

BERMUDA STATUTORY INSTRUMENT

BR 29/1984

**MERCHANT SHIPPING (FORMAL INVESTIGATIONS AND
INQUIRIES) RULES 1984**

*[made under section 27 of the Merchant Shipping Act 1979 [title 31 item 16]
and brought into operation on 6 April 1984]*

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PART I

Preliminary

Citation

1 These Rules may be cited as the Merchant Shipping (Formal Investigations and Inquiries) Rules 1984.

Interpretation

2 In these Rules unless the context otherwise requires—

"the Act" means the Merchant Shipping Act 1979 [*title 31 item 16*];

"formal investigation" means an investigation into a shipping casualty under section 50 of the Act;

"officer" means an officer qualified for the purposes of section 41 of the Act;

"re-hearing" means a re-hearing of a formal investigation under section 53 of the Act.

Investigations to which these Rules apply

3 These Rules apply to a formal investigation, and to re-hearing of a formal investigation which is not held by the Supreme Court under section 53 of the Act.

PART II

Formal Investigations

Formal investigations

4 (1) Where it appears to the Minister that a formal investigation should be held into the circumstances or cause of, or into any particular matter related to, a shipping casualty or incident capable of causing a casualty, he may direct that a formal investigation be held and conducted in accordance with these Rules by a tribunal comprised of a person appointed by him and assisted by one or more assessors also appointed by him.

(2) Where the tribunal comprises more than one person the person first referred to in paragraph (1) shall be the chairman.

Notice; parties

5 (1) Where the Minister has caused a formal investigation to be held, he shall cause a notice, called a Notice of Investigation, to be served

on any person, who, in the opinion of the Minister ought to be made a party to the proceedings; and any such person upon whom a Notice of Investigation has been served, shall be a party to the formal investigation. The Minister shall be a party to the formal investigation.

(2) The Notice of Investigation shall contain a statement of questions which, on the information then in the possession of the Minister, he intends to raise at the formal investigation and he may by subsequent notice amend, add to or omit any of the questions specified in the Notice of Investigation.

(3) If at any time during the preparation for the formal investigation it seems likely that at the formal investigation the conduct of any person will be in issue, the Minister shall cause that person to be notified to that effect at his last known address.

(4) The Minister shall cause every party to the formal investigation to be notified of the time and place appointed for the formal investigation.

(5) A notice under this rule shall be of a reasonable time having regard to all the circumstances.

Other parties

6 Any other person, not being a person who is already a party to the formal investigation by virtue of rule 5 (1) of these Rules, may, at any time prior to or during the formal investigation apply to the chairman to be made a party.

Evidence; procedure

7 (1) Without prejudice to the admission of documents as secondary evidence allowed by statute or otherwise, affidavits, depositions, statutory declarations and other written evidence shall, unless the chairman considers it unjust, be accepted as evidence at the formal investigation.

(2) At the time and place appointed for holding the formal investigation the chairman may proceed with the formal investigation whether the parties, upon whom a Notice of Investigation has been served, or a person who has applied to become a party, or any of them, are present or not.

(3) The formal investigation shall be open to the public except that where the chairman is of the opinion that in the interest of justice or for other good and sufficient reason in the public interest, any part of the evidence, or any argument relating thereto, should be heard in private.

(4) The formal investigation shall commence with the production and examination on behalf of the Minister of all witnesses and evidence. The Minister shall then cause to be stated the questions in

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reference to the casualty or incident capable of causing a casualty and to the conduct of persons connected with the casualty or incident upon which the opinion of the tribunal is desired; and, as far as possible, the questions shall be confined to those on which the opinion of the tribunal is required. In framing the questions for the opinion of the tribunal the Minister may make such modifications in, additions to, or omissions from, the questions in the Notice of Investigation or subsequent notices referred to in rule 5 (2) as, having regard to the evidence which has been given, the Minister may think fit.

(5) Any other party to the formal investigation shall be entitled to make an opening statement, to give evidence, to call witnesses, to cross-examine any witness called by any other party and to address the tribunal in such order as the chairman may direct.

(6) Every formal investigation shall be conducted in such a manner that if criticism is made against any person, that person shall have an opportunity of making his defence either in person or otherwise.

(7) Any of the parties who desires so to do may, after completion of the taking of evidence, address the tribunal upon the evidence and the Minister or his representative may address the tribunal in reply upon the whole case. After this address in reply upon the whole case, an officer, the cancellation or suspension of whose certificate is in question, may, at the discretion of the tribunal, be permitted or invited to give a final statement as to why in the event of a finding that his conduct caused or contributed to the casualty, his certificate of competency should not be cancelled or suspended, or as to why he should not be censured.

(8) The chairman may adjourn the formal investigation from time to time and from place to place, and where an adjournment is asked for by any party to the formal investigation the chairman may impose such terms as to payment of costs or otherwise as he thinks just as a condition of granting the adjournment.

Powers of tribunal

8 (1) Where the tribunal is satisfied of any of the matters mentioned in section 49(a) to (c) of the Act in relation to the officer whose fitness or conduct is in issue, and if it is a matter mentioned in subparagraph (a) or (b) of that section, is further satisfied that it caused or contributed to the casualty, the tribunal may—

- (a) in the case of an officer issued with any certificate under section 41 of the Act, recommended the cancellation or suspension of the certificate or censure him; or
- (b) in the case of any other officer, censure him.

(2) At the end of the formal investigation the chairman shall —

- (a) in cases where an officer's or seaman's certificate is recommended to be cancelled or suspended, give the decision of the tribunal concerning the certificate and a brief summary of their findings in open court; or
- (b) whether or not a certificate is in issue, make a report on the case to the Minister including his and the assessor's, or assessors' findings as to the reasons for the casualty or as to any particular matter relating thereto or as to the conduct of any person implicated therein, and their joint reasons for recommending the suspension or cancellation of any officer's certificate.

Assessors to sign report

9 Each assessor shall either sign the report with or without reservations, or state in writing his dissent therefrom and his reasons for such dissent, and such reservations or dissent and reasons (if any) shall be forwarded to the Minister with the report. The Minister shall, unless in the interest of justice or otherwise in the public interest there are good reasons to the contrary, cause each party to the formal investigation to be given a copy of the whole or part of the report.

Expenses of witnesses

10 Every person other than a public servant attending as a witness before the tribunal on behalf of the Minister shall be allowed such expenses as would be allowed to a witness attending before the Supreme Court, and in case of dispute as to the amount to be allowed, the same shall be referred to the chairman who may request the Registrar of the Supreme Court to ascertain and certify the proper amount of the expenses.

PART III

Re-hearing and Appeals

Re-hearings

11 (1) Where a formal investigation has been held, the Minister may order the whole or part of the case to be re-heard and shall do so in the circumstances specified in section 53(1)(a) and (b) of the Act.

(2) Any re-hearing under this rule which is not held by the Supreme Court shall be conducted in accordance with Part II of these Rules.

Appeals

12 (1) Where the chairman and the assessor, or assessors, have jointly decided to cancel or suspend the certificate of any person or have

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found any person at fault, then if no application for an order for a re-hearing under rule 11 has been made or such an application has been refused that person or any other person who, having an interest in the formal investigation, has appeared at the hearing and is affected by the decision or finding, may appeal to the Supreme Court.

(2) Any such appeal shall be conducted in accordance with any rules of court made under section 53 of the Act for the purpose of appeals to the Supreme Court.