

[LEGAL NOTICE No. 86]

MARITIME TRANSPORT DECREE 2013
(DECREE No. 20 OF 2013)

**Maritime (Investigation and Inquiry Procedures)
Regulations 2014**

IN exercise of the powers conferred upon me by sections 240(1)(cc) of the Maritime Transport Decree 2013, I hereby make these Regulations –

Short title and commencement

1. These Regulations may be cited as the Maritime (Investigation and Inquiry Procedures) Regulations 2014 and shall come into force on a date appointed by the Minister by notice in the *Gazette*.

Interpretation

2. In these Regulations, unless the context otherwise requires, —

“Authority” means the Maritime Safety Authority of Fiji;

“authorised officer” means any person or persons as defined under section 2 of the Decree;

“Chief Executive Officer” means the Chief Executive Officer of the Authority;

“Decree” means the Maritime Transport Decree 2013;

“investigation” and “inquiry” means an investigation and inquiry carried out pursuant to sections 45 and 46 of the Decree;

“Investigation and Inquiry Manual” means the manual referred to in regulation 7(1); and

“maritime document” means those documents that certify the seaworthiness of a ship and the suitability of a person to carry out the relevant maritime activity, and such documents include—

- (a) any licence, permit, certificate or other document issued under Part 3 of the Decree to, or in respect of, any person, ship, cargo, maritime procedure, or maritime equipment; and
- (b) any foreign licence, permit, certificate, or other document recognised by the Chief Executive Officer under section 25 of the Decree or accepted by the Chief Executive Officer under section 26 of the Decree.

Purpose

3. The purpose of these Regulations is to set out the procedures to be followed by an authorised officer appointed under sections 45 and 46 of the Decree to carry out an —

- (a) investigation into an accident, incident or mishap; and
- (b) inquiry into—
 - (i) a serious injury or death on board a ship;
 - (ii) instances where a seafarer belonging to a ship suffers serious injury or dies whilst away from the ship during the course of duty; and
 - (iii) any other matter which in the opinion of the Chief Executive Officer is in the public interest.

Aims, objectives and conduct of investigations and inquiries

4.—(1) Investigations and inquiries are to be conducted taking the following into consideration —

- (a) establishment of the facts from the reported accident, incident, mishap, and death or serious injury on board a ship or whilst away from the ship during the course of duty;
- (b) outline of lessons learnt from the fact finding process referred to in paragraph (a);
- (c) outline of precautionary measures necessary for the avoidance of recurrence of accidents, incidents, mishaps, serious injury and death on board a ship or whilst away from the ship during the course of duty; and
- (d) the Chief Executive Officer to be able to determine if any action is warranted with regards to the maritime document of any person involved in the accident, incident, mishap, serious injury or death, on board a ship or whilst away from the ship during the course of duty.

(2) The objective of an —

- (a) investigation is to ascertain, as far as practicable, the cause and effect of an accident, incident or mishap; and
- (b) inquiry is to ascertain, as far as practicable, the cause and effect of serious injury or death caused on board a ship or caused upon a seafarer belonging to a ship whilst away from the ship or loss of a ship or property.

(3) An investigation or inquiry must be thorough and the resulting report be lucid containing all relevant material.

(4) Upon completion and submission of an investigation report, one or more of the following actions may be taken —

- (a) marine inquiry under section 75 of the Decree;
- (b) suspension of a maritime document under sections 27 and 75A of the Decree;
- (c) revocation of a maritime document under sections 29 and 75A of the Decree;
- (d) prosecution;
- (e) in the case of involvement of a foreign ship or persons with foreign certificates, action by the Administration of the country involved; or
- (f) civil action in the courts of Fiji or elsewhere where the report can be tendered as evidence.

Appointment

5. An authorised officer appointed under section 45 of the Decree in form MSAF 1 as set out in the Schedule, shall for that purpose, report to the Chief Executive Officer —

- (a) the nature or cause of an accident or damage to a ship;
- (b) whether or not the Decree or the Ship Registration Decree 2013 has been complied with;
- (c) whether or not a ship is fit to proceed to sea without serious danger to human life; and
- (d) whether or not a maritime document holder is a fit and proper person within the meaning of section 32 of the Decree.

Powers of the authorised officer

6. An authorised officer may, for the purpose of conducting an investigation or inquiry, have the powers conferred to him or her under sections 46 and 47 of the Decree.

Investigation and inquiry

7.—(1) An authorised officer appointed by the Chief Executive Officer in accordance with section 45 of the Decree shall be required to comply with the procedures in the Authority's Investigation and Inquiry Manual.

(2) Following his or her appointment, the authorised officer shall —

- (a) within 48 hrs, make an assessment of the facts alleged and forward a preliminary report to the Chief Executive Officer;
- (b) ensure that the Notice of Investigation, in form MSAF 3 as set out in the Schedule, is distributed as follows —
 - (i) 2 copies to each ship (Master or Chief Engineer);

- (ii) 1 copy each to the agent and owners or operators; and
 - (c) ensure that the notice is posted at all shipping offices.
- (3) Following submission of a preliminary report under sub-regulation (2)(a), the authorised officer shall be required to—
- (a) familiarise himself or herself with all available information on the accident, incident, mishap, serious injury or death, exercising due care so as not to prejudge the outcome of the investigation or inquiry;
 - (b) prepare a schedule of interview and liaise with ship agents, ship owners and ship operators to ascertain availability of a ship and its personnel; and
 - (c) prepare and issue Summons as set out in Schedule 3 of the Decree and form MSAF 2 to persons required to attend the interview, the service of which shall be required to be carried out in the manner prescribed under section 273 of the Decree.
- (4) The Investigation and Inquiry Manual shall address the following subject matters—
- (a) legal representation;
 - (b) persons to be present during an interview;
 - (c) manner of questioning;
 - (d) questions to be asked;
 - (e) documents to be produced; and
 - (f) preparation of records of interview.
- (5) After having considered the preliminary report referred to in sub-regulation (2)(a), the Chief Executive Officer may—
- (a) detain a ship in accordance with the criteria set out in Part 3 of the Decree; or
 - (b) suspend a person's maritime document,
- for the duration of the investigation or inquiry.

Foreign ships

9.—(1) When an accident, incident or mishap occurs to a foreign ship in Fiji waters or a request is received from the Flag State of the foreign ship, the Chief Executive Officer may conduct investigation or inquiry into the matter and shall immediately inform the Consul of the Flag State who may be required to participate in the investigation or inquiry.

(2) Where the master of a ship fails to cooperate with an investigation, the master and the ship may be detained until such time the investigation is completed.

(3) In the case of an inquiry, section 14 of the Commissions of Inquiry Act (Cap. 47) shall apply.

(4) An investigation or inquiry conducted under sub-regulation (2) shall be carried out without undue delay to the ship.

(5) Where sub-regulation (1) applies and the investigation or inquiry requires the detainment of a foreign ship or its crew, the Chief Executive Officer shall as soon as practicable, be required to inform the Consul of the Flag State when implementing the Authority's detention procedures over the ship or crew.

Investigation and inquiry report

10.—(1) At the conclusion of an investigation or inquiry, the authorised person shall send to the Chief Executive Officer the full investigation or inquiry report outlining—

- (a) the summary of facts;
- (b) record of interviews;
- (c) coloured photos of all evidences (clearly marked for ease of reference);
- (d) signed statements from experts;
- (e) summary of the applicable laws pertaining to the issues being investigated;
- (f) conclusion; and
- (g) recommendations.

(2) Upon receipt of a report under sub-regulation (1), the Chief Executive Officer may—

- (a) suspend any maritime document pursuant to section 27 of the Decree;
- (b) revoke any maritime document or the recognition of any such document pursuant to section 29 of the Decree; or
- (c) request a marine inquiry in accordance with section 45(9) of the Decree.

(3) In exercising sections 27 and 29 of the Decree, the Chief Executive Officer shall take heed of the criteria stipulated in section 31 of the Decree.

(4) The authorised officer shall acquire an interpreter where or when necessary.

Confidentiality of information

11.—(1) Any information obtained during the course of the investigation or inquiry by the authorised officer shall be confidential and shall not be disclosed to any third party.

(2) The authorised officer shall not disclose any findings of the investigation or matter revealed by the investigation or inquiry, other than by his or her report which shall be submitted to the Chief Executive Officer.

Repeal

12. The Marine (Preliminary Investigation and Procedures) Regulations 1990 are hereby repealed.

Made this 14th day of December 2014.

P. TIKODUADUA
Minister for Infrastructure and Transport

SCHEDULE

FORM: MSAF 1
(Regulation 5)

APPOINTMENT OF PERSON UNDER SECTION 45 OF THE MARITIME
TRANSPORT DECREE 2013

Pursuant to section 45 of the Maritime Transport Decree 2013—

I, hereby appoint to carry out an
investigation/inquiry into the circumstances of
.....

Dated this day of 20.....

.....
CHIEF EXECUTIVE OFFICER

FORM: MSAF 2
(Regulation 7(3)(c))

FORM OF SUMMONS

To [name of person summoned and his or her calling and residence if known]

You are hereby summoned to appear before[*name and title
of the authorised officer*] appointed under the Maritime Transport Decree 2013 to inquire
.....[*state briefly the subject of inquiry*] at [*place*] upon the
day of20....., at[*time*], and to give evidence in
respect of such inquiry [*if the person summoned has to produce any document, add*] and
you are required to bring with you[*specify the book or
document required*].

Dated this day of 20.....

FORM: MSAF 3
(Regulation 7(2)(b))

NOTICE TO THE PUBLIC OF INVESTIGATION/INQUIRY

An investigation/inquiry has been ordered into the circumstances attending the accident, incident and mishap, serious injury or death (1)

.....
.....
.....

The investigation is being conducted by (2)

Any person having information material to the accident, incident and mishap or information that may assist in the investigation should contact (3)

The authorised officer conducting the investigation may be contacted by one of the following means—

- (a) in person or via telephone to the Chief Executive Officer, Maritime Safety Authority of Fiji, Level 4 Kadavu House, Suva; or
- (b) in writing to: Chief Executive Officer
P.O. Box 326
Suva, Fiji

Note:

- (1) Enter description of accident, incident and mishap
- (2) & (3) Name of authorised officer investigating the accident, incident and mishap, or inquiring into the death or serious injury.