

GOVERNMENT NOTICE No. 197 published on 15/7/2005

MERCHANT SHIPPING ACT, 2003  
(ACT No. 21 OF 2003)

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**REGULATIONS**

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*(Made under section 222)*

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THE MERCHANT SHIPPING (INTERNATIONAL SAFETY MANAGEMENT (ISM) CODE)  
REGULATIONS, 2005

*Regulation*

*Title*

**PART I**

PRELIMINARY PROVISIONS

1. Citation.
2. Application.
3. Interpretation.

**PART II**

COMPLIANCE WITH ISM CODE

4. Duty to comply with the ISM Code.
5. Duty to hold certificates.
6. Duty to carry certificates.
7. Duty of master.
8. Designated person.
9. Issue of Document of Compliance and Safety Management Certificate.
10. Interim certificates.
11. Issue and endorsement of Safety Management Certificate by another Government.
12. Issue of certificates on behalf of other governments.
13. Annual audit of Document of Compliance.

Merchant Shipping (International Safety Management (ISM Code) Regulations

G.N. No. 197 (contd)

14. Intermediate audit of Safety Management Certificate.
15. Renewal of certificates.

PART III

AUDIT INSPECTION AND DETENTION OF SHIPS AND COMPANY

16. Power of audit, inspection, suspension of service and detention.
17. Exemptions.
18. Suspension or cancellation of Documents of Compliance and Safety Management Certificates.

PART IV

OFFENCES AND PENALTIES

19. Offences and penalties.
20. Defence.

THE MERCHANT SHIPPING (INTERNATIONAL SAFETY MANAGEMENT (ISM) CODE)  
REGULATIONS, 2005

PART I  
PRELIMINARY PROVISIONS

1. These Regulations may be cited as the Merchant Shipping (International Safety Management (ISM) Code) Regulations, 2005. Citation

2.—(1) Subject to sub-regulation (2), these Regulations shall apply to— Applica-  
tion

(a) Tanzanian Ship wherever they may be; and

(b) other ships while they are within the Tanzanian waters.

(2) These Regulations shall apply to—

Passenger ships:

(a) oil tankers, chemical tankers, gas carriers bulk carriers, and cargo high-speed craft, of 500 tons or more, which engage in international voyages; and

(b) other cargo ships and mobile offshore drilling units, of 500 tons or more, which engage in international voyages.

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

3. In these Regulations:-

“Act” means the Merchant Shipping Act, 2003;

“audit” means a systematic and independent examination to determine whether the safety management system is suitable to meet the objectives set out in Section I 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);

“authorized person” means a person authorized by the Minister to carry out inspections and audits for the purpose of these Regulations and includes any surveyor of ships appointed under section 382 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 I of Chapter IX of SOLAS;

Interpreta-  
tion Act  
No. 21 of  
2003

*Merchant Shipping (International Safety Management (ISM Code) Regulations*  
*G.N. No. 197 (contd)*

- “cargo ship” means a cargo ship within the meaning ascribed under the Act;
- “company” means the owner of a ship to which these regulations apply or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner;
- “Document of Compliance” means the Document of Compliance referred to in Regulation 4 of Chapter IX of SOLAS;
- “IMO” means the International Maritime Organization;
- “ISM Code” means the International Safety Management Code for the Safe Operation of Ships and for Pollution Prevention as adopted by IMO by Resolution A. 741 (18);
- “the Authority” means the government department or agency having responsibility for maritime and Inland waterway matters;
- “Merchant Shipping Notice” means a Notice described as such and issued by the Registrar of Ships in accordance with section 209 of the Act;
- “Minister” means the minister responsible for shipping;
- “passenger ships” has the meaning ascribed to it under the Act;
- “Safety Management Certificate” means the Safety Management Certificate referred to in Regulation 4 of Chapter IX of SOLAS;
- “safety management system” means a structured and documented system enabling company personnel to effectively implement the company safety and environmental protection policy;
- “ship” means a floating vessel which is self propelled and capable of carrying passengers or cargo;
- “SOLAS” means the International Convention for the Safety of Life at Sea, 1974(6) its Protocol of 1978(7) and its amendments, in force at 1<sup>st</sup> July, 1998; and
- “tons” means gross tons.

(2) Any reference in these Regulations to SOLAS or the ISM Code shall include the reference to any document amending them.

(3) In interpreting the ISM Code—

- (a) the requirements of the ISM Code having been made mandatory under Regulation 4 the language thereof shall be construed accordingly; and

- (b) reference to the Administration shall, in relation to Tanzania ships, be referenced to the Minister.

## PART II

### COMPLIANCE WITH ISM CODE

4. 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.

Duty to comply with the ISM Code

5.-(1) No company shall operate a ship unless that company holds a valid Document of Compliance.

Duty to hold certificates

(2) No company shall operate a ship unless there is in force in respect of that ship a valid Safety Management Certificate.

(3) No Tanzanian ship to which these regulations apply shall be operated unless:

(a) the company holds a Document of Compliance issued or accepted by the Minister; and

(b) there is in force in relations to the ship a Safety Management Certificate issued by the Minister.

(4) For the purposes of this Regulation a Document of Compliance or Safety Management Certificate is not valid if it has not been endorsed, in the circumstances required by the ISM Code, showing, in the case of a Document of Compliance satisfactory annual audits, or in the case of a Safety Management Certificate, a satisfactory intermediate audit.

6. It shall be the duty of every company to 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.

Duty to carry certificates

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

Duty of master

8.-(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.

Designated person

(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 to comply with sub-regulations (1) and (2) above.

Issue of  
Document  
of  
Compliance  
and Safety  
Management  
Certificate

9.—(1) If the Minister is satisfied that a company operating Tanzanian ships complies with the requirements of the ISM Code he may issue it with a Document of Compliance valid for a period not exceeding five years.

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

(3) Where a company operating ships which are registered in more than one country, but a least one of which is registered in the United Republic of Tanzania, complies with the requirements of the ISM Code the Minister may accept a Document of Compliance issued by the government of one of those countries to which SOLAS applies, if prior to the issue of that document he has agreed to accept it. Conditions for acceptance may include completion of a satisfactory audit of the company by an authorized person.

(4) Where a company newly registers a ship in the United Republic of Tanzania, the Minister may accept a Document of Compliance issued by the government of a country to which SOLAS applies in which ships operated by the company are registered. Conditions for acceptance may include completion of a satisfactory audit by an authorized person.

(5) If the Minister is satisfied that a Tanzanian ship is operated by a company which has a Document of Compliance accepted by the Minister under sub-regulation (3) and (4) above and that its shipboard management operates in accordance with a safety management system which complies with the ISM Code he shall issue in respect of that ship a Safety Management Certificate valid for a period not exceeding five years.

10.—(1) Where a company is newly established, or the company 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.

Interim  
certificates

(2) An interim Document of Compliance, valid for no more than 12 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 and 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.

(3) 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.

(4) The Minister may, as he considers appropriate, extend the validity of the interim Safety Management Certificate for a further six months.

(5) An interim Safety Management Certificate shall only be issued when the Minister is satisfied that—

- (i) the Document of Compliance, or the interim Document of Compliance, is relevant to that ship type;

- (ii) 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;
- (iii) the master and relevant senior officers are familiar with the safety management system and the planned arrangements for its implementation;
- (iv) instructions which have been identified as essential to be provided prior to sailing have been given;
- (v) plans for audit, by the company, of the ship within three months exist; and
- (vi) the relevant information on the safety management system is given in a working language or languages understood by the ship's personnel.

Issue and endorsement of Safety Management Certificate by another Government

11.—(1) The Minister may request, through a proper officer or otherwise, the Government of a country to which SOLAS applies:-

- (a) to conduct an audit of the safety management system operated onboard a Tanzanian ship, and
- (b) if satisfied that the requirements of the ISM Code are complied with, to issue to the ship a Safety Management Certificate or authorize such issue or, where appropriate endorse such certificates in accordance with the requirements of SOLAS 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 Minister.

Issue of certificates on behalf of another governments

12.—(1) The Minister may, at the request of a government of a country to which SOLAS 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



to the company a Document of Compliance or, in respect of the ship a Safety Management Certificate, or, where appropriate, endorse such certificates in accordance with the requirements of SOLAS after annual or intermediate audits.

(2) Subject to sub-regulation (1) 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 Minister.

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

Annual  
audit of  
Document  
of  
Compliance

14. The Minister 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 him, and at other times if he thinks fit.

Intermediate  
audit of  
Safety  
Management  
Certificate

15. Before the renewal of any certificate the Minister shall carry out a renewal audit of the company or ship during the six month period preceding the expiry date of the Document of Compliance or Safety Management Certificate as the case may be, to ensure that compliance with the requirements or the ISM Code is maintained.

Renewal of  
certificates

### PART III

#### AUDIT, INSPECTION AND DETENTION OF SHIPS AND COMPANY

16.—(1) Any authorized person may audit the safety management system of any company.

Power of  
audit,  
inspection,  
suspension  
of  
service  
and  
detention

(2) If an authorized person considers that a company, notwithstanding that it holds a Document of Compliance, is unable to operate ships without creating a risk of:-

- (a) serious danger to safety of life;
- (b) serious damage to property;
- (c) serious harm to the environment; or
- (d) that the company does not hold a Document of Compliance, he 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-paragraph (2) above the authorized person shall serve on the company a notice stating that the operation of the service specified in the notice shall be suspended.

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

(5) If an authorized 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 may detain the ship.

(6) In any case where a ship is liable to be detained, section 409 of the Act (which relates to the detention of the ship) shall have effect in relation to the ship subject to the modification that as if for the words "this Act" wherever they appear, there were substituted "the Merchant Shipping (International Safety Management (ISM Code)) Regulation, 2005".

(7) Where a ship is detained in relation to a failure to comply with a requirement of these Regulations sections 246 of the Act shall apply to the notice of detention as they apply to a detention notice under section 409 and as if for references to the ship being dangerously unsafe there were substituted references to it being in breach of these Regulations.

(8) An authorized person exercising functions under this regulation shall have the powers conferred on an inspector by section 384 of the Act, 2003.

Exemptions

17. The Minister 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 he may specify, and may, subject to giving reasonable notice, alter or cancel any such exemption.

18.—(1) The Minister may by notice in writing suspend or cancel any Document of Compliance or Safety Management Certificate issued by him or at his request under these Regulations where he has reason to believe that—

Suspension  
or  
cancellation  
of  
Documents  
of  
Compliance  
and Safety  
Management  
Certificates

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

(2) Any such 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 Minister considers that urgent safety or pollution prevention considerations require the notice to be given immediately.

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

(5) No person shall—

- (a) intentionally alter a Document of Compliance or Safety Management Certificate;
- (b) in connection with any 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; or
- (d) fail to surrender a Document of Compliance or Safety Management Certificate required to be surrendered under sub-regulation (2).

PART IV  
OFFENCES AND PENALTIES

Offences  
and  
Penalties

19. (1) Any contravention of regulations 4, 5 or 8 by a company shall be an offence and is liable upon conviction to a fine not less than the equivalent Tanzanian shillings of the United States Dollars ten thousand or imprisonment to a term of not exceeding two years or both.

(2) Any contravention of regulation 6 by the company shall be an offence and is liable upon conviction to a fine not less than the equivalent Tanzanian shillings of the United States Dollars three thousand or imprisonment to a term of not exceeding two years or both.

(3) Any contravention of regulation 7 by the master of a ship shall be an offence and is liable upon conviction to a fine not less than the equivalent Tanzanian shillings of the United States Dollars one thousand or imprisonment to a term of not exceeding six months or both.

(4) Any contravention of regulation 8 (2) by the designated person shall be an offence and is liable upon conviction to a fine not less than the equivalent Tanzanian shillings of the United States Dollars five thousand or imprisonment to a term of not exceeding two years or both.

(5) Any company which operates a ship on a service when the service is suspended under regulation 18(1) (b) shall be guilty of an offence and is liable upon conviction to a fine not less than the equivalent Tanzanian shillings of the United States Dollars ten thousand or imprisonment to a term of not exceeding five years or both.

(6) Any contravention of regulation 18(5) shall be an offence, and is liable upon conviction to a fine not less than the equivalent Tanzanian shillings of the United States Dollars two thousand or imprisonment to a term of not exceeding one year or both.

Defence

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

Dar es Salaam,

MARK J. MWANDOSYA (MP),

.....,2005

*Minister for Communication and Transport*