

## GUIDANCE NOTE 03/2024 Rev 01

### THE MERCHANT SHIPPING ACT, 2024

**To: ALL PERSONS HAVING AN INTEREST IN CAYMAN ISLANDS SHIPS AND THE SEAFARERS WHO SERVE ON THEM**

#### 1. BACKGROUND

- 1.1 On 07 March 2024, the Merchant Shipping Act 2024 (MSA 2024) received Royal Assent. The Act was published in the Cayman Islands Gazette and entered into force on 11 March 2024. MSA 2024 repeals and replaces the Merchant Shipping Act (2021 Revision) from that date.
- 1.2 This Guidance Note is not intended to be a definitive guide to MSA 2024 and interested parties are advised to seek professional legal advice on how they may be affected by the changes introduced by the Act.
- 1.3 Rather, this Guidance Note is intended to give information on some key changes contained in MSA 2024. A more extensive overview of MSA 2024 is given in the Appendix to this Guidance Note.
- 1.4 Copies of MSA 2024 may be downloaded from <https://www.cishipping.com/policy-advice/laws-regulations>.

#### 2. PERSONS QUALIFIED TO OWN A CAYMAN ISLANDS SHIP

- 2.1 In MSA 2024, the ownership criteria for a Cayman Islands ships has been widened and aligned with those for owning a ship registered in the United Kingdom.
- 2.2 The criteria for owning a Cayman Islands ship are –
  - (a) British citizens;
  - (b) British Overseas Territories and Crown Dependencies citizens;
  - (c) British Overseas citizens;
  - (d) British subjects;

- (e) persons who, under the *Hong Kong (British Nationality) Order 1986*, are British Nationals (Overseas);
- (f) Cayman Islands citizens;
- (g) persons, other than those referred to in paragraphs (a) to (f), who are nationals or citizens of a Member State of the European Union, European Economic Area or an approved country, including the overseas countries, territories or dependencies of such Member State or country;
- (h) bodies corporate, shipping entities or foreign companies incorporated, established or registered in —
  - (i) the United Kingdom or any of its Overseas Territories or Crown Dependencies;
  - (ii) a Member State of the European Union or European Economic Area, including any overseas country, territory or dependency of such a Member State; or
  - (iii) an approved country<sup>1</sup> or any overseas country, territory or dependency of such an approved country; and
- (i) foreign companies as defined in section 183 of the *Companies Act (2022 Revision)* carrying on business within the Islands which comply with all the requirements of foreign companies under that Act.

2.3 Qualification for owning a ship registered in the United Kingdom can be found in [regulation 7](#) of the United Kingdom's Merchant Shipping (Registration of Ships) Regulations 1993, as amended.

### **3. CONVENTIONS OF IMO AND ILO EXTENDED TO THE CAYMAN ISLANDS**

- 3.1 The International Conventions of IMO and ILO that have been extended to the Cayman Islands are now given force of law in MSA 2024 by ambulatory reference.
- 3.2 This means that all mandatory parts of those conventions are considered as forming part of MSA 2024.
- 3.3 When conventions are amended, those amendments also become part of MSA 2024 on their entry into force.
- 3.4 The Chief Executive Officer of the Maritime Authority of the Cayman Islands may issue Shipping Notices under section 459 of MSA 2024 to give effect to any provisions of an international agreement relating to merchant shipping or seafarers extended to the Cayman Islands. These Shipping Notices also have force of law.

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<sup>1</sup> An "approved country" includes a country whose citizens are persons qualified to own a ship registered in the United Kingdom.

#### **4. EMPLOYMENT AGREEMENTS FOR ALL SEAFARERS**

- 4.1 All seafarers on Cayman Islands ships and yachts (including “Private Yachts” and “Pleasure Vessels”) must be employed under an agreement signed by both the seafarer and by, or on behalf of, the employer.
- 4.2 Employment agreements must contain the following provisions as a minimum –
- (a) the amount of wages and method of payment;
  - (b) the production of monthly wage accounts;
  - (c) any wage deductions permitted by MSA 2024;
  - (d) entitlement to repatriation and medical expenses;
  - (e) entitlement to leave;
  - (f) notice period required;
  - (g) the agreed place for the return of the seafarer; and
  - (h) the governing law.
- 4.3 No right or obligation under MSA 2024 can be renounced by an employment agreement.
- 4.4 This requirement for all seafarers to be employed under an employment agreement does not convey any additional rights or entitlements to seafarers, however the actual entitlement must now be included in the employment agreement. For example, there is no statutory entitlement to leave for seafarers serving on Pleasure Vessels. If a seafarer is employed on a Pleasure Vessel with no entitlement to leave, the employment agreement must state this.

#### **5. POWERS OF THE SHIPPING MASTER**

- 5.1 Any dispute relating to the amount payable to a seafarer may be submitted by the parties to the Shipping Master for decision.
- 5.2 The Shipping Master has the power to decide the amount, if any, that is payable to the seafarer.
- 5.3 The Shipping Master also has the power to decline to decide in a dispute when considering the amounts in dispute, or for any other reason.
- 5.4 No decision by the Shipping Master (including the Shipping Master declining to decide in a dispute) affects a seafarer’s right to pursue a civil claim in the court for unpaid wages.

## **6. INQUIRIES INTO FITNESS OF SEAFARERS**

- 6.1 Should it appear that a seafarer is unfit to discharge their duties or has been seriously negligent in discharging those duties, the Chief Executive Officer may give notice in writing that the suspension or cancellation of any certificate issued to that seafarer is being considered.
- 6.2 This notice will state a period in which the seafarer may make written representations to the Chief Executive Officer as to why a certificate should not be suspended or cancelled.
- 6.3 A seafarer may also ask that the matter is heard by an inquiry led by a person appointed by the Minister. That person, assisted by one or more assessors, will decide on the suspension or cancellation of the certificate, and will make an order with regard to the costs of the inquiry.
- 6.4 A seafarer who has been adversely affected by the decisions of the inquiry may appeal to the Grand Court of the Cayman Islands.

## **7. CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS**

- 7.1 The Convention on Limitation of Liability for Maritime Claims (LLMC) allows a ship owner to limit their liability in certain claims. Amongst other things, LLMC determines liability under the International Convention on Civil Liability for Bunker Oil Pollution Damage. The limit of liability is determined by the size of the ship.
- 7.2 Since the convention entered into force in 1986, these limits have been increased to reflect the rising costs incurred by all parties to a maritime claim.
- 7.3 The MSA 2024 ensures that the current LLMC limits are applicable to all maritime claims heard in the Cayman Islands. Any future increase (or decrease) in the liability limits in LLMC will also apply automatically under MSA 2024.
- 7.4 A similar approach is taken in MSA 2024 with respect to liability under the International Convention on Civil Liability for Oil Pollution and the International Oil Pollution Compensation Funds.

## **8. SURVEYORS, INSPECTORS AND INSPECTORS OF MARINE CASUALTIES**

- 8.1 The powers of surveyors, inspectors and inspectors of marine casualties have been clarified in MSA 2024 and brought in line with the Cayman Islands Constitution Order 2009.
- 8.2 While surveyors may still act as inspectors, a surveyor must be appointed as an inspector before acting as one and may not perform the functions of a surveyor and an inspector at the same time.
- 8.3 The power to require a person to attend at a place and time specified and to require that person to answer any question truthfully is now reserved to an inspector of marine casualties. The answers to such questions remain confidential and are inadmissible in any legal proceedings, be they civil or criminal.

## **Appendix**

*The following text is from the Memorandum of Objects and Reasons that was attached to the Merchant Shipping Bill 2023. This Bill was passed by the Parliament of the Cayman Islands and became the Merchant Shipping Act 2024 when it gained Royal Assent on 07 March 2024. The Act was published in the Cayman Islands Gazette and entered into force on 11 March 2024.*

### **Memorandum of OBJECTS AND REASONS**

This Bill seeks to repeal and replace the Merchant Shipping Act (2021 Revision) and to provide for incidental and connected purposes.

#### **PART 1 - PRELIMINARY**

Part 1 contains the preliminary provisions.

It provides for the short title of the legislation and the interpretation of certain words used throughout the legislation.

#### **PART 2 - REGISTRATION OF SHIPS**

Part 2 deals with the registration of ships and matters related to registration. This Part provides for the procedure for the registration of ships, including the registration of ships chartered by demise to a qualified person, registration during the transfer of ownership, registration of alterations, and the transfer of registration between the Islands and the United Kingdom or a Crown Dependency or a British Overseas Territory.

Part 2 also provides for rules as to names of ships. A ship shall not be described by a name other than that which it is for the time being registered.

Further, this Part provides that a change shall not be made in the name of a ship without the previous written permission of the Registrar of Shipping.

#### **PART 3 - NATIONAL CHARACTER AND FLAG**

Part 3 provides for matters related to the national character and the flag of ships.

This Part provides that a customs and border control officer shall not grant clearance for a ship until the master of the ship has declared to the officer the name of the nation to which the master claims that the ship belongs. If the master of the ship attempts to proceed to sea without such clearance, the ship may be detained until the declaration is made.

This Part also specifically provides that it is an offence for the master of a ship which is not a Cayman Islands ship to do, or permit to be done, anything for the purpose of causing the ship to appear to be a Cayman Islands ship. A person who contravenes this provision, whether done outside or within the Islands, commits an offence and is liable on summary conviction to a fine of twenty-five thousand dollars or to imprisonment for a term of two years, or to both.

Part 4 deals with proprietary interests in registered ships, and provides for the rights of owners and mortgagees, for transfers and transmissions, and for other matters related to the mortgage of a ship, or of a share in a ship.

This Part provides that subject to any rights and powers which appear from the register to be vested in any other person, the registered owner of a ship or of a share in a ship shall have power absolutely to dispose of it provided the disposal is made in accordance with the legislation.

This Part also provides that a transfer of a registered ship, or a share in a ship, shall be effected by a bill of sale, and every bill of sale for the transfer within the Cayman Islands Shipping Registry of a registered ship or of a share in the ship, when executed, shall be produced to the Registrar of Shipping, with the declaration of transfer.

Upon being satisfied that the ship remains entitled to be registered in the Islands, the Registrar shall —

- (a) enter in the register the name of the transferee as owner of the ship or share; and
- (b) endorse on the bill of sale the fact of that entry having been made, with the date and time of the entry.

Where the Court orders the sale of a ship or a share in a ship, the order of the Court shall contain a declaration vesting in the person named by the Court the right to transfer that ship or share, and that person shall then be entitled to transfer the ship or share in the same manner and to the same extent as if the person were the registered owner of the ship.

This Part provides further that a ship or a share in a ship may be made a security for the repayment of a loan or the discharge of any other obligation, and the instrument creating the security, referred to as a mortgage, shall be produced to, and registered by, the Registrar of Shipping in the prescribed manner.

## **PART 5 - MASTERS AND SEAFARERS**

Part 5 deals with masters and seafarers, and other related matters, including the minimum requirements for seafarers to work on a ship; the conditions of employment; the provision of food and water; health protection, medical care, welfare and social security protection; and the civil liability of seafarers for absence without leave, smuggling and fines under immigration laws.

This Part also provides for offences by seafarers in relation to the wearing of uniforms; any conduct which may endanger a person or which is likely to cause serious damage to the ship, its machinery and equipment, or any other ship or structure; disobedience of a lawful command and making of false statements for the purpose of obtaining a certificate or any other document.

Further, this Part provides that seafarers employed on Cayman Islands ships shall be subject to the latest edition of the Code of Conduct for the Merchant Navy as approved by the Government of the United Kingdom.

Part 5 also provides for matters related to the fitness of a seafarer. If it appears to the Chief Executive Officer that a seafarer is unfit to discharge the seafarer's duties or has been seriously negligent in the discharge of the seafarer's duties, the Chief Executive Officer may give the seafarer notice in writing that the Chief Executive Officer is considering the suspension or cancellation of any certificate issued to the seafarer under the legislation and the regulations made under the legislation. The legislation ensures that there is due process with such matters, as it provides for a hearing as well as a rehearing and an appeal process to the Court.

## **PART 6 - PREVENTION OF COLLISIONS AND SAFETY OF NAVIGATION COLLISION REGULATIONS, DISTRESS AND SAFETY**

Part 6 deals with the prevention of collisions, safety of navigation, vessels in distress and aids to navigation.

This Part provides that the International Convention on Regulations for the Prevention of Collisions at Sea 1972 and the rules and annexes contained in that Convention, as amended, modified or replaced from time to time and as extended to the Islands (“the Collision Convention”), has the force of law in the Islands. As such, prescribed vessels shall comply with the Collision Convention, unless exempted by the Chief Executive Officer.

This Part also provides that inspections of a ship shall be carried out by a surveyor or inspector to determine whether the ship is properly provided with lights and the means of making sound signals as required, in compliance with the Collision Convention.

Further, under this Part, there are duties imposed on the master of a ship, including a duty to render assistance following a collision, a duty to assist a ship in distress, a duty to assist persons in danger at sea, a duty to report any accidents at sea, and a duty to notify of any dangers or hazards to navigation.

This Part also provides for the establishment and management of aids of navigation, which are lighthouses, buoys, beacons, radio aids, or any other light, signal or mark established to aid marine navigation, and includes all buildings, moorings and other works associated therewith.

A person who, among other things, wilfully or negligently damages, destroys or allows a ship to foul an aid of navigation, commits an offence and, in addition to the expenses of making good any damage so occasioned, is liable on summary conviction to a fine of five thousand dollars.

Further, where a ship damages, destroys or fouls an aid, the ship may be detained until the cost of repairing or replacing the aid or rendering the aid effective again is paid.

## **PART 7 - SAFETY OF LIFE AT SEA AND MARITIME SECURITY**

Part 7 provides for safety of life at sea and maritime safety.

This Part provides that the International Convention for the Safety of Life at Sea 1974 as modified by the Protocols of 1978 and 1988 including its codes and any other instruments made mandatory under the Convention and as amended, modified or replaced from time to time and as extended to the Islands (“the Safety Convention”), has the force of law in the Islands. As such, prescribed vessels shall comply with the Safety Convention, unless exempted by the Chief Executive Officer.

This Part also provides that inspections and surveys of ships shall be carried out by a surveyor or inspector to determine whether the ship is in compliance with the Safety Convention.

In order to ensure such compliance, the owner and master of every relevant vessel shall ensure that the condition of the ship and the equipment is maintained in accordance with regulation 11(a) of Chapter I of the Safety Convention.

Only when a survey or surveys to meet the requirements of this Part are satisfactorily completed shall the Chief Executive Officer, or any other person authorised by the Chief Executive Officer, issue a certificate or certificates specified in Regulation 12 of Chapter I of the Safety Convention.

This Part also provides that the Chief Executive Officer may cancel a certificate previously issued where the Chief Executive Officer has reason to believe that the certificate was issued

on false or erroneous information, or where, after a survey was done, the structure, equipment or machinery sustained damage or became otherwise deficient.

It should also be noted that a Cayman Islands ship and any ship registered in a country to which the Safety Convention applies shall not proceed to sea without the required certificate. A person who acts in contravention of this requirement commits an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of two years, or to both.

This Part also provides for the application of the International Ship and Port Facility Security Code to Cayman Islands ships, and to all other ships engaged on international or domestic voyages while they are in Cayman Islands waters unless exempted by or under the legislation.

Finally, this Part provides that the Chief Executive Officer has responsibility for ship security and the Governor has responsibility for setting and amending security levels to be operated on Cayman Islands ships.

### **PART 8 - SAFETY OF SUBMERSIBLES**

Part 8 provides for matters related to the safety of submersible craft.

This Part provides that the owner of every submersible craft to which this Part applies shall cause it to be registered in the register of submersible craft under this Part, and have in force in respect of it a safety certificate issued under this Part. The submersible craft shall also be registered.

As it relates to the construction and equipment of submersible craft, this Part empowers the Cabinet to make regulations which, among other things —

- (a) specifies construction requirements for submersible craft and supporting apparatus;
- (b) requires submersible craft and supporting apparatus to be surveyed, and provides for the making of declarations of survey;
- (c) prescribes obligations which any person concerned in the operation of submersible craft and supporting apparatus must fulfil and the required qualifications which such a person must hold; and
- (d) provides for the detention of any submersible craft or supporting apparatus in respect of which a contravention of the regulations has or is suspected to have occurred.

This Part also provides for the issue, duration, extension, suspension and revocation of safety certificates in respect of a submersible craft.

Further, it provides for inquiries and investigations into casualties which occur in respect of a submersible craft or supporting apparatus.

As it relates to offences in respect of submersible craft, a person who causes, permits or is otherwise concerned in the launch, recovery, operation or support of a submersible craft in contravention of the legislation commits an offence and is liable on summary conviction to a fine of twenty thousand dollars.

Also, where a person causes, permits or is otherwise concerned in the operation of supporting apparatus in contravention of the legislation, the person commits an offence and is liable on summary conviction to a fine of twenty thousand dollars.

Further, this Part provides that a submersible craft which is launched, recovered, operated or supported in contravention of the legislation, and any supporting apparatus operated in connection with it may be detained.

## **PART 9 - LOAD LINES**

Part 9 provides for load lines, which are the lines marked on a ship that indicate the maximum depth to which a ship may be loaded.

This Part provides that the International Convention on Load Lines 1966 and annexes as modified by the 1988 Protocol and as amended, modified or replaced from time to time and as extended to the Islands (“the 1966 Convention”), has the force of law in the Islands. As such, prescribed vessels shall comply with the 1966 Convention, unless exempted by the Chief Executive Officer.

In addition, this Part provides that the Assigning Authority may allow any equivalent fitting, material, appliance or apparatus to be fitted in a ship, or allow other provisions to be made in a ship, in the place of any fitting, material, appliance, apparatus or provision which is required under this Part, if satisfied by trial or otherwise that it is at least as effective as that so required by the applicable Convention requirements.

This Part also provides that a ship which undergoes repairs, alterations, modifications and any related outfitting shall continue to comply with the requirements previously applicable to the ship.

Further, this Part provides for an initial survey, a renewal survey and an annual survey. Upon satisfactory completion of an initial or renewal survey of a Cayman Islands ship, and upon payment of any appropriate fee, the Assigning Authority shall issue a Convention certificate in respect of the ship. After a satisfactory annual survey, the Assigning Authority shall endorse the Convention certificate accordingly.

It should also be noted that the owner and master shall ensure that after completion of any survey, no material alteration is made to the ship, its structure, equipment, arrangements, material or scantlings covered by the survey without the approval of the Assigning Authority that issued the Convention certificate.

This Part also provides for the form, duration, validity, cancellation and surrender of Convention certificates.

Further, this Part stipulates that a non-Cayman Islands ship holding a valid Convention certificate is subject to inspection by officers authorised by the Chief Executive Officer when it is in a Cayman Islands port.

Finally, it should also be noted that a ship which, in contravention of the requirements related to load lines, proceeds or attempts to proceed to sea without being surveyed and marked may be detained until it has been so surveyed and marked. If a ship proceeds, or attempts to proceed, to sea in contravention this provision, the master and the owner commit an offence and are liable on summary conviction to a fine of ten thousand dollars or on conviction on indictment to a fine of fifty thousand dollars or to imprisonment for a term of two years, or to both.

## **PART 10 - CARRIAGE OF BULK CARGOES AND DANGEROUS CARGOES**

Part 10 provides for the carriage of grain and other bulk cargoes, the carriage of dangerous cargoes, and the making of regulations in respect of such cargoes.

Unless expressly provided otherwise, this Part applies to all ships to which the Safety Convention applies and to cargo ships of less than five hundred gross tonnage.

This Part also provides that where grain is loaded on board any Cayman Islands ship, loaded within any port in the Islands on board any ship, or loaded with grain outside the Islands, if all necessary and reasonable precautions are not taken to prevent the grain from shifting, the owner or the master of the ship commits an offence and is liable on summary conviction to a fine of twenty thousand dollars, and the ship shall be deemed to be unsafe by reason of improper loading.

On the arrival at a port in the Islands of a ship carrying a cargo of grain, the master shall deliver to a customs and border control officer a notice which states the draught of water and freeboard of the ship after the loading of the cargo at the final port of loading and which provides for certain particulars in respect of the grain. Failure to deliver such a notice, or the making of a false statement in any such notice is an offence in respect of which a person is liable on summary conviction to a fine of two thousand dollars.

As it relates to the carriage and marking of dangerous goods, this Part provides that —

- (a) no person shall send any dangerous goods by, or carry any dangerous goods in, a Cayman Islands ship, except in accordance with this Part and any applicable regulations; and
- (b) no person shall send by, or carry in, a Cayman Islands ship, any dangerous goods without —
  - (i) first distinctly marking their nature on the outside of their outermost package in accordance with such regulations as the Cabinet may make; and
  - (ii) first giving written notice of the nature of such goods and of the name and address of the sender of the goods to the master or owner of the ship.

A person who acts in contravention of the aforementioned requirements commits an offence and is liable on summary conviction to a fine of twenty thousand dollars. Furthermore, the Court may order the goods, and any packaging or container of the dangerous goods, to be forfeited.

### **PART 11 - UNSAFE SHIPS**

Part 11 provides for unsafe ships and matters related to such ships.

Among other things, this Part provides that the Chief Executive Officer has the power to detain unsafe ships. It also provides that the owner and master are liable in respect of an unsafe ship and further that it is an offence to have a Cayman Islands ship, or to have a ship in port in the Islands, in a dangerously unsafe condition. A person who commits such an offence is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of six months, or to both.

This Part also provides that it is the duty of the owner of a ship to take all reasonable steps to ensure that the ship is operated in a safe manner. Failure to discharge this duty is an offence in respect of which a person is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of six months, or to both.

### **PART 12 - WRECK AND SALVAGE**

Part 12 deals with wrecks and salvage and related matters.

Under this Part, the Governor may appoint the Port Director as the Receiver of Wrecks (“the Receiver”) for the Islands, who shall exercise general direction and supervision over all matters relating to wreck and salvage.

Where a vessel is in distress, it shall be the duty of the Receiver, on being informed of the circumstances, to proceed to the place where the vessel is, to take command of all persons present, and to assign such duties and give such directions to each person as the Receiver thinks fit for the preservation of the vessel and the lives of the shipwrecked persons.

This Part empowers the Receiver, in relation to vessels in distress, to require such persons as are necessary to assist, including the master, and to require the use of any vehicle that may be near at hand.

This Part also imposes certain duties on the finder, or the person who takes possession, of any wreck in the Cayman Islands waters or any wreck outside in the Cayman Islands, and who brings it into Cayman Islands waters. If that person is the owner of it, the person shall give notice to the Receiver stating that the person has found or taken possession of it and the person shall describe the marks by which it may be recognised. If that person is not the owner of it, that person shall give notice to the Receiver that the person has found or taken possession of it and, as directed by the Receiver, either hold it to the Receiver’s order or deliver it to the Receiver.

This Part also provides that a person who is entitled to unclaimed wreck found at any place in the Islands or in Cayman Islands waters shall give the Receiver a statement containing the particulars of the person’s entitlement and specifying an address to which notices may be sent. Where such a statement has been given to the Receiver and the entitlement is proved to the satisfaction of the Receiver, the Receiver shall, on taking possession of any wreck found at a place to which the statement refers, within forty-eight hours send to the specified address a description of the wreck and of any marks distinguishing it.

Further, this Part stipulates how any unclaimed wreck is to be dealt with.

This Part also provides for the offences of taking a wreck to a foreign port and interfering with a wrecked vessel or a wreck.

In relation to salvage, this Part provides that the International Convention on Salvage 1989 as amended, modified or replaced from time to time and as extended to the Islands (“the Salvage Convention”) has the force of law in the Islands. It should be noted however that certain provisions under this Part do not apply to the following structures and vessels —

- (a) fixed or floating platforms or to mobile off-shore drilling units when such platforms or units are on location engaged in the exploration, exploitation or production of sea-bed mineral resources; and
- (b) warships or other non-commercial vessels owned or operated by a foreign state and entitled, at the time of salvage operations, to sovereign immunity under generally recognised principles of international law unless that state has decided to apply the Salvage Convention to such ships or vessels.

This Part also provides that where services are rendered for salvage in respect of the preservation of life and salvage in respect of the cargo or equipment of the vessel, the owner of the vessel, cargo or equipment saved shall pay to the salvor a reasonable amount of salvage to be determined in the manner set out in this Part.

Further, this Part provides for the duties owed by a salvor to the owner of a vessel or other property in danger and for the duties owed by the owner and master of the vessel or the owner of other property in danger. Among other things, the salvor shall carry out the salvage operation with due care and seek assistance from other salvors whenever the circumstances reasonably so require. The owner or master shall co-operate fully with the salvor during the course of the salvage operations and when the vessel or other property has been brought to a place of safety, to accept redelivery when reasonably requested to do so by the salvor.

It should also be noted that the Receiver is empowered, in respect of salvage operations, to give directions, and to take measures in accordance with generally recognised principles of international law to protect the environment from pollution following a maritime casualty or acts relating to such casualty which may reasonably be expected to result in harmful consequences.

This Part also provides for the quantum of salvage rewards, and for special compensation where the salvor, by the salvor's salvage operations, has prevented or minimised damage to the environment. However, a salvor may be deprived of the whole or part of the payment due to the salvor under this Part to the extent that the salvage operation has become necessary or more difficult because of fault or neglect on the salvor's part or if the salvor has been guilty of fraud or other dishonest conduct.

Further, this Part provides that where civil salvage services are rendered by or on behalf of the Government, or with the aid of Government property, the Government shall, subject to any applicable regulations, be entitled to claim salvage in respect of those services to the same extent, and shall have the same rights and remedies as any other salvor.

Finally, this Part provides that the Cabinet may make such regulations as may be necessary to give effect to the Salvage Convention and in relation to salvage matters generally.

### **PART 13 - CONTROL OF, AND RETURNS AS TO, PERSONS ON SHIPS**

This Part provides for the control of persons on ships, passenger returns, and the returns of births and deaths on ships.

This Part provides that, among other things, it is an offence for a person —

- (a) to persist in attempting to enter a ship if the person is drunk and disorderly and on that account, the person has been refused admission to the ship by the owner or a person in the owner's employment;
- (b) to molest a passenger;
- (c) to intentionally obstruct or damage any part of the machinery or equipment of the ship, or to obstruct the crew in the navigation or management of the ship, or otherwise in the execution of their duty on or about the ship;
- (d) without the consent of the master or of any other person authorised to give it, to go to sea or attempt to go to sea in a Cayman Islands ship; and
- (e) to go, or remain, on board, a ship without the consent of the master or of any other persons authorised to give it.

This Part also provides for the master's power of arrest. The master of a Cayman Islands ship may cause any person on board the ship to be put under restraint if and for so long as it

appears to the master necessary in the interest of safety or for the preservation of good order or discipline on board the ship.

Further, this Part provides that the master of a ship shall make returns giving the total number of any passengers carried on a ship.

Finally, this Part enables the making of regulations in relation to births and deaths occurring on a ship.

## **PART 14 - LIABILITY AND COMPENSATION**

Part 14 provides for liability, including —

- (a) liability for oil pollution in the case of certain ships;
- (b) liability for bunker oil pollution;
- (c) liability for oil pollution in the case of tankers;
- (d) liability and division of liability for maritime claims;
- (e) liability for wreck removal; and
- (f) liability of a carrier for the carriage of passengers and luggage by sea.

Part 14 also deals with matters related to liability such as time limits, competent jurisdiction, limits of liability and compensation.

This Part provides that the Athens Convention, the Bunkers Convention, the Fund Convention, the Limitation of Liability Convention, the Liability Convention, and the Wreck Removal Convention have the force of law in the Islands and in relation to Cayman Islands ships.

This Part also provides for the determination of liability for oil pollution by certain ships, liability for pollution from bunker oil, and liability for oil pollution by tankers and for exceptions to such liability.

No liability shall be incurred by a defendant in the case of oil pollution by reason of a discharge or escape of oil or bunker oil from a ship, or of a relevant threat of contamination, if the defendant proves that the discharge or escape or the relevant threat of contamination —

- (a) resulted from an act of war, hostilities, civil war, insurrection or an exceptional, inevitable and irresistible natural phenomenon;
- (b) was due wholly to anything done or omitted to be done by another person, not being a servant or agent of the defendant, with intent to do damage; or
- (c) was due wholly to the negligence or wrongful act of a government or other authority in exercising its function of maintaining lights or other navigational aids for the maintenance of which it was responsible.

This Part also provides for the extinguishment of claims in respect of liability for oil pollution by certain ships, liability for pollution from bunker oil, and liability for oil pollution by tankers if the action is commenced three years from the date when the damage or relevant threat of contamination occurred or six years from the date of the incident which caused the damage or relevant threat of contamination.

Further, this Part empowers the Cabinet to make such regulations as may appear to it to be necessary to give effect to the Conventions and Protocols in this Part and also relating to the Islands, Cayman Islands ships, or foreign ships.

This Part also stipulates that shipowners and salvors may limit their liabilities in respect of certain maritime claims, including claims in respect of loss of life or personal injury or loss of or damage to property, claims in respect of the removal or destruction of a ship which is wrecked or stranded and claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship.

However, limitation of liability shall not apply to certain other claims, including claims for salvage, claims by servants of the shipowner or salvor whose duties are connected with the ship or the salvage operations, claims for oil pollution damage in respect of any liability incurred and claims against a shipowner of a nuclear ship for nuclear damage.

Further, a person liable shall not be entitled to limit the person's liability if it is proved that the loss resulted from the person's personal act or omission, committed with the intent to cause such loss, or committed recklessly and with knowledge that such loss would probably result.

In relation to liability for wreck removal, this Part provides that the Cabinet may make such regulations as may appear to it to be necessary to give effect to the Wreck Removal Convention and in relation to wrecks generally.

With respect to the liability of a carrier for the carriage of passengers and luggage by sea, this Part provides that a carrier is liable for the damage suffered as a result of the death of or personal injury to a passenger and the loss of or damage to luggage if the incident which caused the damage so suffered occurred in the course of the carriage and was due to the fault or neglect of the carrier or of the servants or agents of the carrier acting within the scope of their employment. However, the limits of liability of a carrier for death or personal injury shall not exceed the amount determined in paragraph 1 of Article 7 of the Athens Convention. The limits of liability of the carrier for loss of or damage to luggage shall not exceed the amounts determined in article 8 of the Athens Convention.

Finally, this Part provides for the International Oil Compensation Fund ("the Fund"), the purpose of which is to provide for compensation in respect of pollution damage in the territory of the Islands if the person suffering the damage has been unable to obtain full compensation under the legislation. The Fund also provides compensation in respect of pollution damage in the territory of a Fund Convention country if the incident has caused pollution damage in the territory of the Islands and of another Fund Convention country, and proceedings under the Liability Convention for compensation for the pollution damage have been brought in a country which is not a Fund Convention country or in the Islands.

As it relates to contributions to the Fund, in the case of oil which is being imported into the Islands, the importer is liable to pay such contributions in respect of oil carried by sea to ports or terminal installations in the Islands otherwise than on a voyage only within its national waters. In other cases, the person who is liable to pay such contributions is the person by whom the oil is received.

Under this Part, the Director is empowered to, by notice, require a person engaged in producing, treating, distributing or transporting oil to furnish such information as may be specified in the notice for the purpose of transmitting to the Fund the names and addresses of the persons who are liable to make contributions to the Fund. A person who refuses to comply with such a notice commits an offence and is liable on summary conviction to a fine of four

thousand dollars, and on conviction on indictment, to a fine of fifteen thousand dollars or to imprisonment for twelve months, or to both.

## **PART 15 - MARITIME SECURITY**

Part 15 deals with maritime security under the United Nations Convention on the Law of the Sea 1982.

This Part provides for the offences of piracy, armed robbery, hijacking of ships, the seizing or exercising control of fixed platforms, the destruction of ships or fixed platforms or endangering the safety of such ships or platforms, and any other acts endangering or likely to endanger safe navigation.

Further, this Part provides that a person commits an offence if —

(a) in order to compel any other person to do or abstain from doing any act, the person threatens that the person or some other person will do in relation to any ship or fixed platform an act which constitutes the offence of destroying a ship or a fixed platform or endangering the safety of the ship or the platform; and

(b) the making of that threat is likely to endanger the safe navigation of the ship or the safety of the fixed platform.

A person who commits any of the aforementioned offences under this Part is liable on conviction on indictment to imprisonment for life.

## **PART 16 - ENFORCEMENT OFFICERS AND POWERS**

Part 16 deals with enforcement officers, particularly surveyors and inspectors, and the powers of enforcement officers.

Both surveyors and inspectors are appointed by the Chief Executive Officer and may be appointed either generally or for any particular case or purpose.

A surveyor of ships may, at all reasonable times, go on board a ship and inspect that ship, or anything on that ship, for the purposes of —

(a) determining that the legislation is complied with;

(b) conducting any inspection and survey required by the legislation; or

(c) determining that the terms of any approval, licence, consent, direction or exemption given by virtue of the legislation are complied with.

An inspector may, at all reasonable times —

(a) enter any premises in the Islands; or

(b) board any Cayman Islands ship wherever it may be and any other ship which is present in the Islands or in Cayman Islands waters,

for the purpose of reporting to the Chief Executive Officer on certain matters, including whether the legislation has been complied with and upon the nature and causes of any damage which a ship has sustained, and for the purposes of determining whether an improvement notice or a prohibition notice should be served.

This Part also provides that where a person intentionally obstructs a surveyor or an inspector in the exercise of his or her powers, the person commits an offence and is liable on summary conviction to a fine of ten thousand dollars or on conviction on indictment to a fine of twenty thousand dollars or to imprisonment for a term of one year, or to both.

Further, this Part provides for improvement notices, prohibition notices and detention orders, the content of each document, the circumstances in which each of these may be served on a person, and offences for failing to comply with a requirement or direction which is imposed under any such notice or order.

Finally, this Part provides that questions related to the reasons or matters specified in an improvement notice, a prohibition notice or a detention order shall, if the person on whom a notice was served, or the owner of a detained ship, so requires, be referred to a single arbitrator appointed by agreement between the parties for that question to be decided by the arbitrator. Subsequent to this, where an arbitrator decides that any reason or matter did not constitute a reasonable basis for the officer's opinion, and it appears to the arbitrator that there were no reasonable grounds for the officer to form that opinion, the arbitrator may award the party requiring arbitration such compensation in respect of any loss suffered by the party in consequence of the service of the prohibition notice or issue of the detention order as the arbitrator thinks fit.

## **PART 17 - INVESTIGATIONS AND INQUIRIES INTO MARINE CASUALTIES**

Part 17 provides for investigations into marine or shipping casualties, such as the loss or presumed loss, stranding, grounding, abandonment of, or damage to, a ship; a loss of life or serious injury to any person, caused by fire on board, or by any accident to a ship or ship's boat, or by any accident occurring on board a ship or ship's boat; and any damage caused by a ship.

This Part also provides for the constitution of the Board where a formal inquiry into a marine or shipping casualty as aforementioned is held and the related rules relating to inquiries and investigations, especially where the inquiry relates to a report of death or injury.

This Part also ensures that there is due process as provision is made for a rehearing as well as an appeal process to the Court.

## **PART 18 - LEGAL PROCEEDINGS**

Part 18 deals with legal proceedings and related matters, including the prosecution of offences, matters related to jurisdiction, the enforcement of the detention of a ship and special evidentiary provisions.

This Part provides for the time limit for summary offences and the time limit for the enforcement of orders for the payment of money in proceedings before a summary court.

This Part also provides that, for the purpose of conferring jurisdiction, any offence under this legislation shall be deemed to have been committed in any place in the Islands where the offender may be for the time being. For the same purpose, any matter of complaint under this legislation shall be deemed to have arisen in any place in the Islands where the person complained against may be for the time being.

In relation to enforcing the detention of a ship, this Part provides that where, under this legislation, a ship is to be detained, a customs and border control officer shall, and where under this legislation a ship may be detained, a customs and border control officer may, refuse to clear the ship outwards.

As it relates to special evidentiary proceedings, this Part provides that if the evidence of any person is required in the course of any legal proceeding before a judge or magistrate in relation to the subject matter of the proceedings and it is proved that that person cannot be found in the Islands, any deposition that person may have previously made at a place outside the Islands in relation to the same subject matter shall be admissible in evidence in those proceedings.

This Part also provides that a certificate issued under regulations made under the legislation, the official log book of a ship, lists of crews and certain returns or reports are all admissible in evidence and, when in the custody of the Chief Executive Officer, open to public inspection.

Finally, this Part provides that service of documents shall be effected by delivering it to the person, by leaving it at the person's proper address, or by sending it by post to the person at the person's proper address.

## **PART 19 - SUPPLEMENTAL**

Part 19 deals with miscellaneous supplemental matters, including matters related to the administration of the legislation, financial provisions, a general regulation-making power, the making of shipping notices, the application of the Act to certain descriptions of ships, the repeal of the Merchant Shipping Act (2021 Revision) and the Wreck and Salvage Act (1996 Revision), and the application of United Kingdom legislation.

As it relates to the administration of the legislation, the Minister with responsibility for merchant shipping and seafarers has the general superintendence of all matters relating to merchant shipping and seafarers and is authorised to carry into execution the provisions of this and all legislation relating to merchant shipping and seafarers, except where those provisions concern revenue, the Port Authority or the Director of Ports.

Where the provision of the legislation concerns revenue, the Minister of Finance shall administer that provision. The Minister with responsibility for the Port Authority shall administer provisions of the legislation concerning the Port Authority and the Director of Ports.

This Part also provides for the making of regulations by the Cabinet to prescribe fees to be charged under the legislation. Further, it provides that certain expenses shall be payable out of money provided by the Parliament. These include expenses incurred by the Receiver of the Wreck and such expenses as the Cabinet directs for establishing and maintaining on the coasts of the Islands proper lifeboats with the necessary crews and equipment and affording assistance towards the preservation of life and property in cases of shipwreck and distress at sea.

The Cabinet is empowered under this Part to make regulations making such provisions as it considers appropriate in relation to or arising out of matters in this legislation, or to give effect to any provisions of an international agreement relating to merchant shipping or seafarers adopted by the United Kingdom and as extended to the Islands.

The Chief Executive Officer, with the approval of the Minister, is also empowered under this Part to make Cayman Islands Shipping Notices in relation to or arising out of matters to give effect to any provisions of an international agreement relating to merchant shipping or seafarers adopted by the United Kingdom and extended to the Islands which are not otherwise prescribed by this legislation.

Further, this Part provides for the application of the legislation to non-Cayman Islands ships, Government ships, ships chartered by demise to the Government and to certain structures.

As it relates to the application of United Kingdom legislation, this Part provides that the Cabinet may, after consultation with the Secretary of State for Transport of the United Kingdom, by Order, apply to the Islands as part of the law of the Islands, subject to such exceptions, adaptations and modifications as may be specified in the Order, any legislation of the United Kingdom to which this section applies. It should also be noted that that any regulations made under this legislation shall be made after notification of the regulation is given to the Secretary of State for Transport of the United Kingdom.

The Schedule deals with the Instruments and documents for which forms are to be prescribed.