

**DECISION No. 48/2005/QĐ-BGTVT OF
SEPTEMBER 30, 2005, ON MARINE
ACCIDENT REPORTING AND INVESTIGATION**

THE MINISTER OF TRANSPORT

Pursuant to Vietnam Maritime Code of June 14, 2005;

Pursuant to the Government's Decree No. 34/2003/ND-CP of April 4, 2003, defining the functions, tasks, powers and organizational structure of the Ministry of Transport;

At the proposals of the director of the Transport Department and the director of the Vietnam Maritime Administration,

DECIDES:

Chapter I

GENERAL PROVISIONS

Article 1.- Regulation scope

This Decision provides for marine accident reporting and investigation.

Article 2.- Application subjects

This Decision applies to agencies, organizations and individuals involved in marine accident reporting and investigation in the following cases:

1. Marine accidents related to Vietnamese seagoing ships;
2. Marine accidents related to foreign seagoing ships operating in Vietnamese port waters and waters;
3. Marine accidents occurring to ships on official

duty, fishing ships, inland waterway means of transport or hydroplanes operating in port waters of Vietnam.

Article 3.- Classification of marine accidents

Marine accidents include:

1. Extremely serious marine accidents:

An extremely serious marine accident is the one which causes one of the following consequences:

- a/ Death or missing of more than three people;
- b/ Injuries or health damage to more than 10 people, with the personal infirmity rate of between 31% and 60%;
- c/ Injuries or health damage to more than six people, with the personal infirmity rate of 61% or over;

d/ Material damage of over VND 1 billion in terms of assets, facilities, expenses for repair, towage, lifting or removal of sunken means; expenses for repair of underwater or floating works; expenses for unblocking maritime channels; expenses for remedying environmental incidents;

e/ Blocking maritime channels for more than 48 hours;

f/ Causing harms to people's life or health, to assets or facilities as specified in two to four cases in Clause 2 of this Article;

2. Serious marine accidents

A serious marine accident is the one which causes one of the following consequences:

- a/ Death or missing of between one and three people;
- b/ Injuries or health damage to five to 10 people, with the personal infirmity rate of between 31% and 60%.

c/ Injuries or health damage to three to five

people, with the personal infirmity rate of 61% or over;

d/ Material damage of between VND 500 million and VND 1 billion in terms of assets, facilities, expenses for repair, towage, lifting or removal of sunken means; expenses for repair of underwater or floating works; expenses for unblocking maritime channels; expenses for remedying environmental incidents;

e/ Blocking maritime channels for between 24 hours and 48 hours;

3. Less serious marine accidents

A less serious marine accident is the one which occurs in the cases other than those defined in Clauses 1 and 2 of this Article.

Chapter II

REPORTING ON MARINE ACCIDENTS

Article 4.- Marine accident reports

Marine accident reports include urgent reports specified in Appendix 1, detailed reports specified in Appendix 2 and periodical reports specified in Appendix 3 (not printed herein). Marine accident reports must be truthful, accurate and timely.

Article 5.- Urgent reports

1. For an accident in Vietnamese waters:

a/ The shipmaster or person with the highest responsibility onboard another waterway means of transport must immediately send an urgent report to the nearest port authority. In cases where such people cannot make an urgent report, the ship or means owner or the agent of the ship in distress shall have to make such report.

b/ Port authorities, when receiving urgent reports

or being aware of accidents, must transfer such reports or information to the following agencies and organizations:

The Vietnam Maritime Administration;

The Maritime Safety Assurance Company, if accidents damage or put out of gear maritime aids or affect maritime safety of ships and boats;

Organizations or individuals managing or exploiting works and equipment, if accidents causes harms or damage to such works or equipment;

Provincial/municipal Natural Resources and Environment Services and Fisheries Services, if accidents cause or possibly cause environmental incidents or harms to aquatic resources.

2. In cases where accidents occur to Vietnamese seagoing ships operating beyond Vietnamese waters, their masters must make reports at the request of coastal countries and send urgent reports to the Vietnam Maritime Administration within 24 hours after the accidents occur. If accidents are extremely serious, shipmasters or ship owners must report to Vietnamese diplomatic missions or consulates in the relevant coastal countries for assistance in handling.

3. Urgent reports may be sent via one of such communication modes as telegraph, fax, telex or email.

For accidents occurring in port waters, shipmasters may urgently report them to port authority officers on duty via their ships' VHF or telephones but shall later have to send the latter written reports.

4. For extremely serious marine accidents, after receiving urgent reports, the Vietnam Maritime Administration must immediately report to the

Ministry of Transport thereon.

Article 6.- Detailed reports

Following urgent reports, shipmasters must send detailed reports according to the following deadlines:

1. If an accident occurs in port waters, the detailed report thereon must be sent to the local port authority within 24 hours after the accident occurs.

2. If an accident occurs outside port waters but within the Vietnamese waters and after that the ship calls for mooring at the waters of a Vietnamese port, a detailed report thereon must be sent to the local port authority within 24 hours after the ship arrives at the anchoring or mooring place. In cases where after the accident, the ship does not call at any Vietnamese port waters for anchoring or mooring, the detailed report must be sent to the Vietnam Maritime Administration within 48 hours as soon as the ship or its crew calls at the first port after the accident.

3. If an accident occurs to a Vietnamese ship operating beyond Vietnamese waters, a detailed report thereon must be sent to the Vietnam Maritime Administration within 48 hours as soon as the ship calls at the first port after the accident.

Article 7.- Periodical reports

Marine accidents occurring in Vietnamese waters and accidents related to Vietnamese ships must all be periodically reported according to the following provisions:

1. Ship owners must compile books to regularly monitor and update marine accidents occurring to their fleets.

Quarterly, ship owners must send reports on

accidents occurring to their fleets to the Vietnam Maritime Administration. A quarterly report must be sent by the 5th of the first month of the subsequent quarter at the latest.

2. Port authorities must compile books to regularly monitor and update marine accidents occurring in port waters and/or areas under their management as well as marine accidents under their investigation.

Port authorities must send monthly and quarterly reports on marine accidents to the Vietnam Maritime Administration in accordance with the provisions of Clause 2 of this Article.

Monthly reports shall be sent on the 25th of every month.

Quarterly reports shall be sent according to the provisions of Clause 1 of this Article.

3. The Vietnam Maritime Administration must send to the Ministry of Transport quarterly and annual reports on marine accidents occurring in Vietnamese waters and accidents occurring to Vietnamese seagoing ships.

A quarterly report must be sent by the 10th of the first month of the subsequent quarter at the latest while an annual report must be sent by January 15 of the subsequent year at the latest.

4. Ship owners and port authorities must promptly analyze and assess causes of marine accidents so as to work out measures to prevent and restrict such accidents for their fleets and in the areas under their management.

Chapter III

INVESTIGATION OF MARINE ACCIDENTS

Article 8.- Requirements for investigation of

marine accidents

1. Investigation of marine accidents means the identification of conditions, circumstances, causes or possible causes of marine accidents in order to work out effective measures to prevent and restrict such accidents.

2. Marine accidents must be investigated in strict compliance with regulations, in a timely, comprehensive and objective manner.

Article 9.- Responsibilities for investigation of marine accidents

1. Directors of port authorities shall have to organize investigation of marine accidents occurring in the areas under their management and other marine accidents under assignment by the Vietnam Maritime Administration or competent authority.

2. Depending on the complexity of marine accidents, the directors of port authorities shall decide on the number of marine accident investigators, which, however, must be at least two with adequate professional qualifications.

3. In case of necessity, the director of the Vietnam Maritime Administration or the Minister of Transport shall decide to set up marine accident investigation teams.

Article 10.- Marine accident investigators

1. Marine accident investigators are port authority officers with adequate professional qualifications and capabilities as well as necessary law knowledge, to be nominated by directors of port authorities; in special cases, investigators shall be decided by competent agencies.

2. Marine accident investigators shall have the

following tasks:

a/ To work out marine accident investigation plans;

b/ To report in writing on the marine accident investigation process to directors of port authorities or heads of agencies which have assigned them the marine accident investigation task.

3. Marine accident investigators shall have the powers:

a/ To request parties involved in marine accidents to take measures to keep the accident scene intact;

b/ To request people related to marine accidents to report in writing on what they know about the accident conditions, circumstances and developments and the involved subjects. If it is necessary to question those people, investigators must notify them of the questioning time and place in advance;

c/ To request shipmasters to supply copies of maritime log books, engine log books, bell log books, radio log books, course-recording diagrams, sea-charts of areas where their ships meet with accidents and other data on the ships and equipment on board;

d/ To request the ships' decentralized technical monitoring agencies, ship owners, ships' agents, coastal communication radio stations, maritime search and rescue centers, Vessel Traffic Services (VTS), maritime assurance companies, maritime pilots and other relevant agencies and organizations to provide necessary information for investigation of marine accidents.

e/ To visit places of accidents and get onboard ships to inspect the scene, examine working positions and take samples necessary for investigation. All these jobs must be done to the

witness of, and with certification by, competent persons on board the ships and must not affect safe operations of the ships;

f/ To check, duplicate administrative registration, registry, insurance and technical dossiers and papers of ships and relevant technical equipment; professional diplomas and certificates of crew members in service of technical evaluation of related equipment and the ships' sailing capacity before voyage and at the time of occurrence of accidents;

g/ To use sound-recorders, cameras and video-cameras in the course of investigation, if necessary.

Article 11.- Time limits for investigation of marine accidents

1. For marine accidents occurring in port waters, the investigation time limit shall not exceed 30 days, counting from the date of occurrence of an accident.

2. For marine accidents occurring beyond port waters but within Vietnamese waters, the investigation time limit shall not exceed 30 days, counting from the date the relevant ship arrives at the first Vietnamese port after the accident occurs.

3. For marine accidents occurring beyond the Vietnamese waters, the investigation time limit shall be decided by the director of the Vietnam Maritime Administration.

4. In complicated cases, if the investigation of marine accidents cannot be completed within the time limit provided for in Clause 1 or 2 of this Article, directors of port authorities shall have to promptly report such in writing to the director of the Vietnam Maritime Administration for consideration and decision of the investigation time limit extension.

5. For marine accidents for which competent agencies defined in Clause 3, Article 9 of this

Decision decide to set up investigation teams, the heads of investigation decision-issuing agencies shall decide on and extend the investigation time limit.

Article 12.- Conducting marine accident investigations

1. Right after receiving an urgent report specified in Article 5 of this Decision or any information on a marine accident occurring in the area under his/her management, the director of relevant port authority shall have to verify such information for organization of investigation of the marine accident.

2. The marine accident investigation shall be conducted in the following order:

a/ Nominating an officer in charge of investigation, investigators and investigation collaborators;

b/ Gathering initial information on the marine accident;

c/ Approving the investigation plan suggested by the in-charge officer;

d/ Coming to the place of accident, getting onboard the ship for on-the-spot inspection of damage and traces left after the accident in order to identify and gather necessary evidence;

e/ Questioning people related to the marine accident and witnesses;

f/ Synthesizing the collected information. If deeming necessary, conducting additional inspection and questioning to clarify questionable issues;

g/ Based on the current provisions of law on maritime safety, analyzing the collected information, including expertise conclusions on sample items and traces related to the marine accident.

3. For marine accidents investigated by other

agencies according to their respective functions, directors of port authorities must also conduct investigation in accordance with the provisions of this Decision.

4. In case of necessity, directors of port authorities may enter into contracts with maritime experts or expertise agencies or laboratories in order to be advised on specialized domains, expertise and analysis of sample items and objects related to marine accidents.

Article 13.- Marine accident investigation conclusions

1. Contents of marine accident investigation conclusions shall cover the following:

a/ Conclusions on accident conditions and circumstances; violations, elements or possibilities which may have caused accidents. Such conclusions must be based on law and plausible evidence;

b/ Measures or proposals for prevention and restriction of such accidents;

c/ Administrative handling measures falling under the competence of directors of port authorities or proposals on handling measures to the competent authority for consideration and decision with regard to acts of violation falling beyond the handling competence of directors of port authorities.

2. Accident investigation conclusions must be sent to concerned parties and the Vietnam Maritime Administration, each with one copy, by the investigation deadline at the latest. For extremely serious marine accidents, written conclusions on investigation must be sent to the Minister of Transport.

Copies of marine accident investigation

conclusions may be granted to individuals or legal persons directly related to the accidents, if they send to port authorities written requests therefor.

Article 14.- Complaints and settlement of complaints

1. In cases where companies managing or operating Vietnamese seagoing ships; ship owners; shipmasters, crew members and relevant pilots or managers of works or equipment damaged by marine accidents disagree with conclusions on acts of violation and causes of accidents mentioned in written conclusions on marine accident investigation (hereinafter referred collectively to as complainants), they must, within 30 days after receiving such conclusions (according to the postage stamps), lodge complaints to directors of port authorities which have conducted the investigation and announced the marine accident investigation conclusions.

Within 10 days after receiving complaints, directors of port authorities must process such complaints and notify the complainants thereof in writing; if rejecting the complaints, they must give the reasons therefor. The time limit for complaint settlement by directors of port authorities shall not exceed 30 days after the receipt of the complaints; for complicated cases, this time limit may be prolonged but must not exceed 45 days after the receipt of the complaints.

The director of the Vietnam Maritime Administration shall have to direct, inspect and urge the settlement of complaints by directors of port authorities.

2. Within 30 days after receiving complaint-settling decisions from directors of port authorities, if the complainants disagree therewith, they may further complain with the director of the Vietnam

Maritime Administration. In this case, the complainants must send their complaints together with copies of settling decisions of directors of port authorities and documents related to the complaints.

Within 10 days after receiving the complaints, the director of the Vietnam Maritime Administration must process them and notify the complainants as well as directors of relevant port authorities thereof in writing; if rejecting the complaints, he/she must give the reasons therefor. The time limit for complaint settlement by the director of the Vietnam Maritime Administration shall not exceed 45 days after the receipt of the complaints; for complicated cases, this time limit may be prolonged but must not exceed 60 days.

3. Within 30 days after receiving the complaint-settling decisions from the director of the Vietnam Maritime Administration, if the complainants disagree therewith, they may further lodge their complaints to the Minister of Transport. In this case, the complainants must enclose their complaints with copies of complaint-settling decisions of the director of the Vietnam Maritime Administration.

The procedures and time limit for the Transport Minister to process and settle such complaints shall comply with the provisions of Clause 2 of this Article. The Transport Minister's complaint-settling decisions shall be the final ones, except for cases otherwise provided for by law.

Chapter IV

IMPLEMENTATION PROVISIONS

Article 15.- Implementation effect

This Decision takes effect as from January 1, 2006, and replaces the Transport Minister's

Decision No. 2756/2002/QĐ-BGTVT of August 29, 2002, promulgating the regulations on marine accident reporting and investigation.

Article 16.- Organization of implementation

The directors of the Office and concerned Departments of the Ministry of Transport, the director of the Vietnam Maritime Administration, the heads of concerned agencies and units as well as individuals shall have to implement this Decision.

Minister of Transport
DAO DINH BINH