



BERMUDA

MERCHANT SHIPPING (INTERNATIONAL SAFETY MANAGEMENT (ISM)
CODE) REGULATIONS 2019

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The Minister responsible for Maritime Administration, in exercise of the power conferred by sections 3, 93 and 123 of the Merchant Shipping Act 2002, makes the following Regulations:

PART 1
CITATION, INTERPRETATION AND APPLICATION

Citation

- 1 1 These Regulations may be cited as the Merchant Shipping (International Safety Management (ISM) Code) Regulations 2019.

Interpretation

- 2 (1) In these Regulations—
- “audit”, in relation to a safety management system, means a systematic and independent examination, taking into account the Revised Guidelines on Implementation of the International Safety Management (ISM) Code by Administrations, adopted by the IMO, pursuant to Assembly Resolution A. 1022(26), to determine whether the system is suitable to meet the objectives set out in paragraph 1.2 of the ISM Code, and, so far as the system has been operated, whether the system has been implemented effectively;
- “Certifying Authority” means the Minister or any organisation which has an agreement with the Minister pursuant to common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations;
- “Document of Compliance” means a document issued in accordance with paragraph 13.2 of the ISM Code;
- “high speed craft” means a craft to which the Merchant Shipping (High Speed Craft) Regulations 2010 apply;
- “IMO” means the International Maritime Organization;
- “inspector” means a person mentioned in section 217(1)(a) or (c) of the 2002 Act;
- “Interim Document of Compliance” means a document issued in accordance with paragraph 14.1 of the ISM Code;
- “Interim Safety Management Certificate” means a document issued in accordance with paragraph 14.2 of the ISM Code;

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“intermediate audit” means an audit conducted for the purpose set out in paragraph 13.8 of the ISM Code;

“ISM company” means—

- (a) where a person who is not the owner of the ship has assumed responsibility for the operation of the ship and has agreed with the owner to take over all the duties and responsibilities imposed by the ISM Code, that person; or
- (b) in all other cases, the owner of the ship;

“master”, in the application of these Regulations to hovercraft, includes the captain of a hovercraft;

“Merchant Shipping Notice” means a Notice described as such and issued by the Chief Marine Surveyor, or the equivalent UK Merchant Shipping Notice, as applicable;

“relevant document” means a Document of Compliance, an interim Document of Compliance, a Safety Management Certificate or an interim Safety Management Certificate;

“safety management system” means a structured and documented system enabling ISM company personnel to implement effectively, the ISM company’s safety and environmental protection policy;

“Safety Management Certificate” means a document issued in accordance with paragraph 13.7 of the ISM Code;

“ship” includes a hovercraft, a mobile offshore drilling unit, a passenger submersible craft and a high speed craft;

“SOLAS” means the International Convention for the Safety of Life at Sea 1974, its protocols of 1978 and 1988 and all amendments to them in force on the date these Regulations come into force.

(2) Any reference in these Regulations to SOLAS or the ISM Code includes a reference to any amendments of those documents, specified in a Merchant Shipping Notice as being considered relevant, for the purposes of these Regulations by the Minister.

(3) In interpreting the ISM Code for the purposes of these Regulations—

- (a) the requirements of Part A of the ISM Code are to be construed as mandatory; and
- (b) references to the Administration are, in relation to Bermuda ships, to be taken as references to the Minister.

Application

3 These Regulations apply to—

- (a) Bermuda ships wherever they may be; and
- (b) other ships while they are within Bermuda waters.

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PART 2
COMPLIANCE WITH ISM CODE

Duty on ISM company

4 (1) An ISM company must not operate a ship within paragraph (2) unless the requirements in Regulation 5 are complied with in relation to that ship.

(2) A ship is within this paragraph if it is—

- (a) a passenger ship which is—
 - (i) a high speed craft; or
 - (ii) in Class I or II in Regulation 2(6) of the Merchant Shipping (Passenger Ship Construction: Ships of Classes I, II and II(A)) Regulations 1998;
- (b) a cargo ship of 500 gross tonnage or more, engaged in international voyages; or
- (c) a mobile offshore drilling unit of 500 gross tonnage or more, engaged in international voyages.

Certification requirements of Regulation 4

5 (1) The requirements referred to in Regulation 4 are—

- (a) the ISM company holds a valid Document of Compliance or Interim Document of Compliance in respect of the ship, and a copy is carried on board; and
- (b) a valid Safety Management Certificate or Interim Safety Management Certificate has been issued in respect of that ship, and the original is carried on board.

(2) For the purposes of this Regulation—

- (a) a copy of a document must display all the endorsements which have been made to the original document;
- (b) a document is not valid if it has been suspended or cancelled; and
- (c) a document is not valid in connection with a ship which is not a Bermuda ship if it does not display endorsements showing satisfactory annual or intermediate audits (as appropriate) as required by the ISM Code.

Duty of master

6 The master of a ship to which these Regulations apply or which is within Regulation 4(2) must operate that ship in accordance with the safety management system on the basis of which the Safety Management Certificate (or Interim Safety Management Certificate, as the case may be) was issued.

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Designated person

7 (1) In relation to a ship to which these Regulations apply or which is within Regulation 4(2), the ISM company must—

- (a) designate a person who is to discharge the responsibility described in paragraph (2); and
- (b) ensure that the designated person—
 - (i) is provided with sufficient authority and resources; and
 - (ii) has appropriate knowledge and sufficient experience of the operation of ships at sea and in port,

to discharge that responsibility.

(2) The responsibility of the designated person is—

- (a) to monitor the safe and efficient operation of that ship, with particular regard to safety and pollution prevention aspects;
- (b) to take such steps as are necessary, to ensure compliance with the safety management system on the basis of which the Document of Compliance (or Interim Document of Compliance, as the case may be) was issued; and
- (c) to ensure that proper provision is made for the ship to be so manned, equipped and maintained, that it is fit to operate in accordance with that safety management system.

PART 3

CERTIFICATION

Issue and endorsement of documents by Certifying Authority

8 (1) A Certifying Authority may issue and endorse relevant documents as appropriate, in connection with a Bermuda ship where satisfied that relevant requirements of the ISM Code have been met.

(2) A Certifying Authority other than the Minister acts on behalf of the Minister, when issuing and endorsing relevant documents under paragraph (1).

Issue and endorsement of documents by other governments

9 Where—

- (a) the Minister has asked the government of a country which is party to SOLAS to conduct an audit of the safety management system operated on board a Bermuda ship;
- (b) that government is satisfied that it is appropriate to issue or endorse a relevant document in accordance with the ISM Code, pursuant to that request; and

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(c) that government has issued or endorsed such a document,
that document has the same effect for the purposes of Bermuda law as if it had been issued
or endorsed by the Minister.

Issue and endorsement of documents on behalf of other governments

10 (1) The Minister may, at the request of a government of a country which is party
to SOLAS, audit the safety management system of—

- (a) a ship registered in that country; and
- (b) the ISM company.

(2) Where, having carried out an audit in response to such a request, the Minister
is satisfied that the requirements of the ISM Code are met, the Minister may issue to the
ISM company, a Document of Compliance or a Safety Management Certificate, or where
appropriate, endorse such a document in accordance with the requirements of SOLAS, after
annual or intermediate audits.

(3) Where the Minister issues or endorses a document in accordance with such a
request, the Minister must insert in that document a statement recording the fact.

(4) A document issued or endorsed in accordance with such a request has the
same effect as if it had been issued or endorsed by the government which made the request
and not by the Minister.

Exemptions

11 (1) A document issued or endorsed in accordance with such a request, has the
same effect as if it had been issued or endorsed by the government which made the request
and not by the Minister.

(2) The Minister may amend or revoke an exemption by notice in writing containing
the grounds for the amendment or revocation.

(3) A notice under paragraph (2) is valid only if—

- (a) persons to whom the exemption applies, were given the opportunity to
make representations before the notice was given; or
- (b) the Minister considers that urgent safety or pollution prevention
considerations require the notice to be given immediately.

Suspension or cancellation of documents

12 (1) In any of the circumstances listed in paragraph (2), a Certifying Authority may
by notice in writing, containing the grounds for the suspension or cancellation, suspend or
cancel any relevant document issued under Regulation 8 or issued pursuant to a request
under Regulation 9.

(2) The circumstances referred to in paragraph (1) are—

- (a) the document was issued on the basis of incorrect information;

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- (b) an audit required by Part B of the ISM Code in respect of the document has not taken place in the period required by the ISM Code;
 - (c) the management structure of the ISM company has changed since the most recent audit of the ISM company's safety management system, carried out by or on behalf of the Minister; or
 - (d) the ISM company or ship is otherwise not compliant with the ISM Code.
- (3) Where a notice given under paragraph (1), in respect of a Document of Compliance so specifies, any associated Safety Management Certificates or Interim Safety Management Certificates are suspended or cancelled also.
- (4) A notice under paragraph (1) is valid only if—
- (a) the holder of the relevant document was given the opportunity to make representations, before the notice was given; or
 - (b) the Certifying Authority considers that urgent safety or pollution prevention considerations require the notice to be given immediately.
- (5) A Certifying Authority other than the Minister—
- (a) acts on behalf of the Minister, when exercising functions under this Regulation; and
 - (b) may only exercise functions under paragraph (1) in respect of a relevant document, which it issued.

PART 4

DETENTIONS AND OFFENCES

Detention

13 (1) Where an inspector has clear grounds for believing that, in relation to a ship to which these Regulations apply, there has been a failure to comply with Regulation 4, 6, or 7, a breach of any term of an exemption granted under Regulation 11 or a derogation from the ISM Code granted by the Minister, or there will be, if the ship puts to sea, the ship is liable to be detained.

(2) A person having power to detain a ship may permit a ship which is liable to be detained under paragraph (1), to proceed to sea for the purpose of proceeding to the nearest appropriate repair yard available.

(3) The power under this Regulation to detain a ship may only be exercised in relation to a ship other than a Bermuda ship, if the ship in question is in a port or offshore terminal in Bermuda.

(4) Section 242(1) of the 2002 Act (enforcing detention of a ship) applies, where a ship is liable to be detained under this Regulation, as if—

- (a) references to the owner of a ship were references to the ISM Company under these Regulations;

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- (b) references to detention of a ship under the Act were references to detention of the ship in question under this Regulation; and
 - (c) subsection (7) were omitted.
- (5) Where a ship is detained under paragraph (1), the person detaining the ship must serve on the master of the ship a detention notice which—
 - (a) states the grounds for the detention; and
 - (b) requires the terms of the notice to be complied with, until the ship is released by any person mentioned in section 242(1) of the 2002 Act.
- (6) Where a ship other than a Bermuda ship is detained, the Minister must immediately inform the consul or diplomatic representative of the State whose flag the ship is entitled to fly or the appropriate maritime authorities of that State.
- (7) Where a ship is detained under paragraph (1), but the failure to comply referred to in that paragraph has ceased, a person having power to detain the ship must, at the request of the ISM company or master, immediately release the ship—
 - (a) if no proceedings for an offence under Regulation 14 are instituted within the period of seven days beginning with the day on which the ship is detained;
 - (b) if proceedings for such an offence, having been instituted within that period, are concluded without the ISM company or master being convicted;
 - (c) if either—
 - (i) the sum of \$50,000 is paid to the Minister by way of security; or
 - (ii) security which, in the opinion of the Minister, is satisfactory and is for an amount not less than \$50,000 is given to the Minister,by or on behalf of the ISM company or master;
 - (d) where the ISM company or master is convicted of an offence under Regulation 14, if any costs or expenses ordered to be paid by that person, and any fine imposed on that person, have been paid; or
 - (e) if the release is ordered by a court or tribunal referred to in article 292 of the United Nations Convention on the Law of the Sea 1982, and any bond or other financial security ordered by such court or tribunal is posted.
- (8) The Minister must repay any sum paid in pursuance of paragraph (7)(c) or release any security so given—
 - (a) if no proceedings for an offence under Regulation 14 are instituted within the period of seven days beginning with the day on which the sum is paid or the security is given; or
 - (b) if proceedings for such an offence, having been instituted within that period, are concluded without the ISM company or master being convicted.

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(9) Where a sum has been paid, or security has been given, by any person in pursuance of paragraph (7)(c) and the ISM company or master is convicted of an offence under Regulation 14, the sum so paid or the amount made available under the security, must be applied as follows—

- (a) first, in payment of any costs or expenses ordered by the court to be paid by the ISM company or master;
- (b) next, in payment of any fine imposed by the court; and
- (c) any balance must be repaid to the first-mentioned person.

(10) Section 144 of the 2002 Act (interpretation of section 143) applies, for the purposes of paragraphs (7) to (9) as if—

- (a) references to the owner of a ship were references to the ISM Company under these Regulations; and
- (b) references to an offence under section 130 were references to an offence under Regulation 14.

Offences and penalties

14 (1) Any contravention of Regulation 4 or 7(1) is an offence by the ISM company, punishable on summary conviction by a fine not exceeding \$7,500, or on conviction on indictment, by a fine.

(2) Any contravention of—

- (a) regulation 6; or
- (b) regulation 7(2),

is an offence, punishable on summary conviction, by a fine not exceeding \$10,000, or on conviction on indictment, by imprisonment for a term not exceeding two years, or an unlimited fine, or both.

(3) Any breach of a term of an exemption granted under Regulation 11 or a derogation from the ISM Code granted by the Minister, is an offence by the ISM Company, punishable on summary conviction, by a fine not exceeding \$10,000, or on conviction on indictment, by an unlimited fine.

Defence

15 It is a defence for a person charged with an offence under Regulation 14, to show that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

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PART 5
MISCELLANEOUS

Non-application

16 These Regulations do not apply to domestic passenger ships certified under the Marine Board Act 1962.

Transitional provisions; references to documents of compliance etc.

17 References in these Regulations to Documents of Compliance, Interim Documents of Compliance, Safety Management Certificates and Interim Safety Management Certificates issued by a Certifying Authority, include such documents issued by or on behalf of the Minister, pursuant to any legislation on the safety management of roll-on/roll-off passenger ferries (Ro-Ro ferries), in force before the coming into force of these Regulations.

Made this 14th day of February 2019

Minister of Tourism and Transport

[Operative Date: 18 February 2019]