



STATUTORY INSTRUMENT.

No. 02 of 2013.

Merchant Shipping (Maritime Security) Regulation 2013.

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Merchant Shipping (Maritime Security) Regulation 2013.

Being a Regulation,

MADE by the Head of State, acting with, and in accordance with the advice of the National Executive Council under the *Merchant Shipping Act* (Chapter 242), to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

PART I. – PRELIMINARY.

1. INTERPRETATION.

(1) In this Regulation, unless the contrary intention appears –

“Act” means the *Merchant Shipping Act* (Chapter 242);

“Convention” means the *International Convention for the Safety of Life at Sea* 1974 and any amendments made to the Convention from time to time which the Independent State of Papua New Guinea accedes to and accepts;

“Declared port” means a port declared as a declared port under Section 2 of the *Harbours Act* (Chapter 240);

“ISPS Code” means –

(a) the International Ship and Port Facility Security Code made under the Convention; and

(b) Parts A and B of the ISPS Code as set out in the Schedule; and

(c) any amendments made to the ISPS Code from time to time which the Independent State of Papua New Guinea accedes to and accepts;

“Non declared port” means a port other than a declared port;

“Offshore facility” means a fixed or floating platform that is used in the extraction or processing of resources from any land or the seabed (or its subsoil) together with equipment on, or forming part of, the facility and includes –

(a) any mobile offshore drilling ship, unit or facility; or

(b) the waters surrounding an offshore facility for a distance declared by the Secretary by notice in the National Gazette (such declaration being for a class of offshore facilities or for a specified offshore facility);

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(3) Notwithstanding Subsection (1), the Minister may determine by notice in the National Gazette to extend the application of this Regulation to other ships, port facilities, offshore facilities and other facilities, places or waters within Papua New Guinea.

PART II. – COMPLIANCE, DIRECTIONS AND NOTICES.

3. COMPLIANCE WITH REGULATION AND ISPS CODE.

(1) All ship owners, port facility operators, offshore facility operators, ship users, port facility users, and offshore facility users, shall –

- (a) comply with this Regulation and Part A of the ISPS Code; and
- (b) take into account Part B of the ISPS Code.

(2) A direction or notice issued under Section 4 may make compliance with all or part of Part B of the ISPS Code mandatory in particular circumstances.

(3) For the purposes of Subsections (1) and (2), where the ISPS Code provides –

- (a) an optional or alternative method of compliance with the ISPS Code; or
 - (b) an example of a method of compliance with the ISPS Code; or
 - (c) a recommendation for compliance with the ISPS Code; or
 - (d) guidance for compliance with the ISPS Code,
- it shall be sufficient for a ship owner, port facility operator, offshore facility operator, ship user, port facility user, and offshore facility user, to comply with –
- (e) any applicable direction or notice issued by the Secretary under this Regulation; or
 - (f) where no direction or notice applies, one or more options, alternatives, examples, recommendations or guidance contained in the relevant part of the ISPS Code.

(4) All ship owners, port facility operators, and offshore facility operators, shall comply with any requirement, obligation and other procedure required under the ISPS Code.

(5) All ship owners, port facility operators, and offshore facility operators, shall implement and comply with any approved security plan made under the ISPS Code and this Regulation.

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4. DIRECTIONS AND NOTICES.

- (1) The Secretary may issue a direction or notice for the purposes of this Regulation by notice published in a newspaper circulating generally in Papua New Guinea or through other methods of publication as the Secretary determines necessary.
- (2) Where the Secretary issues a direction or notice under Subsection (1), the Secretary shall notify the International Maritime Organization and other relevant bodies of the issuing of the direction or notice.
- (3) A direction or notice issued by the Secretary under Subsection (1) -
 - (a) must be consistent with and in compliance with the ISPS Code; and
 - (b) may supplement, amend or modify the ISPS Code to take into account -
 - (i) local circumstances and conditions; and
 - (ii) available resources; and
 - (iii) known or suspected security threats to the operation of ships, port facilities and offshore facilities.
- (4) In addition to Subsection (3), a direction or notice may provide -
 - (a) a method of compliance with the ISPS Code; and
 - (b) a requirement for compliance with the ISPS Code; and
 - (c) an alternative, additional, replacement obligation or method or requirement to supplement, amend or modify the application of the ISPS Code.
- (5) A direction or notice under Subsection (1) may -
 - (a) apply to -
 - (i) all ships, all port facilities and all offshore facilities; or
 - (ii) a class of ships, a class of port facilities or a class offshore facilities; or
 - (iii) particular ships, particular port facilities or particular offshore facilities; and
 - (b) apply to a specified area, place, facility or operation and for a specified time.
- (6) A direction or notice under Subsection (1) may refer to or incorporate wholly or partially, and subject to any modification determined by the Secretary, any standard, code, procedure or other document prepared or set by an authority or agency in Papua New Guinea or elsewhere.

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5. COMPLIANCE WITH DIRECTIONS AND NOTICES.

(1) All ship owners, port facility operators, offshore facility operators, ship users, port facility users, and offshore facility users, shall comply with any direction or notice issued by the Secretary under this Regulation.

(2) Where a ship owner, port facility operator, offshore facility operator, ship user, port facility user or offshore facility user is uncertain as to the requirements for their compliance with this Regulation, they may apply to the Secretary in writing for a direction or notice to be issued under this Regulation.

(3) Where the Secretary receives an application under Subsection (2), the Secretary, in his absolute discretion, may issue a direction or notice under this Regulation.

(4) Where the Secretary issues a direction or notice under Subsection (3), compliance with the direction or notice by the ship owner, port facility operator, offshore facility operator, ship user, port facility user or offshore facility user is sufficient compliance with the provisions of this Regulation.

6. DOCUMENTS AND PLANS.

(1) All ship owners, port facility operators, offshore facility operators, ship users, port facility users, and offshore facility users shall prepare, submit, maintain and display documents, plans, audits, reports, certificates and other written material as the ISPS Code and any direction or notice requires.

(2) Subject to the ISPS Code, all ship owners, port facility operators, offshore facility operators, ship users, port facility users, and offshore facility users, shall produce and provide copies of the documents, plans, audits, reports, certificates and other written material referred to in Subsection (1) to a maritime security inspector upon demand.

7. SECRETARY'S POWERS.

(1) For the purposes of the Regulation, the Secretary has the power to do all things required to be done by the Contracting Government, Designated Authority, department or other official body or person (however described under the ISPS Code), including, but not limited to –

- (a) issuing and making a Declaration of Security; and
- (b) setting security levels; and
- (c) issuing certificates, reports and other documents; and
- (d) making determinations; and
- (e) issuing directions, notices and orders; and
- (f) making appointments; and
- (g) meeting and fulfilling any other obligation, duty, responsibility or function required of the Contracting Government, Designated Authority, department or other official body or person.

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- (2) Notwithstanding the provisions of the ISPS Code, the Secretary may appoint, in writing, a recognized security organization to undertake -
- (a) security risk assessments in the form, content, format and style as the Secretary may determine from time to time; and
 - (b) the review, approval and certification of plans and documents; and
 - (c) the certification of ships, port facilities and offshore facilities; and
 - (d) other activities and functions as the Secretary may determine from time to time by notice in the National Gazette as required under the Regulation and the ISPS Code.

(3) The Secretary may delegate, in writing, to any maritime security inspector or other person any responsibility, duty, function or power conferred or imposed on the Secretary by the Regulation, other than this power of delegation.

- (4) A delegation under Subsection (4) may -
- (a) be made subject to the conditions, qualifications and exceptions set out in the instrument of delegation; and
 - (b) be revoked or varied by a subsequent written document.

(5) The Secretary may exercise any responsibility, duty, function or power despite the Secretary having delegated its exercise of powers or performance of functions.

(6) An act or thing done by a person under delegation has the same force and effect as if it had been done by the Secretary.

8. REPORTS AND SHARING INFORMATION.

- (1) Subject to Subsection (2), the Secretary may -
- (a) prepare and provide reports to any Papua New Guinea or international agency or other official body; and
 - (b) share information with any Papua New Guinea or international agency or other official body, concerning any matter related to maritime security and any matter related to the implementation of and compliance with this Regulation and the ISPS Code.
- (2) In exercising the powers under Subsection (1) the Secretary shall ensure the integrity of risk assessments and security plans.

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PART III. – ENFORCEMENT.

9. MARITIME SECURITY INSPECTORS.

(1) The Secretary shall appoint, in writing, a person to undertake the duties of a maritime security inspector.

(2) The Secretary shall issue each maritime security inspector with an identity card which must be –

- (a) carried by the maritime security inspector whenever he is on official duty; and
- (b) shown to a ship owner, port facility operator, offshore facility operator, Ship user, port facility user or offshore facility user upon request.

(3) A maritime security inspector has responsibilities, duties, functions and powers as the Secretary may determine from time to time, including but not limited to the inspection of ships, port facilities, offshore facilities, ship users, port facility users, and offshore facility users to ensure compliance with this Regulation.

(4) Subject to the ISPS Code, a maritime security inspector may –

- (a) using reasonable force if necessary, enter, inspect and search any ship, port facility, offshore facility, ship user, port facility user and offshore facility user; and
- (b) using reasonable force if necessary, stop, question and require evidence of the identity of any person in or on a ship, port facility or offshore facility; and
- (c) require any ship owner, port facility operator, offshore facility operator, ship user, port facility user or offshore facility user to –
 - (i) comply with any applicable requirement of the Regulation and ISPS Code; and
 - (ii) produce any document, plan, audit, report, certificate or other written material which the ship owner, port facility operator, offshore facility operator, ship user, port facility user or offshore facility user is required to have in their possession or control under this Regulation; and
 - (iii) provide the Inspector with a copy of an audit, report, certificate or other written material; and
- (d) require any ship owner, port facility operator, offshore facility operator, ship user, port facility user or offshore facility user to provide all reasonable assistance and cooperation to enable the inspector to fulfill his responsibilities, duties, functions and powers under this Regulation; and
- (e) provide the Secretary and other persons nominated by the Secretary with a written report of any matter regarding this Regulation and its enforcement.

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10. ASSISTANCE TO BE PROVIDED TO SECRETARY AND INSPECTORS.

Subject to the IPSP Code, all ship owners, port facility operators, offshore facility operators, ship users, port facility users, and offshore facility users shall, without delay, provide the Secretary and any maritime security inspector with the assistance and cooperation as the Secretary or maritime security inspector may require from time to time.

11. CLOSURE OF A PORT FACILITY OR OFFSHORE FACILITY.

(1) Where a maritime security inspector advises the Secretary in writing that -

(a) a port facility or offshore facility is not operating in compliance with this Regulation; and

(b) the port facility operator or offshore facility operator (as the case requires) has not made the port facility or offshore facility to operate in compliance with this Regulation after being given 7 days written notice to do so by a maritime security inspector,

the Secretary may by written order close the port facility or offshore facility until the port facility operator or offshore facility operator makes the port facility or offshore facility to operate in compliance with this Regulation.

(2) A written notice and order under Subsection (1) shall provide the port facility operator or offshore facility operator with details of the nature of the non-compliance with the Regulation.

(3) Where a port facility or offshore facility has been closed under this Regulation, all persons, including but not limited to, a ship owner, port facility operator, offshore facility operator, ship user, port facility user, and offshore facility user, shall not operate the port facility or offshore facility until the Secretary is satisfied that the operation of the port facility or offshore facility is compliant with this Regulation.

(4) Notwithstanding Subsection (3), a port facility or offshore facility may be operated only for the purposes of safe maintenance or to make the facility compliant with this Regulation.

(5) Where a port facility or offshore facility is closed in accordance with this Regulation, the Secretary may direct a maritime security inspector and request Police to -

(a) take reasonable action as the Secretary determines to ensure that all persons comply with Subsection (3); and

(b) use reasonable force to prevent entry or departure of any ship or person from the port facility or offshore facility (as the case requires).

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12. SEIZURE AND DETENTION OF SHIP.

- (1) Where a maritime security inspector advises the Secretary in writing that -
 - (a) a ship is not compliant with this Regulation or the Convention; and
 - (b) the ship owner has not made the ship compliant with this Regulation or the Convention (as the case requires) after being given 2 days written notice to do so by a maritime security inspector,the Secretary may, by written order, seize and detain the ship until the ship owner makes the ship compliant.
- (2) A written notice and order under Subsection (1) must provide the ship owner with details of the nature of the non-compliance with the Regulation or Convention (as the case requires).
- (3) Where a ship has been seized and detained under this Regulation, all persons, including but not limited to a ship owner, port facility operator, offshore facility operator, ship user, port facility user, and offshore facility user, shall not operate the ship, until the Secretary is satisfied that the ship is compliant with this Regulation or Convention.
- (4) Notwithstanding Subsection (3), a ship may be operated only on purposes of safe maintenance or to make the ship compliant with this Regulation or Convention.
- (5) Where a ship is seized and detained in accordance with this Regulation, the Secretary may direct a maritime security inspector and request Police to -
 - (a) take reasonable action as the Secretary determines to ensure that all persons comply with Subsection (3); and
 - (b) use reasonable force to prevent -
 - (i) entry or departure of the ship and the ship's captain and crew to or from a port facility or offshore facility; and
 - (ii) the loading or unloading of passengers or goods from the ship.

PART IV. - MISCELLANEOUS.

13. PROTECTION FROM LIABILITY.

The Independent State of Papua New Guinea, the Minister, the Secretary, all maritime security inspectors, Police and other persons acting under or with the authority of the Secretary under this Regulation are not liable for any loss or damage caused by the good faith exercise of any responsibility, duty, function or power under this Regulation.

14. FEES AND CHARGES.

- (1) The Secretary may prescribe, by notice in the National Gazette, fees and charges for the exercise of any responsibility, duty, function or power under this Regulation.

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- (2) Where a fee or charge is prescribed under Subsection (1), each person to whom the fee or charge applies must pay the fee or charge as directed by the Secretary.

15. POLICE ASSISTANCE.

The Secretary may request Police and other government agencies to provide the Secretary and maritime security inspectors with such reasonable assistance as the Secretary or an Inspector requires to enforce this Regulation.

16. OFFENCES.

- (1) A person who contravenes or fails to comply with this Regulation is guilty of an offence.

Penalty: A fine not exceeding K100, 000.00 or a term of imprisonment not exceeding 10 years, or both.

- (2) An unauthorized person found in a restricted area or regulated area is guilty of an offence.

Penalty: A fine not exceeding -
(a) for the first offence, K5,000.00; and
(b) for any subsequent offence, K10,000.00.

- (3) A person who unlawfully interferes with, obstructs, prevents or attempts to prevent any person or organization (incorporated or otherwise) from complying with this Regulation or the ISPS Code is guilty of an offence.

Penalty: A fine not exceeding K5,000.00 or a term of imprisonment not exceeding 6 months, or both.

17. FIREARMS AND OTHER WEAPONS.

Subject to any applicable laws in Papua New Guinea a person shall not -

- (a) use or bring into a port facility or offshore facility; or
(b) use or bring onto a ship,
any firearm, ammunition for a firearm or other weapon where the use or carriage of the firearm, ammunition or weapon does not comply with the ISPS Code or a direction or notice issued under this Regulation.

18. REPEAL AND SAVINGS.

- (1) The *Merchant Shipping (Maritime Security) Regulation 2005* is repealed.

(2) All appointments, authorizations, delegations, determinations, directions, orders, certificates and any other official act or function or exercise of power or authority under the *Merchant Shipping (Maritime Security) Regulation 2005* continue to have full force and effect under this Regulation as if they had been made under this Regulation until revoked, varied, cancelled or replaced in accordance with this Regulation.

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SCHEDULE. – ISPS CODE (PARTS A AND B).