

MERCHANT SHIPPING ACT, 2013

MERCHANT SHIPPING (MARINE INQUIRIES) REGULATIONS, 2014

IN EXERCISE of the powers conferred on the Minister under section 491 of the Merchant Shipping Act 2013, these Regulations are made.

1. Citation

These Regulations may be cited as Merchant Shipping (Marine Inquiries) Regulations 2014.

2. Interpretation

In these Regulations, unless the context otherwise requires-

“Act” means the Merchant Shipping Act 2013;

“Marine inquiry” means a marine inquiry into a casualty under section 484 of the Act and any re-hearing of such an inquiry under section 489 of the Act;

“Minister” means the Minister for the time being responsible for maritime affairs;

“person appointed” means the person or persons appointed by the Minister to hold an inquiry under section 484 of the Act; and

“certificate holder” means the holder of a certificate of competency issued under the Act.

3. Application

These Regulations apply to any marine inquiry under section 484 of the Act and to any re-hearing of such inquiry.

4. Assessors

(1) The Minister through the Administration, shall maintain a list of assessors for the purpose of section 484 of the Act who have qualifications set out in the Schedule hereto and may, at any time add to or withdraw the name of any person to or from the list.

(2) Where any question as to the cancellation or suspension of an officer's certificate is likely to arise, the marine inquiry shall be assisted

by not less than two assessors having experience in merchant marine as master or chief officer of foreign going ship, a marine chief engineer officer of a foreign going ship or such suitable officers, depending on the circumstances of the casualty.

5. Notice of Inquiry

(1) When the Minister causes a marine inquiry to be held, the person holding the inquiry shall serve or caused to be served, a notice (in these Regulations called a "notice of inquiry) in writing on the certificate holder concerned who shall be made a party to the inquiry.

(2) Service of such notice shall be effected at least thirty days before the date fixed for the inquiry, either by serving the certificate holder concerned personally or by sending the notice to his last known address by registered post or by the recorded delivery service.

(3) In addition to the certificate holder, the notice of inquiry shall be served on the owner as well as any person who in his or her opinion, ought to be served with such notice.

(4) The notice of inquiry shall state-

- (a) the facts giving rise to the inquiry;
- (b) the allegation made against the certificate holder to whom the notice is addressed and the grounds therefor; and
- (c) the time and date when, and the place where, the inquiry is to be held.

(5) The notice shall be in the form set out in First Schedule to these Regulations with such variations as the circumstances may require.

6. Place of inquiry

The place for the inquiry shall be determined by the Minister and it shall be Court House at Banjul or such other place, and in such building the Minister may direct.

7. Appearance by leave

(1) A person upon whom notice of inquiry has been served and any person who shows that he or she has interest in the investigation shall have the right to appear;

(2) Any other person may by leave of the person holding the inquiry

appear and any person who appears under this Regulation shall thereupon become a party to the proceedings.

8. General Statement

The inquiry shall have all the powers of a court of summary jurisdiction in the exercise of its ordinary jurisdiction and all the powers of surveyor under the Act.

9. Right of accused to make his defense

Every marine inquiry shall be conducted in such a manner that if a charge is made against any person, such person shall have the opportunity of making a defence.

10. Notice to Produce

(1) A party may give to any other party to the case, notice in writing to produce any documents, except in all just exceptions, relating to the matters in difference between them which are in the possession or under the control of such other party.

(2) If the notice is not complied with, secondary evidence of the contents of the documents may be given by the party who gave such notice.

11. Notice to admit

A party may give to any other party, notice in writing to admit any document, except in just exceptions, and in case of neglect or refusal to admit after such notice, the party so neglecting or refusing shall be liable for all the costs of proving the documents, whatsoever may be the result, unless the inquiry is of the opinion that the refusal to admit was reasonable.

12. Affidavit as evidence

(1) Affidavits may by permission of the person holding the inquiry, be used as evidence at the hearing.

(2) The service of any notice, summons or other document may be proved by oath or affidavit of the person by whom it was served.

13. Non appearance

At the time and place appointed for holding the investigation, the parties

to the inquiry may proceed, whether a party on whom a notice of inquiry has been served is present or not.

14. Procedure on investigation

(1) The proceedings on the investigation shall commence investigation with the production and examination of witnesses by the person holding the inquiry.

(2) Such witnesses, after being examined on behalf of the person holding the inquiry, may be cross examined by the parties in such order as the person holding the inquiry may direct, and may then be re-examined by the person.

15. Relevancy of questions and documents

Questions asked and documents tendered as evidence in the course of the examination of witnesses shall not be open to objection merely on the ground that they do or may raise questions which are not contained in, or which vary from, the statement of the case or questions specified in the notice of inquiry.

16. Person holding inquiry to state in the open questions for opinion of inquiry

(1) When the examination of the witnesses produced by the person holding the inquiry has been concluded, such person shall state in the open, the questions in reference to the casualty and the conduct of certificated officers or other persons connected therewith upon which the opinion of the inquiry is desired.

(2) In framing the question for the opinion of the inquiry, the person holding the inquiry may make such modifications, in addition to or omissions from the questions in the notice of inquiry as, having regard to the evidence which has been given, he or she may think fit.

17. Hearing of parties and their witnesses

(1) After questions for the opinion of the inquiry have be stated, the inquiry shall proceed to hear the parties to the investigation on questions so stated, and shall determine thereon; and thereupon each party to the inquiry shall be entitled to address the inquiry and produce witnesses or recall any of the witnesses who have already been examined for further examination and generally adduce evidence.

(2) The parties shall be heard and their witnesses examined, cross-

examined and re-examined in such order as the person holding the inquiry shall direct.

18. Speeches on evidence

When the whole of the evidence in relation to the questions for the opinion of the inquiry has been concluded, any of the parties who so desire may address the inquiry on the evidence and the person holding the inquiry may address the inquiry in reply upon the whole.

19. Adjournment and Costs thereof

The person holding the inquiry may adjourn the inquiry from time to time and from place to place, and where an adjournment is asked for by a party to the inquiry, or the person holding the inquiry, the person holding the inquiry may impose such terms as to the payment of costs or otherwise as it may think just as a condition of granting the adjournment.

20. Remuneration to assessors

There shall be paid as part of the costs of the proceedings to every assessor in respect of his or her services, such sum as may be determined by the Minister or the person holding the inquiry.

DATED THIS.... DAY OF 2014

.....
BALLA GARBA JAHUMPA
MINISTRY OF WORKS, CONSTRUCTION AND INFRASTRUCTURE