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Suppliment tal-Gazzetta tal-Gvern ta' Malta Nru. 19,858, 5 ta' Settembru, 2017
Taqsima B

L.N. 222 of 2017

MERCHANT SHIPPING ACT
(CAP. 234)

Merchant Shipping (Ballast Water Management Convention) Regulations, 2017

IN EXERCISE of the powers conferred by articles 308A, 374 and 375 of the Merchant Shipping Act, the Minister responsible for Transport, Infrastructure and Capital Projects has made the following regulations:-

Citation and commencement.

1. (1) The title of these regulations is the Merchant Shipping (Ballast Water Management Convention) Regulations, 2017.

(2) These regulations shall come into force on the 8 September, 2017.

Interpretation.

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

"the Act" means the Merchant Shipping Act; Cap. 234.

"competent authority" means the Authority for Transport in Malta established by article 5 of the Authority for Transport in Malta Act and in relation to other State parties means the national maritime administration maintained by those States; Cap. 499.

"Convention" means the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004, including any amendment thereto as may from time to time be ratified, acceded to or accepted by the Government of Malta and other instruments, standards and specifications of a mandatory nature related thereto adopted or developed by the International Maritime Organization;

"Maltese Ships" shall have the same meaning as is assigned to it in article 3(1) of the Act;

"Registrar General" shall have the same meaning as is assigned to it in the Act;

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

(2) Unless otherwise defined in the Act or 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

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the Convention.

Application.

3. (1) These regulations shall apply to all Maltese ships wherever they may be and to all other ships while they are in Maltese territorial waters.

These regulations shall not apply to:

(a) ships not designed or constructed to carry Ballast Water;

(b) Maltese Ships which only operate in waters under the jurisdiction of Malta;

(c) Maltese Ships which only operate in waters under the jurisdiction of another Party to the Convention, subject to the authorisation of the latter Party for such exclusion;

(d) ships which only operate in waters under the jurisdiction of Malta and on the high seas, except for ships not granted an authorisation pursuant to paragraph (c) of this sub-regulation;

(e) any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government non-commercial service;

(f) Permanent Ballast Water in sealed tanks on ships that is not subject to discharge;

(g) pleasure craft used solely for recreation or competition or craft used primarily for search and rescue, less than 50 metres in length overall, and with a maximum Ballast Water capacity of 8 cubic metres:

Provided that:

- such craft shall exchange Ballast Water outside port waters and as far from the coast as practically possible;

- when loading Ballast Water, every effort should be made to avoid the uptake of potentially harmful aquatic organisms, pathogens and sediments that may contain such organisms;

- Ballast Water should be exchanged prior to discharge in accordance with regulation B-4 of the Convention; and

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- any chemical treatment shall only use Active Substances approved by the International Maritime Organization.

Convention given force of law in Malta.

4. (1) The Convention, 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.

(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 Convention, or expound on the requirements of these regulations or of the Convention or clarify their application or interpretation; and

(b) extend any of the provisions of the Convention, 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 Organization or any other body or organisation with an appropriate knowledge or competence on the subject matter.

Ballast Water Management Plan.

5. Ships must carry on board and implement a Ballast Water Management Plan approved by the competent authority in accordance with regulation B-1 of the Convention.

Ballast Water record book.

6. (1) Ships shall have on board a Ballast Water record book that may be an electronic record system, or that may be integrated into another record book or system and, which shall at least contain the information specified in Appendix II to the Convention.

(2) Ballast Water record book entries shall be maintained on board the ship for a minimum period of two years after the last entry has been made and thereafter in the Company's control for a minimum period of three years.

(3) In the event of the discharge of Ballast Water pursuant to regulations A-3, A-4 or B-3.6 of the Convention or in the event of other accidental or exceptional discharge of Ballast Water not otherwise exempted by the Convention or these regulations, an entry

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shall be made in the Ballast Water record book describing the circumstances of, and the reason for the discharge.

(4) The Ballast Water record book shall be kept readily available for inspection at all times and, in the case of an unmanned ship under tow, may be kept on the towing ship.

(5) Each operation concerning Ballast Water shall be fully recorded without delay in the Ballast Water record book. Each entry shall be signed by the officer in charge of the operation concerned and each completed page shall be signed by the master. The entries in the Ballast Water record book shall be in English.

Prohibition of proceeding to sea without appropriate certificate.

7. (1) No Maltese ship shall proceed or attempt to proceed to sea on an international voyage unless there is in force in respect of the ship an International Ballast Water Management Certificate, issued after successful completion of a survey conducted in accordance with regulation E-1 of the Convention.

(2) No ship 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 Ballast Water Management Certificate.

Ballast Water Discharge.

8. Except where expressly provided otherwise, the discharge of Ballast Water shall only be conducted in accordance with Ballast Water Management by employing exchange, treatment or delivery to reception facilities in accordance with the Convention and these regulations.

Ballast Water exchange.

9. (1) A ship required to meet the standard of regulation D-1 of the Convention shall perform Ballast Water exchange with an efficiency of at least 95 percent volumetric exchange of Ballast Water.

(2) A ship exchanging Ballast Water by the pumping-through method, pumping through three times the volume of each Ballast Water tank shall be considered to meet the standard described in sub-regulation (1). Pumping through less than three times the volume may be accepted provided the ship can demonstrate that at least 95 percent volumetric exchange is met.

(3) A ship conducting Ballast Water exchange to meet the standard in regulation D-1 of the Convention shall comply with the requirements of Regulation B-4 of the Convention.

Ballast Water treatment.

10. (1) A ship required to meet the standard in regulation D-2 of the Convention shall treat Ballast Water with technology approved in accordance with sub-regulation 2 of this regulation. Treated Ballast

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Water that is discharged shall comply with the requirements of Regulation D-2 of the Convention.

(2) Ballast Water Management systems used to comply with the requirements of this regulation must be approved by the competent authority in accordance with Regulation D-3 of the Convention.

Ballast Water discharge to reception facilities.

11. The requirements of these regulations do not apply to ships that discharge Ballast Water to a reception facility designed taking into account the Guidelines developed by the International Maritime Organization for such facilities.

Exceptions.

12. (1) The requirements of these regulations shall not apply to:

(a) the uptake or discharge of Ballast Water and sediments necessary for the purpose of ensuring the safety of the ship in emergency situations or saving life at sea; or

(b) the accidental discharge or ingress of Ballast Water and sediments resulting from damage to the ship or its equipment:

(i) provided that all reasonable precautions have been taken before and after the occurrence of the damage or discovery of the damage or discharge for the purpose of preventing or minimizing the discharge; and

(ii) unless the owner, company or officer in charge wilfully or recklessly caused damage;

(c) the uptake or discharge of Ballast Water and sediments when being used for the purpose of avoiding or minimizing pollution incidents from the ship; or

(d) the uptake and subsequent discharge on the high seas of the same Ballast Water and sediments; or

(e) the discharge of Ballast Water and sediments from a ship at the same location where the whole of that Ballast Water and those sediments originated and provided that no mixing with unmanaged Ballast Water and sediments from other areas has occurred. If mixing has occurred, the Ballast Water taken from other areas is subject to Ballast Water Management in accordance with Annex A to the Convention.

Exemptions.

13. (1) The competent authority, in waters under jurisdiction of Malta, may grant exemptions to any requirements of these

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regulations, in addition to other exemptions contained in the Convention, but only when they are:

(a) granted to a ship or ships on a voyage or voyages between specified ports or locations; or to a ship which operates exclusively between specified ports or locations;

(b) effective for a period of no more than five years subject to intermediate review;

(c) granted to ships that do not mix Ballast Water or sediments other than between the ports or locations specified in sub-regulation (1)(a); and

(d) granted based on the Guidelines on risk assessment developed by the International Maritime Organization.

(2) Any exemptions granted under this regulation shall not impair or damage the environment, human health, property or resources of adjacent or other States. Any State that Malta determines may be adversely affected shall be consulted, with a view to resolving any identified concerns.

(3) Any exemptions granted under this article shall be recorded in the Ballast Water record book.

Inspection, detention and other measures in respect of ships.

14. (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 Convention, the Registrar General shall take such measures 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 verify that there is on-board in relation to such ship a valid International Ballast Water Management Certificate and inspection of the Ballast Water record book, unless there are clear grounds for believing that the condition of the ship or its equipment does not correspond substantially with the particulars of that certificate or the master or the crew are not familiar with essential shipboard procedures relating to Ballast Water Management, or have

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not implemented such procedures, a more detailed inspection may be carried out.

(2) In the case of a non-Maltese ship, if the Registrar General takes such steps as specified in sub-regulation (1), 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) 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.

Duty to ensure compliance.

15. 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 and requirements of these regulations and the applicable requirements of the Convention and such person, if in fault, shall be liable to the penalties provided for in the Act, and if no such penalty is provided, such person shall, for each offence, be liable to a fine (*multa*) not exceeding five thousand (5,000) units.

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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 FSC — ***Printed at the Government Printing Press on FSC certified paper***

Prezz/*Price*
€0.36