii) there is a change in the nationality of the ship.

(b) The Director may, where he considers appropriate, extend the validity of the interim Safety Management Certificate for a further period of 6 months.

(c) An interim Safety Management Certificate shall be issued where the Director is satisfied that –

- (i) the Document of Compliance or the interim Document of Compliance is relevant to that type of ship;
- (ii) the safety management system provided by the company for the ship includes all key elements of the ISM Code and has been assessed during the audit for issuance of the Document of Compliance or issuance of the interim Document of Compliance;
- (iii) the master and relevant senior officers are familiar with the safety management system and the planned arrangements for its implementation;
- (iv) instructions which have been identified as essential to be provided prior to sailing have been given;
- (v) plans for audit, by the company, of the ship within 3 months exist; and

- (vi) the relevant information on the safety management system is given in a working language or languages understood by the ship's personnel.

9. Issue of Safety Management Certificate by another Government

(1) The Director may request, through a proper officer or otherwise, the Government of a country which is a party to SOLAS –

- (a) to conduct an audit of the safety management system operated on board a Mauritius ship; and
- (b) if satisfied that the requirements of the ISM Code are complied with, to issue to the ship a Safety Management Certificate or authorise such issue or, where appropriate, endorse such certificate in accordance with the requirements of SOLAS after intermediate audit.

(2) A Safety Management Certificate issued pursuant to paragraph (1) shall contain a statement that it has been so issued and shall have the same effect as if it was issued by the Director.

10. Issue of Document of Compliance and Safety Management Certificate on behalf of another Government

(1) The Director may, at the request of a State which is a party to SOLAS, audit the safety management system of a company and ship registered in that country and, if satisfied that the requirements of the ISM Code are complied with, and that the audit has been satisfactorily completed in accordance with these regulations, issue to the company a Document of Compliance or, in respect of the ship, a Safety Management Certificate, or, where appropriate, endorse the document or certificate in accordance with the requirements of SOLAS after annual or intermediate audits.

(2) A Document of Compliance or Safety Management Certificate issued pursuant to paragraph (1) shall contain a statement that it has been so issued and shall have the same effect as if it was issued by that State and not by the Director.

11. Annual audit in respect of Safety Management Certificate

(1) The Director shall carry out an annual audit of every company which is the holder of a Document of Compliance to ensure that the conditions for the continued validity of the document are being complied with.

(2) An annual audit referred to in paragraph (1) shall be carried out within 3 months of the anniversary date of the Document of Compliance.

12. Intermediate audit in respect of Safety Management Certificate

(1) The Director shall carry out an intermediate audit of every ship in respect of which a Safety Management Certificate has been issued to ensure that the conditions for the continued validity of the Safety Management Certificate are being complied with.

(2) An intermediate audit referred to in paragraph (1) shall be carried out between the second and third anniversary of the Safety Management Certificate, or at such other time as the Director may determine.

13. Renewal of Document of Compliance and Safety Management Certificate

The Director shall, prior to the renewal of a Document of Compliance or Safety Management Certificate, carry out a renewal audit of the company or ship during the six-month period preceding the date of expiry of the document or certificate, as the case may be, to ensure that the requirements of the ISM Code are being complied with.

14. Powers of audit, inspection, suspension of service and detention

(1) A surveyor may audit the safety management system of any company.

(2) Where a surveyor determines that a company –

(a) notwithstanding the fact that it is the holder of a Document of Compliance, is unable to operate ships without creating a risk of serious danger to safety of life, serious damage to property or serious harm to the environment; or

(b) does not hold a Document of Compliance,

he shall immediately report the matter to the Director who may suspend the operation of the ships by that company until such time as any such risk is removed or a valid Document of Compliance is held.

(3) Where a service is to be suspended pursuant to paragraph (2)(b), the authorised officer shall serve a notice on the company stating that the operation of the service specified in the notice has been suspended.

(4) (a) A surveyor may inspect any ship, and any such inspection may include an audit of its safety management system.

(b) Where a surveyor is satisfied, after inspecting a ship, that the ship is not complying with these regulations, he shall immediately inform the master and report the matter to the Director.

(5) Where the Director receives information from the surveyor under paragraph (4)(b), he shall give the appropriate instructions to the authorised officer for the situation to be rectified.

15. Suspension or cancellation of Document of Compliance and Safety Management Certificate

(1) (a) The Director may, by notice in writing, suspend or cancel any Document of Compliance or Safety Management Certificate issued by him or at his request under these regulations where he has reason to believe that –

- (i) the certificate was issued on false or erroneous information;
- (ii) since any audit required under these regulations, the management structure of the company or ship has changed substantively; or
- (iii) where any audit of a company or ship has revealed a failure to comply with these regulations.

(b) A notice referred to in subparagraph (a) shall contain the grounds for the suspension or cancellation of the Document of Compliance or Safety Management Certificate, as the case may be.

(c) A notice shall not be given unless the holder has been given the opportunity to make representations, except where the Director considers that urgent safety or pollution prevention considerations require the notice to be given immediately.

(2) The Director may require that any Document of Compliance or Safety Management Certificate, issued by him under these regulations, which has expired or has been suspended or cancelled, be surrendered to him.

16. Offences

(1) No person shall –

- (a) intentionally alter a Document of Compliance or Safety Management Certificate;

- (b) in connection with any audit conducted pursuant to these regulations, knowingly or recklessly furnish false information;
- (c) with intent to deceive, use, lend or allow to be used by another, a Document of Compliance or Safety Management Certificate;
- (d) fail to surrender a Document of Compliance or Safety Management Certificate required to be surrendered under these regulations; or
- (e) forge a Document of Compliance or Safety Management Certificate.

(2) A person who contravenes these regulations shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees.

17. These regulations shall come into operation 1 June 2018.

Made by the Minister on 31 May 2018.
