

VIRGIN ISLANDS

**MERCHANT SHIPPING (INTERNATIONAL SAFETY MANAGEMENT
CODE) REGULATIONS, 2020**

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VIRGIN ISLANDS

STATUTORY INSTRUMENT 2020 NO. 4

**MERCHANT SHIPPING ACT 2001
(No. 13 of 2001)**

**Merchant Shipping (International Safety Management Code) Regulations,
2020**

[Gazetted 12th February, 2020]

The Governor in exercise of the powers conferred by sections 459 and 460 of the Merchant Shipping Act 2001 (No. 13 of 2001), makes these Regulations.

**PART I
PRELIMINARY**

Citation. **1.** These Regulations are the Merchant Shipping (International Safety Management Code) Regulations 2020.

Interpretation. **2. (1)** In these Regulations, unless the context otherwise requires,

No. 13 of 2001 “Act” means the Merchant Shipping Act 2001;

“audit”, in relation to a safety management system, means a systematic and independent examination, taking into account the Revised Guidelines on Implementation of the International Safety Management (ISM) Code by Administrations adopted by the IMO pursuant to Assembly Resolution A.1022(26), to determine whether the system is suitable to meet the objectives set out in paragraph 1.2 of the ISM Code and, so far as the system has been operated, whether the system has been implemented effectively;

“authorised person” means a person authorised by the Director to carry out audits for the purpose of these Regulations and includes any surveyor of ships appointed under section 414(1)(b) of the Act or person authorised under section 414(2) of the Act;

“cargo ship” means a ship which is not a passenger ship or a pleasure vessel;

“Certifying Authority” means

- (a) the Director or any surveyor of Ships appointed by the Governor under section 414(1)(b) of the Act; or

- (b) any person authorised by the Director under section 414(2) of the Act and in accordance with regulation 9(2);

“Competent Authority” means in relation to a Convention State other than the Virgin Islands, the authority designated as having responsibility for the relevant function by the State or, if none, the State;

“Convention State” means a State which is party to SOLAS;

“Document of Compliance” means a document issued under regulation 9(3) which complies with paragraph 13.2 of the ISM Code;

“GT” has the meaning given in the Merchant Shipping (Tonnage) Regulations 1997 of the United Kingdom;

“high speed craft” means a craft as defined in Regulation X-1/3 of SOLAS;

“IMO” means the International Maritime Organisation;

“inspector” means a person appointed as such under section 414(5) of the Act;

“Interim Document of Compliance” means a document issued in accordance with regulation 10 and which complies with paragraph 14.1 of the ISM Code;

“Interim Safety Management Certificate” means a document issued in accordance with regulation 10 and which complies with paragraph 14.2 of the ISM Code;

“intermediate audit” means an audit conducted for the purpose set out in paragraph 13.8 of the ISM Code;

“ISM Code” means the International Management Code for the Safe Operation of Ships and for Pollution Prevention adopted by the IMO by Resolution A.741(18);

“ISM company” means

- (a) the owner of the ship; or
- (b) a person who has assumed responsibility for the operation of the ship and has agreed with the owner to take over all the duties and responsibilities imposed by the ISM Code; or

“master”, in the application of these regulations to hovercraft, includes the captain of a hovercraft;

“mobile offshore drilling unit” means a vessel capable of engaging in drilling operations for the exploration for or exploitation of resources beneath the sea-bed such as liquid or gaseous hydrocarbons, Sulphur or salt;

“a non-Virgin Islands ship” means a ship which is not registered in the Virgin Islands;

“offshore terminal” means an installation situated away from the shore, where bulk, fluid or gas cargo (or more than one of these) is

- (a) transferred between ships;
- (b) loaded onto a ship after having been transported from the shoreline; or
- (c) unloaded from a ship for transporting to the shoreline;

“passenger” means any person carried on a ship, except

- (a) a person employed or engaged in any capacity on board the ship on the business of that ship;
- (b) a person on board the ship either in pursuance of the obligation laid upon the master to carry shipwrecked, distressed or other persons, or by reason of any circumstance that neither the master nor the owner nor the charterer, if any, could have prevented or forestalled; or
- (c) a child under one year of age;

“passenger ship” means a ship carrying more than twelve passengers;

“relevant document” means a Document of Compliance, an Interim Document of Compliance, a Safety Management Certificate or an Interim Safety Management Certificate;

“RO Code” means the Code for Recognised Organisations adopted by IMO Resolution MEPC.237(65) and includes all amendments adopted by the Marine Environment Protection Committee of the IMO on or before the date on which this Order is made;

“Safety Management Certificate” means a document issued in accordance with regulation 8(4) which complies with paragraph 13.7 of the ISM Code;

“safety management system” means a structured and documented system enabling ISM company personnel to implement effectively the ISM company’s safety and environmental protection policy;

“ship” includes a hovercraft, a mobile offshore drilling unit, a passenger submersible craft and a high speed craft;

“SOLAS” means the International Convention for the Safety of Life at Sea 1974, its protocols of 1978 and 1988 and all amendments to them in force on the date these regulations come into force; and

“State” includes a territory;

“Virgin Islands ship” as the meaning assigned to it under section 2 of the Act.

(2) Any reference in these regulations to a specific provision in SOLAS or the ISM or RO Codes is to be construed as a reference

(a) to the provision in that instrument as modified from time to time; and

(b) if the instrument is replaced by another instrument, to the provision in that other instrument.

(3) No modification or replacement of a reference to an instrument by virtue of subregulation (2) affects any rights or liabilities arising before the date on which the modification or replacement has effect.

(4) In interpreting the ISM Code for the purposes of these Regulations reference to the Administration in relation to Virgin Islands ships is to be taken as reference to the Director.

3. (1) These Regulations apply to a ship which Application.

(a) is within a category of ship described in subregulation (2); and

(b) is either

(i) a Virgin Islands ship; or

(ii) any other ship while it is within Virgin Islands waters.

(2) A ship is within this subregulation if it is

- (a) a passenger ship, including a passenger high speed craft;
 - (b) a cargo ship of 500 GT or more, engaged in international voyages; or
 - (c) a mobile offshore drilling unit of 500 GT or more, engaged in international voyages.
- (3) These regulations do not apply to
- (a) a fishing vessel;
 - (b) a warship;
 - (c) a naval auxiliary;
 - (d) a Government ship used for non-commercial purposes;
 - (e) a pleasure vessel;
 - (f) a ship not propelled by mechanical means; or
 - (g) a wooden ship of traditional build.

**PART II
COMPLIANCE WITH ISM CODE**

Duty to comply with ISM Code.

4. Without prejudice to section 184(4) of the Act, an ISM company shall not operate a ship to which these Regulations apply unless the

- (a) requirements in Part A of the ISM Code are complied with in relation to that ship; and
- (b) certification requirements in regulation 5 are complied with in relation to that ship.

Certification requirements.

5. (1) The requirements referred to in regulation 4(b) are as follows:

- (a) the ISM company holds a valid Document of Compliance or Interim Document of Compliance in respect of the ship, and a copy is carried on board; and
- (b) a valid Safety Management Certificate or Interim Safety Management Certificate has been issued in respect of that ship, and the original is carried on board.

- (2) For the purposes of this regulation
 - (a) a copy of a relevant document shall displayed all the endorsements which have been made to the original document;
 - (b) a relevant document is not valid if it has been suspended or cancelled; and
 - (c) a relevant document is not valid in connection with a non-Virgin Islands ship if it does not display endorsements showing satisfactory annual or intermediate audits, as required by the ISM Code.

6. The master of a ship shall operate that ship in accordance with the safety management system on the basis of which the Safety Management Certificate or Interim Safety Management Certificate was issued. Duty of master.

- 7. (1)** The ISM company shall Designated person.
 - (a) designate a person to discharge the responsibility described in subregulation (2); and
 - (b) ensure that the designated person
 - (i) is provided with sufficient authority and resources, and
 - (ii) has appropriate knowledge and sufficient experience of the operation of ships at sea and in port,

to discharge that responsibility.

- (2) A designated person is responsible for
 - (a) monitoring the safe and efficient operation of that ship with particular regard to safety and pollution prevention aspects;
 - (b) taking such steps as are necessary to ensure compliance with the safety management system on the basis of which the Document of Compliance or Interim Document of Compliance was issued; and

- (c) ensuring that proper provision is made for the ship to be so manned, equipped and maintained that it is fit to operate in accordance with that safety management system.

PART III CERTIFICATION

Issue and endorsement of documents by Certifying Authority.

8. (1) A Certifying Authority shall issue and endorse the relevant documents relating to a Virgin Islands ship if satisfied that the relevant requirements of the ISM Code have been met.

(2) Where the Certifying Authority is authorised by the Director under section 414(2) of the Act, the authorisation shall

- (a) be in accordance with
 - (i) Regulation XI-1/1 of SOLAS; and
 - (ii) the RO Code; and
- (b) be notified by the Director to the IMO and the notification shall include
 - (i) the name of any person authorised as a Certifying Authority; and
 - (ii) the specific responsibilities and conditions of that Certifying Authority.

(3) If the Certifying Authority is satisfied that an ISM company complies with the requirements of the ISM Code, the Certifying Authority shall issue the ISM company with a Document of Compliance valid for a period not exceeding five years.

(4) If the Certifying Authority is satisfied that a ship is operated by an ISM company which has been issued with a Document of Compliance and that the ISM company operates in accordance with the safety management system the Certifying Authority has approved, the Certifying Authority shall issue, in respect of that ship, a Safety Management Certificate valid for a period not exceeding five years.

(5) Where an ISM company operates ships which are registered in more than one Convention State, but at least one of which is registered in the Virgin Islands and complies with the requirements of the ISM Code, the Certifying Authority may accept a Document of Compliance issued by the

Competent Authority of one of the other States, if prior to the issue of that document, the Certifying Authority has agreed to accept it.

(6) Where an ISM company newly registers a ship in the Virgin Islands, the Certifying Authority may accept a Document of Compliance issued by the Competent Authority of a Convention State in which ships operated by the ISM company are registered.

(7) If the Certifying Authority is satisfied that a Virgin Islands ship is operated by an ISM company which has a Document of Compliance accepted under subregulation (5) or (6) and that it operates in accordance with a safety management system which complies with the ISM Code, the Certifying Authority shall issue in respect of that ship a Safety Management Certificate valid for a period not exceeding five years.

(8) The Certifying Authority may require an ISM company referred to in subregulations (5) and (6) to be audited by an authorised person before accepting the Document of Compliance issued to that ISM company.

9. (1) Subject to subregulation (2), where an ISM company is newly established, or the ISM company assumes, for the first time, the responsibility for operating a ship type not covered by a Document of Compliance the ISM company already holds, the Certifying Authority may issue an Interim Document of Compliance to facilitate implementation of the ISM Code.

Interim certificates.

(2) The Certifying Authority may issue an Interim Document of Compliance valid for no more than twelve months to an ISM company following a demonstration that the ISM company

- (a) has a safety management system that meets the objectives of section 1.2.3 of the ISM Code; and
- (b) plans to implement a safety management system which will meet the full requirements of the ISM Code within the period of validity of the Interim Document of Compliance.

(3) Subject to subregulation (4), the Certifying Authority may issue an Interim Safety Management Certificate, valid for not more than six months, in respect of a new ship on delivery, when an ISM company takes on the responsibility for the management of a ship which is new to the ISM company or when a ship is transferred between flag states.

(4) The Certifying Authority may issue an Interim Safety Management Certificate only when it is satisfied that

- (a) the Document of Compliance, or the Interim Document of Compliance, is relevant to that ship type;
- (b) the safety management system provided by the ISM 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;
- (c) the master and the designated person are familiar with the safety management system and the planned arrangements for its implementation;
- (d) instructions which have been identified as essential to be provided prior to sailing have been given;
- (e) the ISM company has arranged for the audit of the ship within three months from the time when any of the events described under subregulation (3) take place; and
- (f) the relevant information on the safety management system is given in a working language or languages understood by the ship's personnel.

(5) Where it is appropriate to do so, the Certifying Authority may extend the validity of the Interim Safety Management Certificate once for a further six months.

Issue and endorsement of documents by other States.

10. Where

- (a) the Director has asked the Competent Authority of a Convention State to conduct an audit of the safety management system operated on board a Virgin Islands ship; and
- (b) that Competent Authority, after carrying out the audit, is satisfied that it is appropriate to issue or endorse a relevant document in accordance with the ISM Code, pursuant to a request by the Director under paragraph (a); and
- (c) that Competent Authority has issued or endorsed such a document,

that document has the same effect for the purposes of Virgin Islands law as if it had been issued or endorsed by the Director under these Regulations.

11. (1) The Director may, at the request of a Competent Authority of a Convention State, arrange for the audit of the safety management system of

Issue and endorsement of documents on behalf of other States.

- (a) a ship registered in that country; or
- (b) the ISM company.

(2) Where the Director or an authorised person has carried out an audit in response to a request under subregulation (1) and is satisfied that the requirements of the ISM Code are met, the Director may

- (a) issue to the ISM company a Document of Compliance or a Safety Management Certificate; or
- (b) where appropriate, endorse such a document in accordance with the requirements of SOLAS after annual or intermediate audits.

(3) Where the Director issues or endorses a document in accordance with a request under subregulation (1), the Director shall insert in that document a statement recording the fact.

(4) A document issued or endorsed in accordance with a request under subregulation (1) has the same effect as if it had been issued or endorsed by the Competent Authority of the Convention State which made the request and not by the Director.

12. (1) The Director may by notice in writing grant an exemption from all or any of the provisions of these Regulations for such classes of case or individual cases, and on such conditions, as the Director may specify.

Exemptions.

(2) The Director may amend or revoke an exemption by notice in writing containing the grounds for the amendment or revocation.

(3) A notice under subregulation (2) is valid only if

- (a) persons to whom the exemption applies were given the opportunity to make representations before the notice was given; or
- (b) the Director considers that urgent safety or pollution prevention considerations require the notice to be given immediately.

13. (1) The Certifying Authority may arrange for an authorised person to audit the safety management system of an ISM company.

Powers of audit and inspection.

(2) If, after an audit, an authorised person considers that an ISM 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; or
- (c) serious harm to the environment,

the authorised person may make a recommendation to the Certifying Authority to suspend the operation of ships by that ISM company until such time as any such risk is removed.

(3) Where an ISM company's service is to be suspended in terms of a recommendation made under subregulation (2), regulation 14 has effect and the Certifying Authority shall comply with regulation 14 before suspending the ISM company.

(4) An audit of a ship to which these Regulations apply may also include an inspection of the ship.

(5) If an authorised person is satisfied, on inspecting a ship, that there is a failure to comply in relation to that ship with the requirements of these Regulations, the authorised person may detain the ship.

(6) In any case where a ship is to be detained, regulation 15 has effect.

(7) An authorised person exercising functions under this regulation has the powers conferred on an inspector by the Act.

Suspension or
cancellation of
documents.

14. (1) In any of the circumstances specified in subregulation (2), a Certifying Authority may, by notice in writing containing the grounds for the suspension or cancellation, suspend or cancel any relevant document issued under regulations 8 or 9, or issued pursuant to a request under regulation 10.

(2) The circumstances referred to in subregulation (1) are that

- (a) the document was issued on the basis of incorrect information;
- (b) an audit required by Part B of the ISM Code in respect of the document has not taken place in the period required by the ISM Code;

- (c) the management structure of the ISM company has changed since the most recent audit of the ISM company's safety management system carried out by the Director or an authorised person;
- (d) after an audit under regulation 13, there is a recommendation for the suspension of the operations of that ISM company; or
- (e) the ISM company or ship is otherwise not compliant with the ISM Code.

(3) Where a notice given under subregulation (1) in respect of a Document of Compliance so specifies, any associated Safety Management Certificates or Interim Safety Management Certificates shall also be suspended or cancelled.

- (4) A notice under subregulation (1) is valid only if
 - (a) the holder of the relevant document was given the opportunity to make representations before the notice was given; or
 - (b) the Certifying Authority considers that urgent safety or pollution prevention considerations require the notice to be given immediately.
- (5) A Certifying Authority other than the Director
 - (a) acts on behalf of the Director when exercising functions under this regulation; and
 - (b) may only exercise functions under subregulation (1) in respect of a relevant document which was issued by that Certifying Authority.

PART IV DETENTION AND OFFENCES

15. (1) Where an inspector has clear grounds for believing that, in relation to a ship to which these Regulations apply, there has been or will be if the ship puts to sea Detention.

- (a) a failure to comply with regulations 4, 6 or 7; or

- (b) a breach of any term of an exemption granted under regulation 12,

the ship is liable to be detained.

(2) A person having power to detain a ship may permit a ship which is liable to be detained under subregulation (1) to proceed to sea for the purpose of proceeding to the nearest appropriate repair yard available.

(3) The power under this regulation to detain a ship may only be exercised in relation to a ship other than a Virgin Islands ship if the ship in question is in a port or offshore terminal in the Virgin Islands.

(4) Section 439 of the Act shall apply where a ship is liable to be detained under this regulation as if

- (a) references to the owner of a ship were references to the ISM company under these Regulations;
- (b) references to detention of a ship under the Act were references to detention of the ship in question under this regulation; and
- (c) subsection (10) was omitted.

(5) Where a ship is detained under subregulation (1), the person detaining the ship shall serve on the master of the ship a detention notice which

- (a) states the grounds for the detention; and
- (b) requires the terms of the notice to be complied with until the ship is released by any person mentioned in section 439(1) of the Act.

(6) Where a ship other than a Virgin Islands ship is detained, the Director shall immediately inform the consul or diplomatic representative of the State whose flag the ship is entitled to fly or the Competent Authority of that State.

(7) Where a ship is detained under subregulation (1) but the failure to comply referred to in subregulation (1) has ceased, a person having power to detain the ship shall, at the request of the ISM company or master, immediately release the ship

- (a) if no proceedings for an offence under regulation 16 are instituted within the period of seven days beginning with the day on which the ship is detained;
- (b) if proceedings for such an offence, having been instituted within that period, are concluded without the ISM company or master being convicted;
- (c) if either
 - (i) the sum of \$40,000 is paid to the Minister by way of security; or
 - (ii) security which, in the opinion of the Director, is satisfactory and is for an amount not less than \$40,000 is given to the Director by or on behalf of the ISM company or master;
- (d) where the ISM company or master is convicted of an offence under regulation 16, if any costs or expenses ordered to be paid by that person, and any fine imposed on that person, have been paid; or
- (e) if the release is ordered by a court or tribunal referred to in article 292 of the United Nations Convention on the Law of the Sea 1982, and any bond or other financial security ordered by such court or tribunal is posted.

(8) The Minister shall repay any sum paid in terms of subregulation (7)(c) or release any security so given

- (a) if no proceedings for an offence under regulation 16 are instituted within the period of seven days beginning with the day on which the sum is paid or the security is given; or
- (b) if proceedings for such an offence, having been instituted within that period, are concluded without the ISM company or master being convicted.

(9) Where a sum has been paid, or security has been given, by any person in terms of subregulation (7)(c) and the ISM company or master is convicted of an offence under regulation 16, the sum so paid or the amount made available under the security shall be applied as follows:

- (a) first in payment of any costs or expenses ordered by the court to be paid by the ISM company or master;

- (b) next in payment of any fine imposed by the court; and
- (c) any balance shall be repaid to the person who paid the sum or made available the amount by way of security.

Offences and penalties.

16. (1) An ISM company that contravenes regulation 4 or regulation 7(1) commits an offence and is liable on conviction to a fine not exceeding level 5 on the scale set out in Schedule 5 to the Act or imprisonment for a term not exceeding two years, or both.

(2) An ISM company that contravenes regulation 6 or regulation 7(2) commits an offence and is liable on conviction to a fine not exceeding level 5 on the scale set out in Schedule 5 to the Act or imprisonment for a term not exceeding two years, or both.

(3) An ISM company that breaches a condition of an exemption granted under regulation 12 commits an offence and is liable on conviction to a fine not exceeding level 5 on the scale set out in Schedule 5 to the Act or imprisonment for a term not exceeding two years, or both.

Defence.

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

Made by the Governor this 13th day of January, 2020.

(Sgd.) Augustus J. U. Jaspert,
Governor.