

**S.I. 92 of 2022**

**MERCHANT SHIPPING ACT**

*(Cap 282)*

**Merchant Shipping (Marine Accident Reporting and Safety Investigation) Regulations, 2022**

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## **S.I. 92 of 2022**

### **MERCHANT SHIPPING ACT**

*(Cap 282)*

### **Merchant Shipping (Marine Accident Reporting and Safety Investigation) Regulations, 2022**

In exercise of the powers conferred by section 242 of the Merchant Shipping Act, the Minister responsible for ports and marine makes the following regulations —

#### **Part I - Preliminary**

##### **Citation**

1. These Regulations may be cited as the Merchant Shipping (Marine Accident Reporting and Safety Investigation) Regulations, 2022.

##### **Interpretation**

2. In these Regulations unless the context otherwise requires —

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

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

“Act” means the Merchant Shipping Act (Cap 282);

“Authority” means the Seychelles Maritime Safety Authority established by the Seychelles Maritime Safety Authority Act, 2019;

“agent” means any person, natural or legal, engaged on behalf of the owner, charterer or operator of a ship, or the owner of the cargo, in providing shipping services, including managing arrangements for the ship being the subject of a marine safety investigation.

“Board” means the Marine Accident Investigation Board established by section 227 of the Act;

“causal factor” means actions, omissions, events or conditions, without which —

- (a) the marine casualty or marine incident would not have occurred; or
- (b) adverse consequences associated with the marine casualty or marine incident would probably not have occurred or have been as serious;
- (c) another action, omission, event or condition, associated with an outcome in paragraph (a) or (b), would probably not have occurred;

“Chief Inspector” means the Chief Inspector for marine safety investigation appointed by the Minister;

“coastal state” means a State in whose territory, including its territorial sea, a marine casualty or marine incident occurs;

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

“exclusive economic zone” means the exclusive economic zone as defined in the Maritime Zones (Exclusive Economic Zone and Continental shelf) Order, 2014;

“high seas” means the high seas as defined in article 86 of the United Nations Convention on the Law of the Sea;

“IMO” means the International Maritime Organisation;

“investigator” means a member of the Marine Accident Investigation Board or any person appointed under regulation 12 carrying out a marine safety investigation;

“marine casualty” means an event, or a sequence of events, that has resulted in any of the following which has occurred directly in connection with the operations of a ship, excluding a deliberate act or omission with intention to cause harm to the safety of a ship, an individual or the environment —

- (a) the death of, or serious injury to, a person;
- (b) the loss of a person from a ship;
- (c) the loss, presumed loss or abandonment of a ship;
- (d) material damage to a ship;
- (e) the stranding or disabling of a ship, or the involvement of a ship in a collision;
- (f) material damage to marine infrastructure external to a ship, that could seriously endanger the safety of the ship, another ship or an individual; or
- (g) severe damage to the environment, or the potential for severe damage to the environment, brought about by the damage of a ship or ships;

“marine incident” means an event, or sequence of events, other than a marine casualty, which has occurred directly in connection with the operations of a ship that endangered, or, if not corrected, would endanger the safety of the ship, its occupants or any other person or the environment, excluding a deliberate act or omission, with the intention to cause harm to the safety of a ship, an individual or the environment;

“marine safety investigation” means an investigation into a marine casualty or marine incident, conducted with the objective of preventing marine casualties and marine incidents in the future, including the collection and analysis of evidence, the identification of causal factors and the making of safety recommendations as may be necessary;

“marine safety investigating state(s)” means the flag state or, where relevant, the state or states that take the responsibility for the conduct of the marine safety investigation as mutually agreed in accordance with these Regulations;

“marine safety record” means the following types of records collected for a marine safety investigation —

- (a) all statements taken for the purpose of a marine safety investigation;
- (b) all communications between persons pertaining to the operation of the ship;
- (c) all medical or private information regarding persons involved in the marine casualty or marine incident;
- (d) all records of the analysis of information or evidential material acquired in the course of a marine safety investigation;
- (e) information from the voyage data recorder;

“material damage” in relation to a marine casualty means —

- (a) damage that —
  - (i) significantly affects the structural integrity, performance or operational characteristics of marine infrastructure or a ship; and
  - (ii) requires major repair or replacement of a major component or components; or
- (b) destruction of the marine infrastructure or ship;

“Minister” means the Minister responsible for maritime affairs;

“preliminary assessment” means a preparatory evaluation by the Board which is intended to establish the likely causes and circumstances of an accident with a view to determining whether or not a safety investigation should be undertaken;

“seafarer” means any person who is employed or engaged or works in any capacity on board a ship;

“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 72 hours, commencing within 7 days from the date when the injury was suffered;

“serious marine casualty” means 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 —

- (a) fire;
- (b) explosion;
- (c) collision;
- (d) grounding;
- (e) contact;
- (f) heavy weather damage;
- (g) a suspected hull defect; resulting in any of the following —
  - (i) the immobilization of the main engines;
  - (ii) extensive accommodation damage;
  - (iii) severe structural damage including penetration of the hull underwater rendering the ship unfit to proceed;
  - (iv) pollution;

(v) breakdown that necessitates towage or shore assistance.

“severe damage to the environment” means damage to the environment which, as evaluated by the state affected, or the flag state, produces a major deleterious effect upon the environment;

“substantially interested state” means a state —

- (a) which is the flag state of a ship involved in a marine casualty or marine incident;
- (b) which is the coastal state involved in a marine casualty or marine incident;
- (c) whose environment was severely or significantly damaged by a marine casualty, including the environment of its waters and territories recognized under international law;
- (d) where the consequences of a marine casualty or marine incident caused, or threatened serious harm to that state or to artificial islands, installations, or structures over which it is entitled to exercise jurisdiction;
- (e) where, as a result of a marine casualty, nationals of that state lost their lives or received serious injuries;
- (f) that has important information at its disposal that the Board considers useful to the investigation; or
- (g) that for some other reason establishes an interest that is considered significant by the marine safety investigating State.

“territorial sea” means territorial sea as defined by section 4 of the Maritime Zones Act (Cap 122);

“very serious marine casualty” means a marine casualty involving the total loss of the ship or a death or severe damage to the environment.

“voyage data recorder” means the electronic or mechanical equipment which may be installed on a ship to record key navigational and control information.

### **Application of Regulations**

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

- (a) any Seychelles flagged ship worldwide;
- (b) any ship within Seychelles territorial sea;
- (c) any other ship where in the opinion of the Board, Seychelles is a substantially interested state.

### **Functions of the Board in relation to marine safety investigations**

**4.(1)** The Board shall conduct marine safety investigations in accordance with these Regulations.

(2) For the purpose of sub-regulation (1), the Board shall be supported by a Chief Inspector, a pool of investigators and a secretariat.

(3) The Board shall determine its procedures and manners in which its business and meetings shall be conducted.

(4) The Board members shall be remunerated in accordance with the fees set out in the remuneration policy and framework on fees for executive boards.

(5) A member of the Board may at any time resign by a letter addressed to the Chairperson and such member shall cease to be a member of the Board from the date on which the Chairperson accepts the resignation.

(6) The Board may establish working relations through mutual agreements of understanding with other agencies and stakeholders being an interested party to the investigation, such as, but not limited to the Police, rescue services, the coast guard, and the Port Authority.

## **Objective of marine safety investigation**

5.(1) The conduct of a safety investigation into an accident under these Regulations shall be for the prevention of future accidents through the ascertainment of its causes and circumstances.

(2) The purpose of a safety investigation shall not be for the determination of liability to apportion blame, except so far as is necessary to achieve its objective.

(3) Subject to sub-regulation (2), the investigators conducting a marine safety investigation shall not refrain from fully reporting on the causal factors which may infer fault or liability from the findings.

(4) The safety investigation shall be independent from any inquiry or investigations conducted in accordance with the Seychelles Maritime Safety Authority Act, 2019, the Act and any police investigation.

## **Duty to report accidents and serious injuries**

6.(1) When an accident occurs, the Authority, the Board and the Chief Inspector shall be notified of the accident, as soon as is practicable following the accident and by the quickest means available by —

- (a) the master, or in the event that the master has not survived, the senior surviving officer; and
- (b) the ship's owner, unless the owner has ascertained to his satisfaction that the master or the senior surviving officer has reported the accident.

(2) In addition to any notification made under sub-regulation (1) the Authority, the Board and the Chief Inspector shall be notified, as soon as is practicable and by the quickest means available, of any accident by —

- (a) the harbour authority of a harbour, in the case of an accident within or adjacent to the limits of any harbour;

(b) an official of the Seychelles Coast Guard, in respect of an accident within Seychelles territorial waters.

(3) A person making a notification in accordance with sub-regulation (1) shall, in so far as is practicable, include the information set out in the First Schedule.

(4) In addition to making a notification, the persons specified in sub-regulation (1) (a) and (b) shall —

(a) so far as is reasonably practicable, ensure that the circumstances of every accident are examined; and

(b) as soon as is practicable, submit a report to the Board, giving the findings of such examination, stating any measures taken or proposed to be taken to prevent a recurrence.

(5) If the accident reported under sub-regulation (1) is a marine casualty or a very serious marine casualty, the Authority shall without delay, notify any state considered to be a substantially interested state.

## **PART II - MARINE SAFETY INVESTIGATIONS**

### **Preliminary assessments**

7.(1) In the case of a serious marine casualty, in relation to a ship, the Board in consultation with the Chief Inspector shall conduct a preliminary assessment to determine whether it is appropriate in the circumstances to conduct a marine safety investigation that will ultimately lead to the publication of a report.

(2) When conducting a preliminary assessment the Board and Chief Inspector shall take into account, but shall not be limited to —

(a) the seriousness of the accident;

(b) the type of ship and cargo involved;

- (c) the potential for the findings of a safety investigation to lead to the prevention of future accidents;
- (d) any other factor the Board considers relevant.

(3) Where the Board in consultation with the Chief Inspector decides that a marine safety investigation into an accident shall not be carried out, the reasons for this decision shall be recorded.

### **Ordering a marine safety investigation**

8.(1) The Board in consultation with the Chief Inspector shall ensure that a safety investigation is carried out in relation to any accident that is a very serious marine casualty.

(2) The Board may decide to undertake a safety investigation in relation to an accident that is a serious marine casualty having carried out a preliminary assessment in accordance with regulation 7.

(3) The safety investigation shall include, but shall not be limited to —

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

(4) A safety investigation in relation to an accident that is a marine casualty or a marine incident may be conducted, if it is considered likely that a marine safety investigation will provide information that can be used to prevent marine casualties and marine incidents in the future.

(5) Where the Board and the Chief Inspector has received a notification under regulation 6, the Board and the Chief Inspector shall determine whether or not a safety investigation should be conducted and shall publish details of that decision in such manner as is seen fit, as soon as is reasonably practicable.

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

(7) Any person who is in possession of information requested by an investigator for the purposes of regulation 6 shall provide such information to the best of their ability and knowledge.

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

- (a) any loss of life resulted from suicide or natural causes; or
- (b) any serious injury resulted from attempted suicide;
- (c) a criminal investigation has been opened by the Police into the case.

(9) When a marine safety investigation is commenced under these Regulations, the master, the owner and agent of a ship involved in the marine casualty or marine incident being investigated, shall be informed as soon as practicable, of —

- (a) the marine casualty or marine incident under investigation;
- (b) the time and place at which the marine safety investigation will commence;
- (c) the name and contact details of the Board;
- (d) the relevant details of the legislation under which the marine safety investigation is being conducted;
- (e) the rights and obligations of the parties subject to the marine safety investigation; and
- (f) the rights and obligations of the state or states conducting the marine safety investigation.

(10) The marine safety investigation shall commence, as soon as is reasonably practicable, without delaying the ship unnecessarily.

### **Subsequent or re-opened investigation**

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

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

(3) In cases under sub-regulation (2), the new evidence shall be fully assessed and referred to other substantially interested States for appropriate input.

(4) Any safety investigation may be re-opened either in whole or in part and shall be subject to and conducted in accordance with the provisions of these Regulations.

### **Preservation and collection of evidence**

10.(1) Following an accident involving a ship to which regulation 3 applies, the persons referred to under regulation 6 (1) shall so far as is practicable, ensure the keeping of all —

- (a) charts;
- (b) log books;
- (c) recorded information relating to the period preceding, during and after an accident, 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.

(2) Any recordings or entries referred to under sub-regulation (1) shall not be altered.

(3) In the case of an accident involving a ship to which regulation 3 applies, the persons referred to under regulation 6 (1) shall 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 so far as practicable left undisturbed.

(4) The obligation under sub-regulation (1), (2) and (3) shall continue until —

- (a) a published notification is received from the Board that no safety investigation is to take place or that the investigation has been completed;
- (b) 30 days have passed since the Board received the report under regulation 6 (1) and no notice has been published by the Board that an investigation will be conducted in the matter; or
- (c) the Board or an investigator conducting the investigation gives written notification that they are no longer required.

(5) Following an accident in Seychelles waters involving a ship which is not a Seychelles ship, the persons referred to under regulation 6 (1) shall comply with the requirements of sub-regulation(1), (2) and (3) if required to do so by or on behalf of the Board.

(6) Following an accident, the Board may, if it considers it necessary for the collection or preservation of evidence in connection with any safety investigation, including a preliminary assessment relating to the accident, require 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 investigator engaged in the investigation of such accident, until the process of collecting or preserving evidence is completed to the investigator's satisfaction.

(7) The Board shall not require a ship that is subject to regulations 4 (a), (b) or (c) to remain in Seychelles waters any longer than is necessary for the collection or preservation of the evidence referred to under sub-regulation (6) and shall ensure that such evidence is collected or preserved expeditiously.

(8) Any person from whom evidence is sought should be informed and allowed access to legal advice, regarding —

- (a) the nature and basis of the investigation;
- (b) any potential risk that they may incriminate themselves in any proceedings subsequent to the marine safety investigation;
- (c) any right not to self-incriminate or to remain silent; and
- (d) any protections afforded to the person to prevent the evidence being used against them if they provide the evidence to the marine safety investigation.

### **Obtaining evidence from seafarers**

11. Where a marine safety investigation requires a seafarer to provide evidence, the investigator shall take into account the provisions of the IMO guidelines on the fair treatment of seafarers in accordance with the Second Schedule.

### **Conduct of a safety investigation**

12.(1) If the Board decides to conduct a safety investigation, the investigation shall be undertaken by one or more investigators at such times and places and in such manner most conducive to achieving the objective under regulation 5.

(2) An investigator undertaking a marine safety investigation shall have working knowledge and practical experience in areas pertaining to their normal duties.

(3) To assist investigators to perform duties outside their normal assignments, the Board and Chief Inspector shall, ensure ready access to expertise in —

- (a) navigation and the collision regulations;
- (b) flag state regulations on certificates of competency;
- (c) causes of marine pollution;
- (d) interviewing techniques;
- (e) evidence gathering; and
- (f) evaluation of the effects of the human element.

(4) To assist with specific investigations, the Board in consultation with the Chief Inspector may appoint —

- (a) investigators with necessary specialist skills to form part of a marine safety investigation;
- (b) consultants to provide expert advice on any aspect of a marine safety investigation.

(5) All investigators conducting a marine safety investigation shall have functional independence from —

- (a) the parties involved in the marine casualty or marine incident;
- (b) anyone who may make a decision to take administrative or disciplinary action against an individual or organisation involved in a marine casualty or marine incident; and

(c) judicial proceedings.

(6) A safety investigation may extend to cover, but shall not be limited to —

- (a) all events and circumstances preceding the accident together with subsequent events and circumstances;
- (b) hazard identification and the estimated risk assessment which is used to identify the frequency of a hazard occurring and its consequences;
- (c) issues involving salvage and pollution connected with the accident;
- (d) the conduct of search and rescue operations,

if in the opinion of the Board or the Chief Inspector they are relevant to future safety.

(7) When accessing a ship to conduct a marine safety investigation, an investigator may carry on board the ship any equipment deemed necessary to collect evidence and conduct the investigation.

(8) An investigator 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 Board considers reasonable.

### **Disclosure of Records**

**13.(1)** Subject to this regulation, the names, addresses or other details of anyone who has given evidence to an investigator shall not be disclosed.

(2) The Board shall only disclose information from a marine safety record where —

- (a) it is necessary or desirable to do so for transport safety purposes and in this instance shall take into account any impact on the future availability of safety information to a marine safety investigation;

- (b) information from a marine safety record needs to be provided to an external expert for their analysis or second opinion; or
- (c) as otherwise permitted in accordance with these Regulations.

(3) Any marine safety record specified in the Third Schedule, in the possession of the Board shall not be disclosed in criminal, civil, disciplinary or administrative proceedings unless —

- (a) the court determines that any adverse domestic or international impact that the disclosure of the information may have on any current or future marine safety investigations is outweighed by the public interest in the administration of justice; or
- (b) where appropriate in the circumstances, the substantially interested state which provided the marine safety record to the marine safety investigation authorises its disclosure.

(4) Any part of the marine safety records which are not pertinent to the analysis of the marine casualty or marine incident shall not be included in the final report and shall not be disclosed.

(5) Information from a marine safety record shall only be disclosed to a substantially interested state where doing so will not undermine the integrity and credibility of any marine safety investigation being conducted or of the Board.

(6) The Board may require that a substantially interested state receiving information in relation to a marine safety investigation undertake to keep such information confidential.

### **Discontinuing a marine safety investigation**

**14.(1)** The Board may, at any time, after its commencement, decide to discontinue a marine safety investigation and the reason for discontinuation shall be recorded.

(2) Sub-regulation (1) shall not apply to an investigation of a very serious marine casualty.

(3) The Board shall discontinue an investigation under sub-regulation (1) if the Board 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 an investigation is discontinued in accordance with this regulation, the Board shall report the reasons for discontinuation to the Minister.

### **PART III - COOPERATION WITH OTHER SUBSTANTIALLY INTERESTED STATES**

#### **Notification to substantially interested states**

**15.(1)** When a ship flying the flag of another state is involved in a marine casualty that occurs —

- (a) in the exclusive economic zone of Seychelles; or
- (b) within the territory, including the territorial sea of Seychelles, the Authority shall, as soon as is reasonably practicable, notify any other substantially interested state.

(2) When a Seychelles flag ship and a ship flying the flag of another state are involved in a marine casualty that occurs on the high seas, the Authority shall, as soon as is reasonably practicable, notify any substantially interested states.

(3) Notification under this shall not be delayed due to the lack of complete information.

#### **Agreement with another substantially interested state to conduct a marine safety investigation**

**16.(1)** Where a marine casualty occurs —

- (a) within the territory, including the territorial sea, of Seychelles involving a ship flying the flag of another state;
- (b) within the territory or exclusive economic zone of another coastal state, involving a Seychelles flag ship; or
- (c) on the high seas, involving a Seychelles flag ship and another flag ship,

the Authority shall consult with that other state to seek agreement on which state will be the marine safety investigating state.

(2) Prior to reaching an agreement or if an agreement is not reached in accordance with sub-regulation (1), the existing obligations and rights of states under international law to conduct a marine safety investigation remains with the respective parties to conduct their own investigation.

(3) When an agreement is being sought in accordance with sub-regulation (1), the parties involved shall take into account —

- (a) whether the ship or ships involved in a marine casualty or marine incident occurring on the high seas, or in the exclusive economic zone, subsequently sail into the territorial sea of a state;
- (b) the resources and commitment required of the flag state and other substantially interested states;
- (c) the potential scope of the marine safety investigation and the ability of the flag state or another substantially interested state to accommodate that scope;
- (d) the need of the investigators carrying out a marine safety investigation to access evidence and consideration of the state or states best placed to facilitate that access to evidence;

- (e) any perceived or actual adverse effects of the marine casualty or marine incident on other states;
- (f) the nationality of the crew, passengers and other persons affected by the marine casualty or marine incident.

(4) Where a Seychelles flag ship is involved in a marine casualty, by fully participating in a marine safety investigation conducted by another substantially interested state, Seychelles shall be considered to fulfil its obligations under the Code, SOLAS regulation I/21 and article 94, section 7 of the United Nations Convention on the Law of the Sea.

### **Parallel investigations**

17. Where a marine safety investigation is being conducted in parallel with another substantially interested state's own separate marine safety investigation, the Board shall, where possible, seek to co-ordinate the timing of their investigations, to avoid conflicting demands upon witnesses and access to evidence.

### **Co-operation**

18.(1) Where a marine safety investigation is being conducted by another substantially interested state, the Board shall, to the extent practicable, co-operate with that other state.

(2) Where a marine safety investigation involving another substantially interested state is being conducted by the Board, the Board shall allow any substantially interested state to participate, to the extent practicable, in aspects of the marine safety investigation relevant to it.

(3) The participation of a substantially interested state shall include allowing the states' representatives to —

- (a) interview witnesses;
- (b) view and examine evidence and make copies of documents;

- (c) make submissions in respect of the evidence, comment on and have their views properly reflected in the final report; and
- (d) be provided with the draft and final reports relating to the marine safety investigation.

(4) Where the marine casualty or marine incident involves a Seychelles flag ship, the Board shall facilitate the availability of the crew to the investigators carrying out the marine safety investigation.

## **PART IV - MARINE SAFETY INVESTIGATION REPORT**

### **Reports of marine safety investigations**

19.(1) Whenever a marine safety investigation is conducted, the Board shall produce a full marine safety investigation report or in cases where deemed fit by the Chief Inspector, a simplified report.

(2) The Board shall make publicly available a report of a marine safety investigation at the earliest, but in any case, no later than 1 year after the date of receiving notification of the accident.

(3) The report under sub-regulation (1) shall contain but not be limited to —

- (a) a summary outlining the basic facts of the marine casualty or marine incident and stating whether any death, injury or pollution occurred as a result;
- (b) the identity of the flag state, owner, operator as identified in the safety management certificate, and the classification society;
- (c) where relevant, the details of the dimensions and engines of any ship involved, together with a description of the crew, work routine and other matters, such as time served on the ship;

- (d) a factual narrative detailing the circumstances of the marine casualty or marine incident;
- (e) an analysis and comments on the causal factors including any mechanical, human or organisational factors;
- (f) a discussion of the marine safety investigation's findings, including the identification of safety issues;
- (g) conclusions relating to the facts of the evidence;
- (h) where facts cannot be clearly established, an analysis and professional judgement to determine the probable facts and;
- (g) where appropriate, recommendations with a view to preventing future marine casualties and marine incidents.

(4) The Board shall seek to fully verify the accuracy and completeness of the draft report by the most practical means.

### **Release of marine safety reports**

**20.(1)** A report shall not be made publicly available until the Board has —

- (a) served a notice, accompanied by a draft copy of the report to any person who, or organisation which, could be adversely affected by the report or, if that person is deceased, upon such person or persons who appears to best 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 Board by persons or organisations, served a notice under paragraph (a).

(2) Subject to sub-regulation (1), the report shall be amended in such manner as the Board thinks fit.

(3) The representations referred to in sub-regulation (1) shall be in writing and shall be served on the Board within 30 days of service of the notice issued under that sub-regulation.

(4) The Board may extend the time period prescribed under sub-regulation (3), notwithstanding its expiration, where the Board considers it appropriate to do so having regard to the requirements under regulation 19 (2).

(5) The Board may not furnish a draft marine safety report to a substantially interested state 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.

### **Publication of final marine safety report**

**21.(1)** A final marine safety investigation report shall be submitted to the Minister and made available to the public and the shipping industry in such manner as the Minister considers fit.

(2) A copy of the report shall be given to —

- (a) any person who has been served a notice under regulation 20 (1) (a);
- (b) persons or organisations to which recommendations have been addressed in that report;
- (c) any person who in the opinion of the Board may find the report useful or of interest.

(3) For every marine safety investigation conducted into a very serious marine casualty, the Board shall, through the Authority submit the final marine safety report to —

- (a) all stakeholders of interest; and
- (b) the IMO.

(4) Where a marine safety investigation is conducted into a marine casualty or marine incident other than a very serious marine casualty, and a marine safety investigation report is produced which contains information which may prevent or lessen the seriousness of marine casualties or marine incidents in the future, the final marine safety investigation report shall be submitted to the IMO.

(5) Where a marine safety investigation report is published by another State or the IMO, the Authority shall undertake to assist the public and the shipping industry with details necessary to access the report.

(6) The Board may publish safety information relating to an ongoing investigation.

### **Recommendations**

**22.(1)** Any person, agency or authority to whom a recommendation is addressed in accordance with section 21 (2) (b) shall, as soon as is reasonably practicable —

- (a) take the recommendation into consideration;
- (b) send to the Chief Inspector —
  - (i) lay down the details of the measures, if any, that they have taken or propose to take to implement recommendations, and the timeline for securing that implementation; or
  - (ii) an explanation as to why no measures shall be taken to implement the recommendation;

(c) give notice to the Chief Inspector if at any time, any information provided to the Chief Inspector in accordance with paragraph

(1)(b)(i) concerning the measures they propose to take or the timetable for securing their implementation is rendered inaccurate by any change of circumstances.

(2) Recommendations shall be made publicly available if the Chief Inspector considers that to do so is in the interests of safety or the prevention of pollution.

## **PART V - MISCELLANEOUS**

### **Penalties**

**23.(1)** A person commits an offence if —

- (a) being a person referred to under regulation 6 (1) (a) or (b), fails without reasonable cause to report an accident as required by regulation 6; or
- (b) being a person referred to in sub-regulation 1 (a), fails without reasonable cause to provide information as required by regulation 6 (3); or
- (c) he or she falsely claims to have any additional information or new evidence pertaining to any accident,

and shall be liable on conviction, to a fine not exceeding SCR20,000.

(2) Any person who fails without reasonable cause to comply with any requirement or duty under regulation 10 (1), (2) or (5) commits an offence and is liable on conviction, to a fine not exceeding SCR 20,000 or to imprisonment not exceeding 1 year, or to both.

(3) Any person who, without reasonable cause discloses or permits to be disclosed any information in contravention of regulation 13, or makes available any documents or records in contravention of regulation 13, commits an offence and is liable on conviction, to a fine not exceeding SCR 20, 000 or to imprisonment for a term not exceeding 1 year, or to both.

## **Judicial proceedings**

**24.(1)** If any part of a publication produced by the Board as a result of a marine safety investigation, or any analysis or conclusion reached in the publication is based on information obtained in accordance with an investigator's powers under section 227 of the Act, that part, analysis or conclusion shall be inadmissible in any judicial proceedings held to attribute or apportion liability or blame.

(2) For the purposes of these Regulations, an investigator who is required to attend a judicial proceeding shall not provide at the proceeding —

- (a) information that was obtained through use of the investigator's power under section 227 of the Act; and
- (b) any opinion evidence or analysis based on such information.

(3) Any evidence provided in breach of subregulation (2) shall be inadmissible in any judicial proceedings.

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

## **Investigation not to be subject to external interference**

**25.(1)** A marine safety investigation shall be conducted in an impartial and objective manner, free from interference or influence.

(2) The Board shall be able to report on the results of a marine safety investigation without direction or interference from any person or organisation that may be affected by its outcome.

(3) An investigator carrying out a marine safety investigation shall do so, free from interference from any interested party with respect to —

- (a) the gathering of all available information relevant to the

- marine casualty or marine incident, including voyage data recordings and ship traffic services recordings;
- (b) any analysis of evidence and the determination of causal factors;
  - (c) drawing conclusions relevant to the causal factors;
  - (d) distributing a draft report for comments and preparation of the final report; and
  - (e) if appropriate, the making of safety recommendations.

### **Interim safety measures**

**26.** At any stage of a marine safety investigation, where the Board is of the view that urgent action is required to be taken to prevent the risks of further accidents occurring, the Board may recommend interim safety measures and urgent actions to be taken to interested parties and stakeholders.

### **Administrative responsibilities**

**27.** The Minister shall ensure that the Board has sufficient material, financial resources and suitably qualified personnel available to enable them to facilitate the State's obligations to undertake maritime safety investigations into marine casualties and marine incidents.

## **FIRST SCHEDULE**

*[Regulation 6(3)]*

Marine Casualty or Incident Notification Data —

1. The name of the ship and its flag State;
2. The International Marine Organisation ship identification number;
3. The nature of the marine casualty;

4. The location of the marine casualty;
5. The time and date of the marine casualty;
6. The number of any seriously injured or killed persons;
7. Consequences of the marine casualty to individuals, property and the environment; and
8. The identification of any other ship involved.

## **SECOND SCHEDULE**

### *[Regulation 11]*

The IMO guidelines on the treatment of Seafarers —

1. The evidence shall be taken at the earliest practical opportunity;
2. The seafarer shall be allowed to return to his or her ship, or be repatriated at the earliest possible opportunity;
3. The seafarers human rights shall, at all times, be upheld;
4. All seafarers from whom evidence is sought shall be informed of the nature and basis of the marine safety investigation; and
5. A seafarer from whom evidence is sought shall be allowed access to legal advice, regarding —
  - (a) any potential risk that he may incriminate himself in any proceedings subsequent to the marine safety investigation;
  - (b) any right not to self-incriminate or to remain silent; and
  - (c) any protection afforded to him to prevent the evidence being used against himself if he provides the evidence to the marine safety investigation.

## **THIRD SCHEDULE**

*[Regulation 13(3)]*

Marine Safety records that shall not be disclosed in any criminal, civil, disciplinary or administrative proceedings —

1. All declarations or statements taken from persons by an investigator or supplied to an investigator in the course of an investigation, together with any notes or recordings of witness interviews;
2. Medical or confidential information regarding persons involved in an accident;
3. Any report made under regulation 6 (4);
4. Copies of the report other than the final report;
5. All correspondence received by the Board from parties involved in a safety investigation;
6. Evidence from voyage data recorders;
7. The notes made by an investigator, whether written or held electronically along with any recordings or photographs;
8. All communications between persons having been involved in the operation of the ship or ships; and
9. The investigator's opinions expressed in the analysis of information.

**MADE this 29th day of August, 2022.**

**ANTONY DERJACQUES  
MINISTER OF TRANSPORT**

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