



MERCHANT SHIPPING (ISM) REGULATIONS 2020

MARINECARE Consultant Bangladesh Ltd

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The Director General of Shipping, in exercise of the powers conferred by section --- of the Merchant Shipping Act 2020, makes the following regulations:

Short title and commencement

1. (1) These Regulations may be cited as the Merchant Shipping (ISM) Regulations 2020.
- (2) These Regulations shall come into force on the day after notice of their making is given in the Official Gazette.

Interpretation

2. In these Regulations –

"Act" means the Merchant Shipping Act 2020;

"Administration" means the Government of the state whose flag the ship is flying;

"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 Director General of Shipping or any person authorized or recognized by the Director General for the purposes of these Regulations;

"Document of Compliance" means a document issued in accordance with paragraph 13.2 of the ISM Code;

"IMO" means the International Maritime Organisation;

"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;

“Merchant Shipping Notice” means a notice described as such and issued by the Department of Shipping, and includes a reference to any such document amending or replacing that notice which is considered by the Director General to be relevant from time to time;

“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; and

“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 Director General.

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

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- (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 Bangladesh ships, to be taken as references to the Director General.

Application

3. These Regulations apply to—
- (a) Bangladesh ships wherever they may be; and
 - (b) other ships while they are within Bangladesh waters.

Compliance with ISM Code

4. (1) An ISM Company shall not operate a ship unless the applicable requirements are complied with in relation to that ship.
- (2) The ISM Code is mandatory for all passenger ships of any size and all cargo ships of 500 gross tonnage and above, including self-propelled mobile offshore drilling units (MODUs), under the provisions of Chapter IX of the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS).
- (3) The following ship types are not subject to the requirements of SOLAS and the ISM Code is therefore not mandatory, however this regulation may adopted for guidance on voluntary application of the ISM Code:
- i. Cargo ships and MODUs of less than 500 gross tonnage;
 - ii. Offshore units which are not self-propelled;
 - iii. Pleasure yachts for the private use of their owner and not engaged in commercial trade (i.e. non-commercial/private yachts).

Responsibilities under ISM Code

- 5 (1) In accordance with paragraph 3.1 of the ISM Code, if the entity responsible for the operation of the ship is other than the Owner, the Owner shall notify the Department of Shipping (DOS) of the full name and details of such entity.
- (2) The notification, as well as any changes of the entity, or its contact details, should be made using a specified form.
- (3) In the case of changes of ISM Designated Person Ashore (DPA) without any change of the entity identified in paragraph (1) the notification may be made by email to cns@dos.gov.bd

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(4) The DOS will provide acknowledgement letters to the DPA by email confirming:

- i. Appointment of ISM Company;
- ii. Appointment of DPA.

(5) Owners of ships to which the ISM Code does not apply must ensure that there is a shore-based contact through which the DOS can communicate with the person(s) responsible for the operation of the ship. The Owner must inform the DOS of the relevant contact details of this person using the same procedures outlined in paragraph (2).

Certification requirements

6.—(1) The requirements referred to in regulations 4 (1) 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 foreign ship if it does not display endorsements showing satisfactory annual or intermediate audits (as appropriate) as required by the ISM Code.

Duty of master

7. The master of a ship to which this Regulation applies 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.

Designated person

8.—(1) In relation to a ship to which this regulation apply , the ISM company must—

- (a) designate a person who is to discharge the responsibility described in paragraph (2); and

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(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.

Issue of certificates

9.— The Certifying Authority or a Recognized Organization, if authorized, may issue and endorse relevant documents as appropriate in connection with a Bangladesh ship where satisfied through an audit that relevant requirements of the ISM Code have been met.

Issue and endorsement of documents by other governments

10. Where—

(a) the Director General has asked the government of a country which is party to SOLAS to conduct an audit of the safety management system operated onboard a Bangladesh 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

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

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Issue and endorsement of documents on behalf of other governments

11.—(1) The Director General 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 Director General is satisfied that the requirements of the ISM Code are met, the Director General 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 Director General issues or endorses a document in accordance with such a request, the Director General 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 Director General.

Exemptions

12.—(1) In relation to a Bangladesh ship, the Director General may by notice in writing grant an exemption from all or any of the provisions of these Regulations for such classes of case or individual cases, and on such terms, as the Director General may specify.

(2) The Director General 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 Director General considers that urgent safety or pollution prevention considerations require the notice to be given immediately.

Suspension or cancellation of documents

13.—(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

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cancel any relevant document issued under regulation 9 or issued pursuant to a request under regulation 10.

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

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

- (a) acts on behalf of the Director General when exercising functions under this regulation; and
- (b) may only exercise functions under paragraph (1) in respect of a relevant document which it issued.

Detention

14.—(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, 5, 7 or 8 or a breach of any term of an exemption granted under regulation 12 or a derogation from the ISM Code, the ship is liable to be detained.

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(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 foreign ship if the ship in question is in a port or offshore terminal in Bangladesh.

(4) Section ----- of the MSA 2020 (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;

(b) references to detention of a ship under the Act were references to detention of the ship in question under this regulation.

(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 ----- of the Act.

(6) Where a foreign ship is detained, the Director General 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.

Offences and penalties

15.—(1) Any contravention of regulation 4(1) or regulation 8(1) is an offence by the ISM company, punishable on summary conviction by a fine not exceeding one hundred thousand penalty units.

(2) Any contravention of regulation 7 or regulation 8(2) is an offence, punishable on summary conviction by a fine not exceeding fifty thousand penalty units.

(3) Any breach of a term of an exemption granted under regulation 12 or a derogation from the ISM Code is an offence by the ISM company, punishable on summary conviction by a fine not exceeding twenty five thousand penalty units..

Defence

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16. It is a defence for a person charged with an offence under regulation 15 (2) to show that they took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Review

17.—(1) The Director General must from time to time—

(a) carry out a review of these Regulations,

(b) set out the conclusions of the review in a report, and

(c) publish the report.

(2) In carrying out the review the Director General must, so far as is reasonable, have regard to legislation of other IMO member States.

(3) The report must in particular—

(a) set out the objectives intended to be achieved by the regulatory system established by these Regulations,

(b) assess the extent to which those objectives are achieved, and

(c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

Made this 15th day of January, 2020

Director General
Department of Shipping