

**DEPARTMENT OF TRANSPORT
NOTICE 942 OF 2015**

Merchant Shipping Act, 1951 (Act No. 57 of 1951)

**Merchant Shipping (Seafarer Accident Insurance)
Regulations, 2015**

The Minister of Transport intends, in terms of section 356 (1) of the Merchant Shipping Act, 1951 (Act No. 57 of 1951) intends to make the regulations in the Schedule.

Interested persons are invited to submit their written comments on the draft to the Director-General, Department of Transport for the attention of Mr. P Mbeki or Mr. T Matlala within 30 days from publication thereof at :

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1 Purpose of regulations

These regulations supplement Chapter IVA [Financial Security for Loss of Life and Personal Injury] of the Act.

2 Definitions

- (1) In these regulations, unless the context indicates otherwise, an expression given a meaning by the Act has the given meaning and—

"medical expenses" means the reasonable and customary charges levied by a medical practitioner or other registered health practitioner, and includes the cost of necessary medical or surgical treatment, services or supplies and hospital, nursing, counselling and ambulance services;

"permanent total disablement", in relation to a seafarer, means the permanent inability of the seafarer to perform any work of the kind at which he or she was employed or engaged at the time of the accident;

"temporary partial disablement", in relation to a seafarer, means the temporary partial inability of the seafarer to perform the whole of the work at which he or she was employed or engaged at the time of the accident, until such time that—

- (a) the seafarer has recovered; or
- (b) the seafarer is declared temporarily or permanently and totally disabled;

"temporary total disablement", in relation to a seafarer, means the temporary total inability of the seafarer to perform the whole of the work at which he or she was employed or engaged at the time of the accident or to resume work at a rate of earnings not less than that at which he or she was employed or engaged at the time of the accident, until such time that—

- (a) the seafarer has recovered; or
- (b) the seafarer is declared permanently and totally disabled;

"the Act" means the *Merchant Shipping Act, 1951* (Act No. 57 of 1951).

- (2) For these regulations, strict compliance with the form prescribed in the Annex is not required and substantial compliance is sufficient.

3 Relevant insurance certificates

For paragraph (b) of the definition of "relevant insurance certificate" in section 189A of the Act, each of the following is taken to be a relevant insurance certificate in relation to the ship concerned:

- (a) a document that evidences the registration, in terms of section 80 of the *Compensation for Occupational Injuries and Diseases Act, 1993* (Act No. 130 of 1993), of the employer of the seafarers belonging to the ship;
- (b) a document that evidences the approval of an equivalent arrangement under section 189N(1) of the Act.

4 Ships to which Chapter IVA does not apply

For section 189B (2) (b) of the Act, the following class of ships is prescribed:

Vessels owned by any person who holds a valid subsistence fishing permit issued under the *Marine Living Resources Act, 1998* (Act No. 18 of 1998), when used for fishing operations covered by the permit.

5 Minimum benefits

The insurance or other financial security to be maintained in terms of section 189C of the Act must provide minimum benefits in accordance with the items of the following table:

Item	Event (not later than 24 months after accident)	Minimum benefit	Additional requirements
1	Death	R100,000 lump sum, less the sum of any benefits received under items 2, 3 and 4	Death is to be presumed within seven days after the accident if— (a) having regard to an affidavit by a person acquainted with the facts of the matter, it is probable that the seafarer has died as a result of the accident; and (b) the Authority has confirmed that the relevant statutory casualty report has been lodged. Payable not later than 14 days after death or presumed death, as the case may be. If any of these time periods cannot be complied with, the Authority is to be notified in writing stating the reasons for the non-compliance.
		Actual funeral expenses up to a maximum of R6,000	
2	Permanent total disablement	R100,000 lump sum, less the sum of any benefits received under items 3 and 4	Payable upon declaration of disablement by a medical practitioner.
3	Temporary total disablement	R600 per week up to a maximum period of 104 weeks	Payable upon declaration of disablement by a medical practitioner. Benefits may be excluded in respect of disablement that lasts for three days or less.
4	Temporary partial disablement	R400 per week up to a maximum period of 104 weeks	
5	Medical aid	Actual medical expenses up to a maximum of R15,000	

6 Restrictions on termination and modification of insurance or other financial security

- (1) Insurance or other financial security is taken not to meet the requirements of these regulations if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate mentioned in section 189D(1) of the Act, before 60 days have elapsed from the date on which written notice of its termination is given to the proper officer, unless, within that period, the certificate has been surrendered to that officer or a copy of a new certificate has been lodged with that officer in accordance with section 189D(2) of the Act.
- (2) No modification of insurance or other financial security maintained in terms of section 189C of the Act that results in a change in the information required to be recorded on the certificate mentioned in section 189D(1) of the Act is to be effective before 30 days have elapsed from the date on which written notice of the modification is given to the proper officer, unless, within that period, an authentic copy of the updated certificate has been lodged with that officer in accordance with section 189D(2) of the Act.

7 Restriction on payment of benefits

- (1) If an accident is attributable to the wilful misconduct of the seafarer, some or all of the benefits specified in regulation 6, except medical aid, may be excluded in terms of the insurance or other financial security maintained in terms of section 189C of the Act, unless—
 - (a) the accident results in permanent total disablement; or
 - (b) the seafarer dies as a result of the accident leaving one or more dependants.
- (2) For subregulation (1), "wilful misconduct" includes (but is not limited to)—
 - (a) being under the influence of intoxicating liquor or a drug having a narcotic effect; or
 - (b) a contravention of any law for the protection or the health of seafarer or for the prevention of accidents, if the contravention was committed wilfully or with a reckless disregard of that law's provisions.

8 Restriction on defences for insurer or provider of financial security

Subject to regulation 8, insurance or other financial security is taken not to meet the requirements of these regulations if a failure, at any time, to comply with any statutory requirement applicable in relation

to the ship or anyone on the ship constitutes a ground for repudiating a claim in terms of the insurance or security.

9 Form of insurance certificate

The certificate mentioned in section 189D(1) of the Act must be in accordance with the form of certificate given in the Annex.

10 How to lodge insurance certificate

For section 189D(2) of the Act, an authentic copy of a certificate is taken to have been lodged with the proper officer if it is received at the office of the proper officer together with any fee payable upon its lodgement not later than seven days after the date of issue stated in the certificate.

11 Title and commencement

These regulations are called the *Merchant Shipping (Seafarer Accident Insurance) Regulations, 2015* and are advertised for comments.

Annex: Form of insurance certificate

(Regulation 10)

CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY IN TERMS OF SECTION 189D OF MERCHANT SHIPPING ACT, 1951

Name of ship	Official number or letters	Home port	Name and principal place of business of owner

This is to certify that there is in force in relation to the above-named ship a policy of insurance or other financial security satisfying the requirements of section 189C of the *Merchant Shipping Act, 1951*.

Type of security

Number of seafarers covered by security

Duration of security

Name and principal place of business of insurer(s) and/or guarantor(s):

Name

.....

Principal place of business

.....

This certificate is valid until

Issued by

(Full designation of insurer(s) and/or guarantor(s))

at on

(Place)

(Date)

.....
(Signature and designation of authorised issuing official)

Explanatory Note

- 1 These regulations are enabled by section 356 of the *Merchant Shipping Act, 1951* (Act No. 57 of 1951) ("the Act").
- 2 The regulations supplement Chapter IVA of the Act, which requires shipowners of commercially operated vessels to maintain insurance or other financial security in accordance with the regulations. This insurance or security is meant to pay compensation to seafarers who suffer loss of life or personal injury as a result of workplace accidents. Shipowners do not have to maintain this insurance or security if they have an approved equivalent arrangement in place (e.g. cover under the *Compensation for Occupational Injuries and Diseases Act, 1993* (COIDA)).
- 3 The regulations prescribe the minimum benefits and other requirements that Chapter IVA insurance or security must meet. Regulation 6 sets out the minimum benefit arrangement, providing for a death/funeral benefit, a permanent total disability benefit, temporary disability benefits, and medical aid. The monetary value of benefits has been informed generally by the amount of compensation available under COIDA in similar cases. Questions of termination and modification of cover are also dealt with (regulation 7), as are questions relating to the effect of wilful misconduct on entitlement to benefits (regulation 8) and the availability of certain policy defences (regulation 9).
- 4 The regulations also deal with several other matters that are required to be prescribed under Chapter IVA. These cover the documents that are taken to be relevant insurance certificates (regulation 4); the vessels (other than pleasure vessels) to which Chapter IVA does not apply (regulation 5); the form of insurance certificate (regulation 10 and the Annex); and the manner and time in which an insurance certificate must be lodged with the proper officer (regulation 11).