



BERMUDA

MERCHANT SHIPPING (COMPULSORY INSURANCE OF SHIPOWNERS FOR
MARITIME CLAIMS) REGULATIONS 2019

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The Minister responsible for Maritime Administration, in exercise of the powers conferred by section 188A of the Merchant Shipping Act 2002, makes the following Regulations:

Citation

1 These Regulations may be cited as the Merchant Shipping (Compulsory Insurance of Shipowners for Maritime Claims) Regulations 2019.

Application

- 2 (1) These Regulations apply to seagoing ships of 300 gross tonnes or more.
- (2) These Regulations do not apply to warships, auxiliary warships or other State owned or operated ships used for a non-commercial public service.
- (3) Regulation 3 is without prejudice to—

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- (a) sections 161 and 161A of the Act; and
- (b) Part IXA of, and Schedule 7A to the Act.

Insurance

3 (1) A Bermuda ship shall not enter or leave a port in Bermuda or elsewhere, unless the shipowner has insurance in respect of that ship.

(2) A ship which is not a Bermuda ship shall not enter or leave a port in Bermuda unless the shipowner has insurance in respect of that ship.

(3) Subject to paragraphs (5) and (6), the insurance must cover at least maritime claims subject to the limitation under the Convention on Limitation of Liability for Maritime Claims 1976 as amended by the 1996 Protocol (hereafter referred to as “the 1976 Convention”).

(4) The amount of insurance for every ship per incident must be at least, equal to the relevant maximum amount for the limitation of liability as laid down in the 1976 Convention.

(5) The amount of the insurance must cover maritime claims in respect of loss resulting from delay in the carriage by sea of cargo, but only where—

- (a) The Hague Visby Rules are incorporated into the contract for the carriage of goods; and
- (b) that contract imposes liability for loss resulting from delay in the carriage by sea, of cargo.

(6) The insurance must cover maritime claims in respect of loss resulting from delay in the carriage by sea, of passengers or their luggage, but only where the delay is consequent upon—

- (a) an incident involving a collision, stranding, explosion, fire or other cause affecting the physical condition of the ship so as to render it incapable of safe navigation to the intended destination of the passengers and their luggage; or
- (b) any other incident involving a threat to the life, health or safety of passengers.

(7) In this Regulation the “Hague Visby Rules” means the International Convention for the Unification of certain rules of law relating to bills of lading signed in Brussels on 25th August 1924, as amended by the Protocol signed in Brussels on 23rd February 1968 and by the Protocol signed in Brussels on 21st December 1979.

Insurance other than contracts of insurance

4 Where, to comply with Regulation 3, a shipowner relies on insurance consisting of proved self-insurance or financial security offering similar conditions of cover in respect of a ship—

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- (a) the shipowner must provide documentary evidence of the existence of that insurance, to the Minister; and
- (b) that ship must not enter or leave a port in Bermuda unless the Minister has confirmed in writing that the arrangements for self-insurance or financial security offering similar conditions of cover, are adequate.

Insurance certificates and documentation

- 5
- (1) The existence of the insurance referred to in Regulation 3 is to be proved by—
 - (a) one or more certificates issued by the insurance provider; or
 - (b) where Regulation 4 applies, written confirmation given by the Minister.
 - (2) The documentation referred to in paragraph (1)(a) must include the following information—
 - (a) name of ship, its International Maritime Organization number and port of registry;
 - (b) shipowner's name and principal place of business;
 - (c) type and duration of the insurance; and
 - (d) name and principal place of business of the provider of the insurance and, where appropriate, the place of business where the insurance is established.
 - (3) If the language used in the certificates is not English, French or Spanish, the text must include a translation into one of those languages.
 - (4) The documentation referred to in paragraph (1) must be—
 - (a) carried on board the ship; and
 - (b) produced on demand by the master, to—
 - (i) the Minister or any proper officer, where the ship is a Bermuda ship; or
 - (ii) the Minister, in the case of any other ship.

Penalties

- 6
- (1) A shipowner commits an offence if—
 - (a) a ship belonging to the shipowner enters or leaves a port in contravention of Regulation 3; or
 - (b) anyone attempts to navigate that ship into or out of a port in contravention of that Regulation.
 - (2) A shipowner found guilty of an offence under paragraph (1) is liable—
 - (a) on summary conviction, to a fine not exceeding \$10,000; or
 - (b) on conviction on indictment, to a fine.

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(3) A master who fails to comply with Regulation 5(4), commits of an offence and is liable on summary conviction, to a fine not exceeding \$10,000.

(4) Any document required or authorised by virtue of any statutory provision, to be served on a foreign company for the purposes of the institution of (or otherwise in connection with the institution of) proceedings for an offence under Regulation 3 against the company as shipowner, is to be treated as served on the company, if the document is served on the master of the ship.

(5) In this Regulation “foreign company” means a company or body which is not one to which section 62A of the Companies Act 1981 applies, so as to authorise the service of the document in question.

Expulsion order

7 Where a flag State has informed the Chief Marine Surveyor of the Bermuda Shipping and Maritime Authority that it has issued an expulsion order in respect of a ship, the Minister must refuse that ship entry to any port in Bermuda until the shipowner produces to the Minister, the documentation referred to in Regulation 5(1).

Power to detain

8 (1) A ship may be detained if anyone attempts to navigate it out of a port in contravention of Regulation 3.

(2) Section 242 of the Act (which relates to the detention of a ship) has effect in relation to the ship, subject to the modification that, for—

- (a) “this Act”, substitute “the Merchant Shipping (Compulsory Insurance of Shipowners for Maritime Claims) Regulations 2019”; and
- (b) “owner of a ship”, substitute “shipowner”.

(3) An officer detaining the ship must serve on the master of the ship a detention notice which—

- (a) states the reason for the detention; and
- (b) requires the ship to comply with the terms of the detention notice until it is released by a competent authority.

(4) Where a ship is detained which is not a Bermuda ship, the Minister must immediately inform, in writing—

- (a) the ship’s flag state administration or, if this is not possible;
- (b) the Consul of the State of the flag administration or, in the Consul’s absence;
- (c) the nearest diplomatic representative of the State of the flag administration.

(5) The written information referred to in paragraph (4) must set out all the circumstances of the decision to detain the ship.

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- (6) Where paragraph (4) applies, the Minister must also notify all relevant—
- (a) nominated surveyors; or
 - (b) recognised organisations,

responsible for the issue of classification certificates.

(7) In this Regulation “competent authority” means any officer mentioned in section 242(1) of the Act.

Arbitration

9 (1) Any question as to whether any of the matters specified in relation to a ship in a detention notice constituted a valid basis for the officer’s opinion must, if the master or shipowner so requires, by a notice given to the officer within 21 days from the service of the detention notice, be referred to a single arbitrator appointed by agreement between the parties, for that question to be decided by the arbitrator.

(2) Where a notice is given by the master or shipowner in accordance with paragraph (1), the giving of the notice does not suspend the operation of the detention notice.

(3) The arbitrator may have regard to any matter not specified in the detention notice which appears to the arbitrator to be relevant as to whether the ship was or was not liable to be detained.

(4) Where the arbitrator decides, as respects a matter to which the reference relates, that in all the circumstances the matter did not constitute a valid basis for the officer’s opinion, the arbitrator must—

- (a) cancel the detention notice; or
- (b) affirm it with such modifications as the arbitrator may in the circumstances think fit.

(5) In any case other than one described in paragraph (4), the arbitrator must affirm the detention notice in its original form.

(6) The decision of the arbitrator must include a finding whether there was or was not a valid basis for the detention of the ship.

(7) To be qualified for appointment as an arbitrator under this Regulation, a person must be—

- (a) a person holding a certificate of competency as a master mariner or as a marine engineer officer class 1, or a person holding a certificate equivalent to any such certificate;
- (b) a naval architect;
- (c) a person falling within paragraph (8); or
- (d) a person with special experience of shipping matters or of activities carried on in ports.

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(8) For the purposes of paragraph (7)(c), a person falls within this paragraph if that person is qualified to be appointed to a high judicial office in Bermuda.

Compensation for unjustified detention

10 (1) If on a reference under Regulation 9 relating to a detention notice, the arbitrator decides that the shipowner has proved—

- (a) that the matter complained of did not constitute a valid basis for the officer's opinion; and
- (b) that there were no reasonable grounds for the issue of the detention notice,

the arbitrator must award the shipowner such compensation in respect of any loss suffered in consequence of the detention of the ship, as the arbitrator thinks fit.

(2) Any compensation awarded under this Regulation is payable by the Minister.

Made this 14th day of February 2019

Minister of Tourism and Transport

[Operative Date: 18 February 2019]