L.N. 275 of 2011

MERCHANT SHIPPING ACT
(CAP. 234)

Merchant Shipping (Accident and Incident Safety Investigation) Regulations, 2011

IN exercise of the powers conferred by article 374 of the Merchant Shipping Act, the Minister for Infrastructure, Transport and Communications, has made the following regulations -

Citation, commencement and scope.

1. (1) The title of these regulations is the Merchant Shipping (Accident and Incident Safety Investigation) Regulations, 2011.

(2) These regulations shall be deemed to have come into force on the 17th June, 2011.

(3) These regulations adopt the measures contained in Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009, establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Council Directive 1999/35/EC and Directive 2002/59/EC of the European Parliament and of the Council, and IMO Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident.

Interpretation.

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

"the Act" means the Merchant Shipping Act;

"accident site" means any of the following sites associated with a marine accident:

(a) a site containing the ship or any of its wreckage;

(b) a site where there is an impact point associated with the marine accident;

(c) if the marine accident involved the destruction or serious damage to property (other than the ship) – a site containing that property or any of its wreckage,

together with such area around the site as the head of marine safety investigation determines to be reasonably necessary to facilitate the safety investigation of the marine accident and securing the site;

"the Authority" means the Authority for Transport in Malta, established by article 5 of the Authority for Transport in Malta Act;

Cap. 499.

"common methodology" means the common methodology as referred to in Directive 2009/18/EC;

"Court" in the case of judicial proceedings or an application for disclosure made in Malta means a Court of Civil or Criminal jurisdiction and includes the court of survey established by article 326 of the Act;

"Directive 1995/46/EC" means the Directive of the European Parliament and of the Council of 24 October 1995, on the protection of individuals with regard to the processing of personal data and on the free movement of such data, in its up to date version;

"Directive 2009/18/EC" means the Directive of the European Parliament and of the Council of 23 April 2009, establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Directives 1999/35/EC and 2002/59/EC, in its up to date version;

"EMCIP" means the European Maritime Casualty Information Platform which is the European Union's central database for marine accidents and incidents, which stores information on accidents and incidents involving ships and occupational accidents;

"evidential material" means anything that may be relevant to a marine safety investigation;

"GISIS" means the Global Integrated Shipping Information System which is the International Maritime Organization's central database, which stores information on, inter alia, accidents and incidents involving ships;

"head of marine safety investigation" means the head of marine safety investigation of the Marine Safety Investigation Unit appointed by the Authority in concurrence with the Minister in accordance with regulation 5 of these regulations;

"high-speed passenger craft" shall have the same meaning as assigned to it by the Merchant Shipping (Safe Operation of Regular Ro-Ro Ferry and High-Speed Passenger Craft Services) Regulations, 2003; L.N. 433 of 2003.

"IMO" means the International Maritime Organization;

"IMO Code" means the IMO Code on the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident, in its up-to-date version;

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

"marine safety investigation" means an investigation into a marine accident or incident, conducted by virtue of these regulations and in such manner and approach that it complies with the general provisions and mandatory standards of the IMO Code and the fundamental principles in Directive 2009/18/EC;

"marine safety investigation Authority" in relation to Malta means the Marine Safety Investigation Unit established in terms of these regulations and in relation to any other State means the Authority maintained by that State responsible for the conduct of marine safety investigations in accordance with the IMO Code or Directive 2009/18/EC;

"master" shall have the same meaning assigned to it by the Act;

"Member State" means a member of the European Union or the European Economic Area (EEA) States;

"Minister" shall have the same meaning as assigned to it by the Act;

"owner" shall include any person other than the owner, who manages a ship;

"permanent cooperation framework" means the permanent cooperation framework as referred to in Directive 2009/18/EC;

"port in Malta" shall have the same meaning as "port" as assigned to it by the Authority for Transport in Malta Act;

"Registrar-General" shall have the same meaning as assigned to it by the Act;

"ro-ro ferry" has the same meaning as assigned to it by the Merchant Shipping (Safe Operation of Regular Ro-Ro Ferry and High-Speed Passenger Craft Services) Regulations, 2003;

"safety investigator" means a person duly authorised by the marine safety investigation Authority to carry out marine safety investigations, and responsible to that Authority;

"serious casualty" means a marine accident which does not qualify as a "very serious casualty" and which involves a fire, explosion, collision, grounding, contact, heavy weather damage, ice damage, hull cracking, or suspected hull defect, etc., resulting in:

(a) immobilization of main engines, extensive accommodation damage, severe structural damage, such as penetration of the hull under water, etc., rendering the ship in a condition, which does not correspond substantially with the applicable conventions, presenting a danger to the ship and the persons on board or an unreasonable threat of harm to the marine environment, or;

(b) pollution (regardless of quantity), and/or;

(c) a breakdown necessitating towage or shore assistance;

"ship" shall have the same meaning as assigned to it by the Act but does not include:

(a) ships of war and troop ships and other ships owned or operated by the Government of Malta and used only on Government non-commercial service;

(b) ships not propelled by mechanical means;

(c) wooden ships of primitive build;

(d) pleasure yachts and pleasure crafts not engaged in trade, unless they are or will be crewed and carrying more than 12 passengers for commercial purposes;

(e) fishing vessels with a length of less than 15 metres;

(f) fixed offshore drilling units;

"very serious casualty" means a marine accident involving the total loss of the ship or a death or severe damage to the environment;

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 IMO Code and Directive 2009/18/EC.

Application.

3. These regulations shall apply to marine accidents and incidents involving or occurring on board Maltese ships, wherever they may be, and to foreign flagged ships when in Maltese waters or when Malta has other substantial interests.

Provided that regulation 6 of these regulations, shall only apply to foreign flagged ships when in Maltese waters.

Objective of marine safety investigations.

4. (1) The sole objective of marine safety investigations carried out in accordance with these regulations including the analysis, conclusions, and recommendations, which either result from them or are part of the process thereof, shall be the prevention of future marine accidents and incidents through the ascertainment of causes, contributing factors and circumstances.

(2) It shall not be the purpose of marine safety investigations carried in accordance with these regulations to apportion blame or determine civil and criminal liabilities.

(3) The objective of marine safety investigations as prescribed in paragraph (1) hereof shall not preclude the Marine Safety Investigation Unit from carrying out other activities beyond marine safety investigations.

Provided that such activities shall not affect the independence of the Marine Safety Investigation Unit or entail responsibility in regulatory, administrative or standardisation matters.

Establishment of the Marine Safety Investigation Unit.

5. (1) For the purpose of carrying out marine safety investigations into marine accidents and incidents to which these regulations apply in an effective and rapid manner, the Authority shall appoint safety investigators, one of whom shall be appointed by the Authority in concurrence with the Minister, as head of marine safety investigation.

(2) The head of marine safety investigation and the safety investigators appointed in terms of paragraph (1) hereof shall form part of the Marine Safety Investigation Unit.

(3) The Marine Safety Investigation Unit shall for all intents and purposes of these regulations be a permanent safety investigation body with the mandate to carry out marine safety investigations. It shall be independent in its organisation and decision-making of any Directorate, department or unit within the Authority and any other party whose interests could conflict with the task entrusted to it. To ensure that the head of marine safety investigation is not delayed or prevented from reaching the objective of marine safety investigations as prescribed in these regulations, it is provided that:

(a) in respect of any matter falling within the functions of the Marine Safety Investigation Unit and the powers delegated to the head of marine safety investigation, the legal and judicial representation of the Marine Safety Investigation Unit shall also vest in such person; and

(b) the Marine Safety Investigation Unit shall be enabled to respond immediately on being notified at any time of a marine accident or incident and to obtain sufficient resources to carry out its functions independently.

(4) The head of marine safety investigation may arrange for any of the powers conferred on him by these regulations, to be delegated to the safety investigators or the persons appointed under regulation 10(4) of these regulations.

Provided that when delegating such functions it must be ensured that the person so appointed has a working knowledge and

practical experience of the subject matter under investigation and is able to use the delegated powers to achieve the objective of marine safety investigations and adhere to the criteria prescribed by these regulations.

(5) Safety investigators shall carry out their duties under the direction of the head of marine safety investigation and in accordance with his instructions.

(6) Notwithstanding any Act of Parliament, no entity other than the Marine Safety Investigation Unit established in terms of these regulations may commence a safety investigation into a marine accident and incident in accordance with these regulations.

Duty to report marine accidents and incidents.

6. (1) When a marine accident and incident occur, the owner or operator of the ship or her master shall as soon as practicable and by the quickest available means, inform the Marine Safety Investigation Unit of the occurrence.

Provided that when a report has already been submitted to the Minister in terms of article 307 of the Act, no further reports need to be submitted.

(2) In addition to any report made under paragraph (1) hereof, the Authority, through any one officer, shall report to the Marine Safety Investigation Unit any marine accident or incident of which the Authority is aware, as soon as is practicable and by the quickest means available.

Ordering of investigation.

7. (1) The head of marine safety investigation may cause any marine accident or incident to be investigated. Without prejudice to paragraphs (2), (3) and (4) hereof, the discretion and extent not to exercise this authority shall solely remain with the head of marine safety investigation. In exercising his authority, the head of marine safety investigation shall ensure that a marine safety investigation shall not prejudice the conduct of inquires and investigations to shipping casualties under Part VII of the Act. In reaching his decision, the head of marine safety investigation shall also take into consideration co-operation with other States referred to in regulation 11 of these regulations.

Provided that when a marine accident or incident involving a ro-ro ferry or high-speed passenger craft, to which these regulations apply occurs, the head of marine safety investigation shall order a marine safety investigation when:

(a) the marine accident or incident occurs in Maltese waters or,

(b) the marine accident or incident occurs in waters where Member States have no jurisdiction and the last port visited by the ro-ro ferry or high-speed passenger craft involved was a port in Malta.

(2) Where a report of an occurrence has been received in accordance with regulation 6 of these regulations, the head of marine safety investigation shall undertake a marine safety investigation once it is confirmed that the reported occurrence is a very serious casualty.

(3) Where a report of an occurrence has been received in accordance with regulation 6 of these regulations and it is confirmed that the reported occurrence is a serious casualty, the head of marine safety investigation shall carry out a preliminary assessment and decide thereupon whether or not to undertake a marine safety investigation.

Provided that in his deliberations to reach such decision, the head of marine safety investigation shall take into consideration:

(a) the potential impact of that investigation on other marine safety investigations in progress;

(b) whether the marine accident forms part of a series of marine accidents or incidents;

(c) type of vessel or cargo involved;

(d) the potential of the findings of that marine safety investigation to lead to the prevention of future marine accidents and incidents;

(e) any circulars, clarifications, codes, decisions, directives, guidelines, instruments, interpretations, publications, recommendations, regulations, resolutions, rules or any similar medium of IMO or any other body or organisation with an appropriate knowledge or competence on the subject matter.

Provided further that when the head of marine safety investigation decides not to undertake a marine safety

investigation as a result of that preliminary assessment, the reasons for that decision shall be recorded and notified through EMCIP.

(4) When the head of marine safety investigation is notified of an occurrence, which is determined to be an occurrence other than a very serious and serious marine casualty, he shall have the power to decide whether or not a marine safety investigation is to be undertaken, taking into consideration subregulation (3)(a) to (3)(e) hereof.

(5) When the head of marine safety investigation decides to undertake a marine safety investigation, that investigation shall be started as promptly as is practicable after the marine accident or incident and, in any event, no later than two months after its occurrence.

(6) Prior to deciding whether a marine safety investigation should be carried out and if so, the form it should take, the head of marine safety investigation may cause information to be obtained as he considers necessary concerning the marine accident or incident and any remedial action taken as a result.

Any person mentioned in regulation 6 of these regulations, as well as any other person who is in possession of such information and has been requested to do so by a safety investigator, shall provide such information to the best of his ability or knowledge.

(7) The Minister may require the head of marine safety investigation to investigate any marine accident or incident, or to expand the scope of the marine safety investigation to include any further consequences of a marine accident, such as:

(a) salvage and pollution aspects; or

(b) the conduct of search and rescue operations, and in such circumstances the head of marine safety investigation may conduct an investigation into the further consequences or causal factors of a marine accident, which may be separate and distinct from the investigation into the initial marine accident.

Subsequent or reopened investigations.

8. (1) The head of marine safety investigation may cause any investigation to be re-opened if, following its completion, in his opinion new and important evidential material is discovered

which could have a material effect on any safety recommendations made.

(2) Any investigation may be re-opened either in whole or as to any part of it and a re-opened investigation shall be subject to and conducted in accordance with the provisions of these regulations.

Provided that notwithstanding a decision by the head of marine safety investigation under regulations 7(3) and 7(4) of these regulations not to investigate, he may at any subsequent time cause an investigation to be carried out if he is then satisfied there is good reason in the interest of future maritime safety and environmental protection to do so.

Preservation of evidence and detenion order.

9. (1) Following a marine accident involving a Maltese ship which is reportable in accordance with regulation 6 of these regulations, the owner or operator of the ship or her master shall so far as is practicable ensure that all:

(a) charts;

(b) log books;

(c) electronic and magnetic recordings and video tapes, including information from a VDR, S-VDR or any other recording system relating to the period preceding, during and after the marine accident and take the necessary steps, to prevent such information from being overwritten; and

(d) documents, equipment or other records which might reasonably be considered as evidential material and therefore pertinent to the accident,

are kept and that no alteration is made to any recordings or entries in them.

Provided that following a marine incident involving a Maltese ship, the owner or operator of the ship or her master shall comply with the requirements of this paragraph if requested to do so by the head of marine safety investigation.

(2) The duty under paragraph (1) hereof to ensure that documents, information or records are kept and not altered, shall continue until a notification is received from the head of marine safety investigation that no investigation is to take place or that the investigation is completed.

(3) Following a marine accident or incident in Maltese waters involving a ship which is not a Maltese ship, the owner or operator of the ship or her master shall comply with the requirements of paragraph (1) hereof, if requested to do so by the head of marine safety investigation.

(4) Pending a marine safety investigation into a reported occurrence in Maltese waters and with due regard to the requirements of regulation 7(1) of these regulations, no person other than the head of marine safety investigation may access freely an accident site or interfere with any ship, appliances or other equipment involved in a marine accident or incident without the prior written consent of the head of marine safety investigation.

This paragraph, however, shall not apply to the Registrar-General, the Harbour Master, Executive Police, Civil Protection officials, Health Services, and judicial authorities.

(5) Following a marine accident or incident, the head of marine safety investigation may, if he considers it reasonably necessary for the collection or preservation of evidential material, require the owner or operator of the ship or her master, to ensure that a ship is accessible to the Marine Safety Investigation Unit, until the process of collecting or preserving the evidential material has been completed to its satisfaction.

Provided that when exercising the authority to detain a ship under this paragraph, the head of marine safety investigation shall do so in consultation with the Registrar-General.

(6) The head of marine safety investigation shall not unduly delay the departure of a ship for the collection or preservation, as the case may be, of evidential material including evidential material mentioned in paragraph (1) hereof.

(7) The detention order under paragraph (5) hereof may include a direction that a ship shall remain in a particular place, or shall move to a particular anchorage or berth, and may also specify circumstances when the master of the ship may move his ship from a specified place for reasons of safety or prevention of pollution. When issuing such directions, the head of marine safety investigation is to be consulted in order to ensure that evidential material mentioned in paragraph (1) hereof is not compromised as far as practicable.

(8) Without prejudice to the rights enjoyed by Malta

to hold administrative or judicial investigations, the relevant provisions of IMO Assembly Resolution A.987(24) shall be taken into account.

Conduct of investigations and independence.

10. (1) Marine safety investigations shall:

(a) be independent of judicial or other parallel investigations whose purpose, or one of whose purposes is to determine liability or apportion blame or may lead to the determination of liability or apportionment of blame; and

(b) not be unduly precluded, suspended, or delayed by reason of any measure, including an investigation mentioned in paragraph (a) hereof, irrespective of the severity or perceived severity of the marine accident or incident.

(2) Without prejudice to paragraph (4) hereof, if the head of marine safety investigation decides pursuant to regulation 7(1) of these regulations that an investigation shall be carried out, it shall be undertaken by one or more safety investigators, following the principles of the common methodology and at such times and places as appear to them most conducive to achieving the objective set out in regulation 4 of these regulations.

(3) Notwithstanding paragraph (2) hereof, the head of marine safety investigation may depart from the principles of the common methodology in a specific case where this can be justified as necessary, in his professional judgment, in order to achieve the objective of these regulations.

(4) When the required professional expertise in a marine safety investigation cannot be provided by the Marine Safety Investigation Unit, the safety investigator may be assisted by any person, so appointed by the head of marine safety investigation, and such person shall have the powers conferred on a safety investigator under regulation 5 of these regulations. The head of marine safety investigation may also, by writing, revoke or suspend the appointment under this paragraph before the marine safety investigation is concluded to his satisfaction.

(5) In relation to a marine safety investigation being conducted, the head of marine safety investigation may request assistance from any public body, any person other than a person mentioned in paragraph (4) hereof, or from another marine safety investigation Authority.

(6) A marine safety investigation may extend to cover all events and circumstances preceding the marine accident or incident together with subsequent events and circumstances which in the opinion of the head of marine safety investigation may have been relevant to its cause or outcome.

(7) Any person, not being a person acting specifically and solely on behalf of a person required to attend for an interview, who has been allowed by a safety investigator to be present or has been nominated to be present by a person required to attend, may at any time be excluded from being present by the safety investigator with the agreement of the head of marine safety investigation, if:

(a) both the safety investigator and the head of marine safety investigation have substantial reason to believe that his presence would hamper the marine safety investigation with the result that the objective in regulation 4 of these regulations is likely to be hindered and maritime safety thereby endangered; and

(b) the head of marine safety investigation is satisfied having regards to all circumstances, that it is proper to exclude that person.

(8) Without prejudice to the foregoing paragraph, where a person nominated to be present has been excluded in accordance with paragraph (7) hereof, the person required to be interviewed shall be entitled to nominate another person to be present at the interview.

(9) Evidential material required by a safety investigator to be produced for the purposes of an investigation, whether on board the ship involved or otherwise, may be retained by the Marine Safety Investigation Unit until the marine safety investigation is completed.

Co-operation with other States.

11. (1) When conducting marine safety investigations, the Marine Safety Investigation Unit shall cooperate with substantially interested States, to limit so far as practicable, the possibility of parallel marine safety investigations into the same marine accident or incident.

(2) If the marine accident or incident involves a substantially interested State, the Marine Safety Investigation Unit shall cooperate with the marine safety investigation Authority of that State with a view to rapidly agreeing which will be the lead investigating State.

(3) Without prejudice to regulation 7(1) of these regulations, the head of marine safety investigation shall share the responsibility for the safety investigation and its coordination and cooperate with other substantially interested States until such time a mutual agreement is reached under paragraph (2) hereof.

(4) The Marine Safety Investigation Unit shall, so far as practicable, ensure that the scope and practical arrangements for the conduct of marine safety investigations are determined in cooperation with substantially interested States, taking into account the permanent cooperation framework, in order to achieve the most conducive approach under the prevailing situation and taking into consideration the scope of marine safety investigations as prescribed in these regulations.

(5) Without prejudice to the requirements prescribed in regulation 7 of these regulations and subject to the mutual agreement with other substantially interested States, the head of marine safety investigation may on a case-by-case basis delegate the task of leading a marine safety investigation or specific tasks for the conduct of such marine safety investigation to any of the substantially interested States.

(6) The head of marine safety investigation shall ensure that where Malta is not the lead investigating State but nevertheless is a substantially interested State, the marine safety investigation Authority of that State will afford him equal rights and access to witnesses and evidential material and so far as he is able, shall also ensure that his point of view is taken into consideration by the lead investigating State during the process of a marine safety investigation.

(7) In those exceptional circumstances where, notwithstanding paragraph (1) hereof and in coordination with the substantially interested Member States, it is determined that parallel marine safety investigations shall be conducted into the same marine accident or incident, the Marine Safety Investigation Unit shall notify the European Union Commission in writing of the reasons for the conduct of such parallel investigations.

(8) In those exceptional circumstances where parallel marine safety investigations are being conducted, the Marine Safety Investigation Unit shall ensure that so far as practicable, cooperation between the substantially interested States is not compromised by reason of such decision and remains committed to cooperate with these States. When necessary, parallel safety

investigations shall be carried out without prejudice to the exchange of evidential material, in order for the substantially interested States to reach, as far as possible, shared conclusions.

(9) The fact that a marine safety investigation in which Malta is a substantially interested State may be led by a country which is a lead investigating State shall not prejudice the conduct and reporting requirements of marine safety investigations as prescribed under these regulations, where applicable.

(10) The head of marine safety investigation shall not cause other substantially interested Member States to remit any costs incurred by the Marine Safety Investigation Unit in the process of a marine safety investigation where Malta is either the lead investigating State or a substantially interested State.

Provided that when Malta is neither the lead investigating Member State nor a substantially interested State in a marine safety investigation, the head of marine safety investigation shall agree beforehand on the reimbursement of costs incurred by Malta should a lead investigating Member State or any substantially interested State require the assistance or services of the Marine Safety Investigation Unit. The requirements of regulation 4(3) of these regulations shall apply in circumstances mentioned in this paragraph.

Disclosure of records and confidentiality. Cap. 440.

12. (1) Without prejudice to the Data Protection Act, all evidential material related to the marine accident or incident being investigated under these regulations shall not be disclosed or made available for purposes other than a marine safety investigation unless a Court determines that there is an overriding public interest in its disclosure.

Provided that the Court, in reaching such a decision, shall have due regard to the opinion of the head of marine safety investigation and the interests of justice in disclosure of the evidential material, or part therein, outweighs any prejudice, or likely prejudice, to:

(a) the marine safety investigation into the marine accident or incident to which the evidential material relates;

(b) any future marine safety investigation undertaken by the Marine Safety Investigation Unit; or

(c) relations between Malta and any other State, or international, regional and domestic organisations.

For the purposes of this regulation and regulation 13(5) of these regulations, "disclose" shall include:

(a) divulging or communicating the information in any way; and

(b) in relation to information contained in a document or other article, producing the document or other article, or make it available, for inspection;

(2) A person who has given a declaration or statement to a safety investigator in the course of a marine safety investigation is not precluded by these regulations to make available a copy of his declaration or statement to another person as he deems fit. However, the person who has given a declaration or statement to a safety investigator shall not disclose any comments which were made by the safety investigator in the course of the marine safety investigation.

(3) Any independent technical analysis commissioned under regulation 10(5) of these regulations by the Marine Safety Investigation Unit and opinions expressed in such analysis, and which therefore are part of the evidential material, may be made publicly available if the head of marine safety investigation considers it appropriate to do so.

Reports into investigations.

13. (1) Where Malta is the lead investigating Member State, the head of marine safety investigation shall cause a marine safety investigation report into very serious and serious marine accidents conducted pursuant to these regulations, other than marine safety investigations which are being undertaken on behalf of a State other than Malta, to be made publically available within 12 months of the date of the marine accident or incident.

Provided that if it is not possible to publish the final marine safety investigation report within 12 months of the marine accident or incident, an interim marine safety investigation report shall be published within 12 months of the date of the accident and a copy shall be sent to the European Union Commission.

(2) The final marine safety investigation report shall not be made publicly available until such time that it has been ascertained that a notice is served under this regulation upon any interested party or State and due considerations taken of the representations relating to the facts or analysis contained in the marine safety investigation report, which may be made

in accordance with paragraph (4) hereof by or on behalf of the persons served with such notice, and the head of marine safety investigation shall amend the marine safety investigation report in such manner as deemed fit.

(3) The notice referred to in paragraph (2) hereof, shall be accompanied by a draft copy of the final marine safety investigation report.

(4) The representations referred to in paragraph (2) hereof shall be served on the head of marine safety investigation within 30 days of service of the notice referred to in paragraph (2) hereof or within such further period as may be agreed by the head of marine safety investigation.

(5) Subject to any Court order under regulation 12(1) of these regulations, no person shall disclose any part of the draft copy of the final marine safety investigation report which has been furnished to him pursuant to paragraph (3) hereof or permit such part of the draft copy of the final marine safety investigation report to be disclosed, save with the prior consent in writing of the head of marine safety investigation.

(6) A copy of the final marine safety investigation report when made publicly available shall be also made available to:

(a) any person who has been served with a notice pursuant to paragraph (2) hereof;

(b) those persons or bodies to whom recommendations have been addressed in that marine safety investigation report;

(c) the Minister;

(d) the IMO;

(e) the European Union Commission; and

(f) any person or organisation whom the head of marine safety investigation considers may find the marine safety investigation report useful or of interest.

(7) The final marine safety investigation report and any previous draft copies of the final marine safety investigation report

shall be inadmissible in any judicial proceedings whose purpose or one of whose purposes is to attribute or apportion liability or blame unless a Court, having regard to the factors mentioned in regulation 12(1) of these regulations, determines otherwise.

(8) In this regulation, "judicial proceedings" includes administrative, civil, or criminal proceedings before any Court, the Registrar-General and any other person having by law the power to hear, receive, and examine evidential material on oath.

(9) Where relevant, the marine safety investigation reports referred to in this regulation, shall be presented in a format which is in accordance with the framework presented in Annex I to Directive 2009/18/EC.

(10) The head of marine safety investigation may decide, pursuant to regulation 7(1) of these regulations, that if a marine safety investigation is ordered under regulation 7(4) of these regulations and the findings of which do not have the potential to lead to the prevention of future marine accidents and incidents that investigation shall result in a published simplified marine safety investigation report.

(11) Where Malta is the lead investigating Member State and has therefore sent a final copy of the marine safety investigation report to the European Union Commission, the head of marine safety investigation shall take into account the possible technical observations made by the European Union Commission in order to improve the quality of the report.

(12) In addition to the marine safety investigation report, the Marine Safety Investigation Unit shall provide the European Commission with data extracted from safety investigations through EMCIP.

Recommendations.

14. (1) The head of marine safety investigation may as a result of one or more marine safety investigations, either in progress or in its finalised version, and on the basis of an abstract analysis from any source deemed valid and reliable, at any time make recommendations as to how future marine accidents and incidents may be prevented. The autonomy conferred upon the head of marine safety investigation in accordance with this regulation shall in no case be construed as authority to enforce any recommendation made.

(2) Any recommendations made by the Marine Safety Investigation Unit shall in no case create a presumption of blame or liability.

(3) The recommended actions shall be addressed to those persons or bodies who, in the opinion of the Marine Safety Investigation Unit, are most fitted to implement them.

(4) Recommendations shall be made publicly available if it is considered that it is in the interests of maritime safety and environmental protection to do so.

(5) Any person to whom a recommendation is addressed pursuant to paragraph (1) hereof shall, without delay, take that recommendation into consideration and give notice to the head of marine safety investigation concerning any measures which may be taken in response to that recommendation.

(6) In this regulation, all the information, documents, analysis and correspondence related to recommendations, whether in an electronic format or otherwise, shall be considered as part of the evidential material and therefore subjected to the same protection and provisos applicable to evidential material as prescribed in regulation 12 of these regulations.

(7) Pursuant to paragraph (1) hereof, the head of marine safety investigation shall notify the European Union Commission of any urgent action he deems necessary to prevent the risk of new accidents.

Penalties.

15. (1) Without prejudice to any other penalties under the Act , to which a person may be liable, that person shall be guilty of an offence if he:

(a) fails without reasonable cause to provide information as required by these regulations;

(b) falsely claims to have any additional information or new evidence pertaining to any marine accident or incident; or

(c) engages in an act of omission or commission which is not authorised by the head of marine safety investigation and has or could have the result of adversely affecting a marine safety investigation and such person shall be liable upon conviction to a fine (multa) not exceeding one thousand units.

(2) Paragraph (1) hereof shall not apply if the act of omission or commission was necessary:

(a) to ensure the safety of persons or property;

(b) to remove deceased persons or animals from an accident site;

(c) to move the ship, or the wreckage of the ship to a safe place; or

(d) to prevent or minimise the possibility of severe damage to the environment.

(3) If a person fails without reasonable cause to comply with any requirements, duty or prohibition in regulation 10 of these regulations, he shall be guilty of an offence and liable upon conviction to a fine (*multa*) not exceeding one thousand units.

(4) If any person without reasonable cause discloses or permits to be disclosed any information or evidential material or parts therein in contravention of these regulations, to any party irrespective of whether or not that party qualifies to be an interested party, he shall be guilty of an offence and liable upon conviction to a fine (*multa*) not exceeding one thousand units.

Proceedings privileged.

16. No proceedings, civil or criminal, shall lie against the head of marine safety investigation or against the persons appointed by the Authority pursuant to regulation 5 of these regulations as safety investigators or against the persons appointed by the head of marine safety investigation pursuant to regulation 10(4) of these regulations for anything he may do or report or say in the course of the exercise or intended exercise of his functions under these regulations, unless it is shown that he acted in bad faith.

Ippubblikat mid-Dipartiment tal-Informazzjoni (doi.gov.mt) — Valletta — ***Published by the Department of Information (doi.gov.mt) — Valletta***
Mitbugħ fl-Istamperija tal-Gvern fuq karta riċiklata — ***Printed at the Government Printing Press on recycled paper***

Prezz/*Price*
€0.90