

## **INTERNATIONAL SAFETY MANAGEMENT (ISM) CODE REGULATIONS, 2014**

**IN EXERCISE** of the powers conferred on the Minister under section 256 of the Merchant Shipping Act 2013, these Regulations are made.

### **1. Citation**

These Regulations may be cited as the Merchant Shipping International Safety Management (ISM) Code Regulations 2014.

### **2. Interpretation**

(1) In these Regulations-

"Act" means the Merchant Shipping Act 2013;

"Administration" means the Gambia Maritime Administration;

"audit" means a systematic and independent examination to determine whether the safety management system is suitable to meet the objectives set out in Section 1 of the Code, and, so far as the system has been operated, that the system has been implemented effectively. Such audits shall take into account the Guidelines on the Implementation of the ISM Code by Administrations, adopted by IMO pursuant to Assembly Resolution A. 788 (19);

"authorised person" means a person authorised by the Administration to carry out inspections and audits for the purpose of these Regulations and includes any surveyor of ships appointed under section 258 of the Act;

"bulk carrier", "chemical tanker", "gas carrier", "high speed craft", "mobile offshore drilling unit" and "oil tanker" have the meanings given by regulation 1 of Chapter IX of the Safety Convention;

"cargo ship" has the meaning assigned to it by section 3 of the Act;

"company" means the owner of a ship to which these Regulations apply or any other organisation or person such as manager or a bareboat charterer who has assumed the responsibility for the operation of the ship from the owner;

"Director General" means the Director General of the Administration;

"Document of Compliance" means the Document of Compliance referred to in regulation 4 of Chapter IX of the Safety Convention;

"Gambian Ship" has the meaning assigned to it by section 3 of the Act;

"IMO" means the International Maritime Organization;

"ISM Code" means the International Management Code for the Safe Operation of Ships and for Pollution Prevention as adopted by IMO by Resolution A.741 (18), together with any amendments which may be in effect in respect of Gambia;

"Safety Convention" has the meaning given in section 253 of the Act;

"Safety Management Certificate" means the Safety Management Certificate referred to in regulation 4 of Chapter IX of the Safety Convention;

"safety management system" means a structured and documented system enabling company personnel to effectively implement the company safety and environmental protection policy;

"ship" includes hovercraft, and "master" shall be construed accordingly;

"tons" has the meaning given in regulation 2(1) of the *Merchant Shipping (Cargo Ship Construction) Regulations 2014*; and

(2) In interpreting the ISM Code, the requirements of the ISM Code having been made mandatory under regulation 4 the language thereof shall be construed accordingly.

### **3. Application**

(1) Subject to sub-regulations (2) and (4), these Regulations apply to -

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

(2) These Regulations apply to-

- (a) passenger ships;

- (b) oil tankers, chemical tankers, gas carriers, bulk carriers, and cargo high-speed craft, of five hundred tons or more, which engage in international voyages; and
- (c) other cargo ships and mobile offshore drilling units, of five hundred tons or more, which engage in international voyages.

(3) These Regulations apply to every company operating a ship to which these Regulations apply.

#### **4. Duty to comply with the ISM Code**

Every company shall comply with the requirements of the ISM Code as it applies to that company and to any ship owned by it or for which it has responsibility.

#### **5. Duty to hold certificates**

(1) A company shall not operate a ship unless that company holds a valid Document of Compliance.

(2) A company shall not operate a ship unless that ship has a valid Safety Management Certificate.

(3) A Gambian ship shall not be operated unless-

- (a) the company holds a Document of Compliance issued or accepted by the Director-General; and
- (b) the ship has a Safety Management Certificate issued by the Administration.

(4) For the purposes of this regulation, a Document of Compliance or Safety Management Certificate is not valid if it has not been endorsed as required by the ISM Code, showing-

- (a) in the case of a Document of Compliance satisfactory annual audits; or
- (b) in the case of a Safety Management Certificate, a satisfactory intermediate audit.

## **6. Duty to carry certificates**

Every company shall ensure that a valid Safety Management Certificate and a copy of the Document of Compliance is carried on board each ship to which these Regulations apply

## **7. Duty of master**

The master of every ship shall operate his or her ship in accordance with the safety management system on the basis of which the Safety Management Certificate was issued.

## **8. Designated person**

(1) The company shall designate a person who shall be responsible for monitoring the safe and efficient operation of each ship with particular regard to the safety and pollution prevention aspects.

(2) In particular, the designated person shall -

- (a) take such steps as are necessary to ensure compliance with the company safety management system on the basis of which the Document of Compliance was issued; and
- (b) ensure that proper provision is made for each ship to be so manned, equipped and maintained that it is fit to operate in accordance with the safety management system and with statutory requirements.

(3) The company shall ensure that the designated person -

- (a) is provided with sufficient authority and resources; and
- (b) has appropriate knowledge and sufficient experience of the operation of ships at sea and in port,

to enable him or her to comply with subregulations (1) and (2).

## **9. Issue of Document of Compliance and Safety Management Certificate**

(1) Where the Administration is satisfied that a company operating Gambian ships complies with the requirements of the ISM Code, he or she may issue it with a Document of Compliance valid for a period not exceeding five years.

(2) Where the Administration is satisfied that a ship is operated by a company to which it has issued a Document of Compliance and that the company and its shipboard management operate in accordance with the safety management system it has approved, it shall issue in respect of that ship a Safety Management Certificate valid for a period not exceeding five years.

(3) Where a company operating a ship which is registered in more than one country, at least one of which is registered in The Gambia, complies with the requirements of the ISM Code, the Administration may accept a Document of Compliance issued by the government of one of those countries to which the Safety Convention applies, if prior to the issue of that document it has agreed to accept it. Conditions for acceptance may include completion of a satisfactory audit of the company by an authorised person.

(4) Where a company newly registers a ship in The Gambia, the Administration may accept a Document of Compliance issued by the government of a country to which the Safety Convention applies in which ships operated by the company are registered. Conditions for acceptance may include completion of a satisfactory audit by an authorised person.

(5) Where the Director-General is satisfied that a Gambian ship is operated by a company which has a Document of Compliance accepted by the Administration under paragraph (3) or (4) above and that its shipboard management operates in accordance with a safety management system which complies with the ISM Code, he or she shall issue in respect of that ship, a Safety Management Certificate valid for a period not exceeding five years.

## **10. Interim certificates**

(1) Where a company is newly established or it assumes for the first time, the responsibility for operating a ship type not covered by a Document of Compliance the company already holds, an interim Document of Compliance may be issued to facilitate implementation of the ISM Code.

(2) An interim Document of Compliance, valid for no more than twelve months, may be issued to a company following a demonstration that the company has a safety management system that meets the objectives of section 1.2.3 of the ISM Code.

(3) The company shall demonstrate plans to implement a safety management system meeting the full requirements of the ISM Code within the period of validity of the interim Document of

Compliance.

(4) An interim Safety Management Certificate valid for not more than six months, may be issued in respect of a new ship on delivery, when a company takes on the responsibility for the management of a ship which is new to the company or when a ship is transferred between flag states.

(5) The Administration may as he or she considers appropriate, extend the validity of the interim Safety Management Certificate for a further six months.

(6) An interim Safety Management Certificate shall only be issued when the Administration is satisfied that -

- (a) the Document of Compliance, or the interim Document of Compliance, is relevant to that ship type;
- (b) the safety management system provided by the company for the ship includes all key elements of the ISM Code and has been assessed during the audit for issuance of the Document of Compliance or issuance of the interim Document of Compliance;
- (c) the master and relevant senior officers are familiar with the safety management system and the planned arrangements for its implementation;
- (d) instructions which have been identified as essential to be provided prior to sailing have been given;
- (e) plans for audit by the company, of the ship within three months exist; and
- (f) the relevant information on the safety management system is given in a working language or languages understood by the ship's personnel.

#### **11. Issue and endorsement of Safety Management Certificate by another government**

(1) The Administration may request through a proper officer or otherwise, the government of a country to which the Safety Convention applies -

- (a) to conduct an audit of the safety management system operated onboard a Gambian ship; and
- (b) where satisfied that the requirements of the ISM Code are complied with, to issue to the ship a Safety Management Certificate or authorise such issue or, where appropriate endorse such certificates in accordance with the requirements of the Safety Convention after intermediate audit.

(2) A certificate issued in accordance with such a request shall contain a statement that it has been so issued and shall have the same effect as if it was issued by the Administration.

## **12. Issue of certificates on behalf of other governments**

(1) The Administration may, at the request of a government of a country to which the Safety Convention applies, audit the safety management systems of companies and ships registered in that country and, if satisfied that the requirements of the ISM Code are complied with, and that the audit has been satisfactorily completed in accordance with these Regulations issue-

- (a) to the company a Document of Compliance;
- (b) in respect of the ship, a Safety Management Certificate; or
- (c) where appropriate, endorse such certificates in accordance with the requirements of the Safety Convention after annual or intermediate audits.

(2) A certificate issued in accordance with such a request shall contain a statement that it has been so issued and shall have the same effect as if it was issued by that government and not by the Administration.

## **13. Annual audit of Document of Compliance**

The Administration shall carry out an annual audit of the safety management system of every company to which it has issued a Document of Compliance, within three months of the anniversary date of the Document of Compliance.

#### **14. Intermediate audit of Safety Management Certificate**

The Administration shall carry out an intermediate audit of each ship, to ensure that the conditions for the continued validity of the Safety Management Certificate are being met, between the second and third anniversaries of the Safety Management Certificate issued by it, and at other times if it thinks fit.

#### **15. Renewal of certificates**

The Administration shall carry out an intermediate audit of each ship, to ensure that the conditions for the continued validity of the Safety Management Certificate are being met, between the second and third anniversaries of the Safety Management Certificate issued by it, and at other times if it thinks fit.

#### **16. Powers of audit, inspection, suspension of service and detention**

(1) Any authorised person may audit the safety management system of any company.

(2) Where an authorised person considers that a company, notwithstanding that it holds a Document of Compliance, is unable to operate ships -

(a) without creating a risk of serious danger to safety of life, property or the environment; or

(b) because the company does not hold a Document of Compliance, it may suspend the operation of ships by that company until such time as any such risk is removed or a valid Document of Compliance is held.

(3) Where a service is to be suspended pursuant to sub-regulation (2), the authorised person shall serve on the company, a notice stating that the operation of the service specified in the notice shall be suspended.

(4) Any authorised person may inspect any ship, and such inspection may include an audit of its safety management system.

(5) Where an authorised person is satisfied on inspecting a ship that there is a failure to comply in relation to that ship with the requirements of regulation 4 or 5 he or she may detain the ship.



(6) Where a ship is liable to be detained, section 347 of the Act shall have effect in relation to the ship subject to the modification that the words "this Act" wherever they appear, shall be substituted with the words "the Merchant Shipping (International Safety Management (ISM) Code) Regulations 2014."

(7) Where a ship is detained in relation to a failure to comply with a requirement of these Regulations, sections 349 and 350 of the Act shall apply to the notice of detention as they apply to a detention notice under section 348, and references to the ship being dangerously unsafe shall be substituted with references to it being in breach of these Regulations.

(9) An authorised person exercising functions under this regulation shall have the powers conferred by section 529 of the Act.

## **17. Exemptions**

The Administration may grant exemptions from all or any of the provisions of these Regulations (as may be specified in the exemption) for classes of cases or individual cases on such terms (if any) as it may specify, and may, subject to giving reasonable notice, alter or cancel any such exemption.

## **18. Suspension or cancellation of Documents of Compliance and Safety Management Certificates**

(1) The Administration may by notice in writing, suspend or cancel any Document of Compliance or Safety Management Certificate issued by it or at its request under these Regulations where it has reason to believe that-

- (a) the certificate was issued on false or erroneous information;
- (b) since the last audit required by these Regulations, the management structure of either the company or ship has changed substantively; or
- (c) an audit of a company or ship has revealed a failure to comply with regulation 4.

(2) Any notice shall contain the grounds for the suspension or cancellation of the certificate.

(3) A notice shall not be given unless the holder has been given the opportunity to make representations, except where the

Administration considers that urgent safety or pollution prevention considerations require the notice to be given immediately.

(5) The Administration may require that any Document of Compliance or Safety Management Certificate issued by it under these Regulations which has expired or has been suspended or cancelled, be surrendered as directed.

(6) A person shall not -

- (a) intentionally alter a Document of Compliance or Safety Management Certificate;
- (b) in connection with an audit conducted pursuant to these Regulations, knowingly or recklessly furnish false information;
- (c) with intent to deceive, use, lend or allow to be used by another, a Document of Compliance or Safety Management Certificate;
- (d) fail to surrender a Document of Compliance or Safety Management Certificate required to be surrendered under sub-regulation (5); or
- (e) forge any Document of Compliance or Safety Management Certificate.

## **19. Offences and penalties**

(1) A company which contravenes regulation 4, 5, or 8 commits an offence and is liable on conviction to a fine of seven hundred and fifty thousand dalasis.

(2) A company which contravenes regulation 6 commits an offence and is liable on conviction to a fine not exceeding one hundred and fifty thousand dalasis.

(3) The master of a ship who contravenes regulation 7 commits an offence and is liable on conviction to a fine of seven hundred and fifty thousand dalasis or imprisonment not exceeding two years, or to both the fine and imprisonment.

(4) A designated person who contravenes regulation 8(2) commits an offence and is liable on conviction to a fine of seven hundred and fifty thousand dalasis, or imprisonment not exceeding two years, or both the fine and imprisonment.

(5) A company which operates a ship on a service when the service is suspended under regulation 16(1)(b) commits an offence and is liable on conviction to a fine of seven hundred and fifty thousand dalasis, or imprisonment not exceeding two years, or both the fine and imprisonment.

(6) A person who contravenes regulation 18(3) commits an offence and is liable on conviction to a fine not exceeding seven hundred and fifty thousand dalasis, or to imprisonment not exceeding six months, or both the fine and imprisonment.

## **20. Defence**

It shall be a defence for a person charged with an offence under these Regulations to show that he or she took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

**MADE THIS .... DAY ..... 2014**

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**BALLA GARBA JAHUMPA**  
**MINISTER OF WORKS, CONSTRUCTION AND**  
**INFRASTRUCTURE**