**L.N. 332 of 2003**

## MERCHANT SHIPPING ACT
## (CAP. 234)

### Merchant Shipping (Prevention of Pollution from Ships) Regulations, 2003

IN exercise of the powers conferred by articles 281, 308A and 374 of the Merchant Shipping Act, the Minister for Transport and Communications has made the following regulations:-

Citation and commencement.

**1.** (1) The title of these regulations is the Merchant Shipping (Prevention of Pollution from Ships) Regulations, 2003.

(2) These regulations shall come into force on such date as the Minister may appoint.

Interpretation.

**2.** (1) In these regulations, unless the context otherwise requires -

"the Act" means the Merchant Shipping Act;

"Annex I" means Annex I to the MARPOL Convention including appendices thereto;

"Annex II" means Annex II to the MARPOL Convention including appendices thereto;

" Annex III" means Annex III to the MARPOL Convention including the appendix thereto;

"appropriate inspector" shall have the same meaning as is assigned to it in article 154 of the Act;

"Maltese waters" shall have the same meaning as is assigned to it in the Territorial Waters and Contiguous Zone Act; Cap. 226.

"MARPOL Convention" means the International Convention for the Prevention of Pollution from Ships, signed in London on

2nd November, 1973 as modified by the Protocol of 1978 relating thereto signed in London on 17th February, 1978;

"Protocol I" means Protocol I to the MARPOL Convention.

(2) Any reference in these regulations, but in particular in subregulation 4(1) hereof, to a convention, protocol or annex shall include reference to any amendment to such convention, protocol or annex as from time to time may be ratified, acceded to or accepted by the Government of Malta, and where the context allows, it shall include also reference to any other instruments, standards and specifications of a mandatory nature related thereto as may from time to time be adopted or developed by the International Maritime Organisation or in terms of regulation 4(2)(a) hereof.

(3) Unless otherwise defined in these regulations or unless the context otherwise requires, words and expressions used in these regulations shall have the same meaning assigned to them in the MARPOL Convention or in Protocol I, or in Annex I or in Annex II, or in Annex III, as the case may be.

(4) The terms "Administration" and "the competent authority of the Government of a Party" as used in Annex I or in Annex II shall, with reference to Malta, and where the context so requires, for the purposes of these regulations, mean the Registrar-General.

(5) In Annex I or in Annex II, any reference to "nominated surveyor", "persons or organisations duly authorized by the Administration" or "recognized organization" shall, for the purposes of these regulations, with reference to Malta and where the context so requires, be construed as reference to a surveyor of ships or an organisation or body of surveyors appointed in terms of article 367 of the Act, and duly authorized by the Registrar-General.

Application.

**3.** These regulations shall apply to all Maltese ships and, notwithstanding the provisions of Article 3(1) of the MARPOL Convention but subject to the provisions of Article 3(3) of the said convention, to all other ships while they are in Maltese waters as determined by Annex I or Annex II or Annex III, as the case may be.

Protocol I, Annex I, Annex II and Annex III given force of law in Malta.

**4.** (1) Protocol I and Annex I, except for regulations 10(7) and 12, and Annex II, except for regulation 7, and Annex III, as may from time to time be in force, shall, unless otherwise provided in or in terms of these regulations and notwithstanding the provision of any other law, form part of and be enforceable as part of the Law of Malta and shall apply to all Maltese ships and, notwithstanding the provisions of Article

3(1) of the MARPOL Convention but subject to the provisions of Article 3(3) of the said convention, to all other ships while they are in Maltese waters as determined by the said Annexes, and the reference to "all ships" in regulation 2(1) of Annex I, "all ships carrying noxious liquid substances in bulk" in regulation 2(1) of Annex II and "all ships carrying harmful substances in packaged form" in regulation 1(1) of Annex III shall be construed accordingly.

(2) The Registrar-General may either on a case by case basis or through the issue of *Merchant Shipping Notices*-

(a) determine, lay down, prescribe, set or specify what may be required to be determined, laid down, prescribed, set or specified by these regulations, by the MARPOL Convention, by Protocol I, by Annex I, by Annex II or by Annex III, or expound on the requirements of these regulations or of such Convention, Protocol, or Annexes or clarify their applicability or interpretation; and

(b) extend any of the provisions of the MARPOL Convention, Protocol I, Annex I, Annex II and Annex III to other classes of Maltese ships or, to other classes of ships while they are in Maltese waters, and in so doing, and without prejudice to the generality of the foregoing, the Registrar-General shall be guided by the circulars, clarifications, codes, decisions, directives, guidelines, instruments, interpretations, manuals, notices, publications, recommendations, regulations, resolutions, rules or any other similar medium of the International Maritime Organisation or any other body or organisation with an appropriate knowledge or competence on the subject matter.

Provisions of rules and regulations inconsistent with the MARPOL Convention or Protocol I or Annex I or Annex II or Annex III

**5.** Save as provided for in these regulations, where any provisions of any rules and regulations made under the Act are inconsistent with the provisions of the MARPOL Convention or Protocol I or Annex I or Annex II or Annex III, the provisions of that Convention, Protocol and Annexes shall, unless specifically provided for in such rules or regulations, apply.

Duty to ensure compliance.

**6.** (1) It shall be the duty of the owner, of the company which has assumed the operation of the ship and of the master to ensure that the ship is in compliance with the provisions of these regulations and the applicable requirements of the MARPOL Convention, Protocol I, Annex I, Annex II and Annex III and such person shall, on conviction, be liable to a fine (*multa*) as provided for in regulation 12 hereof for each offence.

(2) It shall be the duty of any person –

(a) to whom a direction is given in pursuance of these regulations, the MARPOL Convention, Protocol I, Annex I, Annex II or Annex III, or

(b) upon whom an obligation is imposed by these regulations, by the MARPOL Convention, Protocol I, Annex I, Annex II or Annex III, to comply or ensure compliance with the provisions of these regulations and the applicable requirements of the MARPOL Convention, Protocol I, Annex I, Annex II and Annex III and such person shall, on conviction, be liable to a fine (*multa*) as provided for in regulation 12 hereof for each offence.

Inspection, detention and other measures in respect of ships.

**7.** (1) The Registrar-General, or an appropriate inspector, may inspect any ship to which these regulations apply and if satisfied that the ship is not in compliance with the provisions of these regulations and the applicable requirements of the MARPOL Convention or Protocol I or Annex I or Annex II or Annex III, the Registrar-General shall take such steps as are considered necessary to ensure that the ship shall not sail until it can proceed to sea without presenting an unreasonable threat of harm to the marine environment and any expenses incurred therefore shall be a charge on the ship, so however that the ship shall not be unduly detained or delayed:

Provided that the Registrar-General may permit the ship to proceed to sea for the purpose of proceeding to the nearest appropriate repair yard available:

Provided further that, in the case of a non-Maltese ship, such inspection shall be limited to verifying that there is on board in relation to such ship a valid International Oil Pollution Prevention Certificate in the form prescribed by Annex I and an International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk in the form prescribed by Annex II and the documentation prescribed by Annex III, as the case may be, unless there are clear grounds for believing that the condition of the ship or its equipment or its cargo does not correspond substantially with the particulars of that certificate or documentation.

(2) In the case of a non-Maltese ship, if the Registrar-General takes such steps as specified in subregulation (1) hereof, the Registrar-General shall forthwith notify the maritime Administration and the nearest maritime, consular or diplomatic representative of the flag State of the ship.

(3) Upon receiving evidence that a ship to which these regulations apply has discharged oil or an oily mixture or noxious liquid substances or unassessed liquid substances carried in bulk or a mixture containing such substances or has jettisoned any harmful substances in violation of the provisions of these regulations and of the MARPOL Convention or Annex I or Annex II or Annex III, the Registrar-General shall investigate the matter and may inspect the ship or cause the ship to be inspected by an appropriate inspector or by any other person duly authorised by the Registrar-General, and shall inform the State which has reported the alleged violation as well as the International Maritime Organization of the action taken:

Provided that, if the investigation establishes a violation of these regulations or of the MARPOL Convention or Annex I or Annex II or Annex III, the owner or the company which has assumed the operation of the ship and the master or any other officer or member of the crew of the ship shall, on conviction, be liable to a fine *(multa)* as provided for in regulation 12 hereof:

Provided further that, in the case of a non-Maltese ship, if the investigation indicates a violation of these regulations or of the MARPOL Convention or Annex I or Annex II or Annex III, the Registrar-General shall provide the flag State of the ship with the report of such investigation and with evidence, if any, of such violation.

(4) For the purposes of this regulation, the provisions of article 154(2) and (3) of the Act shall apply *mutatis mutandis* to the Registrar-General and to appropriate inspectors.

Fraud, misuse of certificates, etc.

**8.** If any person-

(a) intentionally alters a certificate issued or any marking, labeling or documentation carried for the purposes of the MARPOL Convention or Annex I or Annex II or Annex III;

(b) falsely makes a certificate or any marking, labeling or documentation referred to in the MARPOL Convention or Annex I or Annex II or Annex III;

(c) in connection with any survey required by the MARPOL Convention or Annex I or Annex II or Annex III knowingly or recklessly furnishes false information;

(d) with intent to deceive, use, lend, or allow to be used by another, a certificate or any marking, labeling or documentation referred to in the MARPOL Convention or Annex I or Annex II or Annex III;

(e) fails to surrender a certificate or documentation to be surrendered for the purposes of the MARPOL Convention or Annex I or Annex II or Annex III, such person shall, on conviction, be liable to a fine *(multa)* as provided for in regulation 12 hereof for each offence.

Prohibition of proceeding to sea without appropriate certificate.

**9.** (1) No Maltese oil tanker of 150 gross tonnage and above and any other ship of 400 gross tonnage and above shall proceed or attempt to proceed to sea on an international voyage unless there is in force in respect of the ship an International Oil Pollution Prevention Certificate.

(2) No Maltese ship carrying in bulk noxious liquid substances or unassessed liquid substances shall proceed to sea or attempt to proceed to sea on an international voyage unless there is in force in respect of the ship the relevant certificate referred to in regulations 11 and 12A of Annex II as appropriate.

(3) No oil tanker of 150 gross tonnage and above and any other ship of 400 gross tonnage and above shall proceed to sea or attempt to proceed to sea on an international voyage from Maltese waters unless there is in force in respect of the ship an International Oil Pollution Prevention Certificate.

(4) No ship carrying in bulk noxious liquid substances or unassessed liquid substances shall proceed to sea or attempt to proceed to sea on an international voyage from Maltese waters unless there is in force in respect of the ship the relevant certificate referred to in regulations 11 and 12A of Annex II as appropriate.

(5) No Maltese ship wherever it is, or no other ship while it is in Maltese waters, shall carry harmful substances except in accordance with the provisions of Annex III.

(6) If a ship proceeds to sea or attempts to proceed to sea on an international voyage, in contravention of subregulations (1) to (5) hereof, the master of the ship shall be liable to a fine *(multa)* as provided for in regulation 12 hereof.

(7) The master of every ship to which the provisions of subregulations (3) and (4) hereof apply, shall produce to the officer from whom a clearance for the ship is demanded, at the time a clearance for the ship is demanded for a voyage from Malta to a port or place outside Maltese waters, the certificates and documentation referred to in the said subregulations to be in force when the ship proceeds to sea on an international voyage, and a clearance shall not be granted, and

the ship may be detained, until the said certificate or certificates are so produced.

(8) Where an exemption certificate issued for the purposes of the MARPOL Convention or Annex I or Annex II in respect of a ship specifies any conditions on which the certificate is issued and any of those conditions is not complied with, such person shall, on conviction, be liable to a fine *(multa)* as provided for in regulation 12 hereof.

Duty to report pollution and other incidents.

**10.** In the event of an incident referred to in Protocol I, in the case of a Maltese ship, the same report required by that Protocol to be made to the coastal State shall also be made to the Registrar-General.

Casualties to ships.

**11.** If a casualty occurs to –

(a) a Maltese ship wherever it may be; or

(b) to any ship and such casualty has occurred on the coasts of Malta, including any port installation or ship repair facility, or at sea within Maltese waters, and such casualty produces a major deleterious effect upon the marine environment, a shipping casualty shall be deemed to have occurred for the purposes of article 312 of the Act, and the provisions of articles 313 to 317 (both inclusive) of the Act shall apply *mutatis mutandis*.

Penalties.

**12.** If the owner, the company which has assumed the operation of the ship, the master of the ship or any other person contravenes the provisions of these regulations, such person shall, on conviction, be liable to a fine *(multa)* as specified hereunder –

(a) where there is a contravention of subregulation 6(1) hereof, a fine *(multa)* not exceeding five hundred units;

(b) where there is a contravention of subregulation 6(2) hereof, a fine *(multa)* not exceeding five hundred units;

(c) where there is a contravention of subregulation 7(3) hereof, a fine *(multa)* not exceeding ten thousand units;

(d) where there is a contravention of regulation 8 hereof, a fine *(multa)* not exceeding five hundred units;

(e) where there is a contravention of subregulation 9(6) hereof, a fine *(multa)* not exceeding five hundred units;

(f) where there is a contravention of subregulation 9(8) hereof, a fine *(multa)* not exceeding five hundred units;

(g) where there is a contravention of regulation 10 hereof, a fine *(multa)* not exceeding five hundred units.

Revokes L.N. 58 of 2003.

The Merchant Shipping (Prevention of Pollution from Ships) Regulations, 2003 are hereby revoked.

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