

THE MARITIME TRANSPORT ACT, NO. 5 OF 2006

RULES FOR MARINE INQUIRY AND FORMAL INVESTIGATION

ARRANGEMENT OF RULES

RULES

TITLE

PART ONE

PRELIMINARY PROVISIONS

1. Short title and commencement
2. Interpretation.
3. Application
4. Purpose of inquiry

PART TWO

**BOARD OF INQUIRY AND THE CONDUCT
OF FORMAL INVESTIGATION**

5. Board of Inquiry
6. Oath for members
7. Terms of References to the Board
8. Proceedings of meeting of the Board

PART THREE

RULES AND PROCEDURES OF THE BOARD

9. Issuing of summons
10. Descriptions of summons

11. Issuing of notice
12. Rules of evidence
13. Preliminary meeting
14. Inquiry shall be open
15. Other procedures
16. Other person wishing to appear

**PART FOUR
PUBLICATION OF FINDINGS AND THE REPORT**

17. Report
18. Results of Marine Inquiry
19. Temporary Suspension order
20. Submission of report

**PART FIVE
MISCELLANEOUS PROVISIONS**

21. Costs of the Inquiry
22. Re-hearing
23. Offences and penalties
24. Immunities

SCHEDULE

THE MARITIME TRANSPORT ACT, NO.5 OF 2006

RULES FOR MARINE INQUIRY AND FORMAL INVESTIGATION
[Made under section 457(1)]

IN EXERCISE of the powers conferred upon me under section 457(1) of the Maritime Transport Act, No. 5 of 2006, **I, DR. SIRA UBWA MWAMBOYA**, Minister responsible for Maritime Transport Affairs, do hereby make Rules for Marine Inquiry and Formal Investigation as follows:

PART ONE
PRELIMINARY PROVISIONS

Short Title and commencement **1.** These Rules may be cited as Zanzibar Marine Inquiry and Formal Investigation Rules of 2018 and shall come into operation after being signed by the Minister and published in Official Gazette.

Interpretation. **2.** In these Rules, unless the context requires otherwise:

“accident” or “casualty” means as described in section 427 of the Act;

“Act” means the Maritime Transport Act, No. 5 of 2006;

“Authority” means the Zanzibar Maritime Authority;

“Board” means the Marine Board of Inquiry as may be established under rule 5(1) of these Rules;

“Chairman” means the Chairman of the Board of Inquiry as may be appointed under rule 5(1) of these Rules;

“formal investigation” has the means assigned to it under section 455 of the Act;

“Marine Inquiry” means an inquiry into a marine incident or casualty ordered by the Minister to ascertain the whole truth of the events leading up to and the causes of a marine incident or casualty in order to avoid future occurrences, and if so needed, to assign the fault or liability to a person to whom the fault or

causes lies against;

“Minister” means the Minister responsible for maritime affairs.

Application

3. These Rules shall apply to any Marine Inquiry and to any rehearing of such inquiry conducted in accordance with section 456 of the Act, with respect to casualties or accidents involving or occurring on board:

- (a) any vessel registered in Tanzania Zanzibar; or
- (b) any other vessel which the accident or casualty occurred within the Zanzibar territorial water.

Purpose of inquiry

4.-(1) The fundamental purpose of inquiry under these Rules is to conduct a detailed formal investigation of a marine incident or casualty in a public forum by means of reviewing of all relevant documentation and interviews of witnesses and taking oral testimony of witnesses under oath, with a view to ascertaining the underlying causes of the incident or casualty and preventing future occurrences.

(2) Whilst the purpose of inquiry is not to determine fault, it is to determine in a legal sense whether the law has been followed, and is to be distinguished from a prosecution although the Board may recommend to the appropriate authority a legal or administrative actions to be taken against any officer or seafarer.

PART TWO BOARD OF INQUIRY AND THE CONDUCT OF FORMAL INVESTIGATION

Board of Inquiry

5.-(1) Where a ship accident or casualty occurred, the Minister shall appoint a Judge of the High Court and not more than five persons to constitute a Board of Inquiry to inquire and investigate on such accident or casualty.

(2) A person may be eligible to be appointed as a member of the Board if he:

- (a) has possess a requisite skills and knowledge in maritime matters;
- (b) has a considerable shipboard experience and are knowledgeable on the operation of vessels; or
- (c) has a knowledge of national and international Rules and Regulations governing vessel safety, prevention of marine pollution and minimum standards of seamen's employment and

welfare.

(3) The Minister shall appoint a qualified lawyer to be the Secretary to the Board.

(4) In order to facilitate the functions of the Board, the Authority shall provide the secretarial services to the Board.

Oath for members

6. All members shall, before assuming their responsibilities, take and prescribed an oath of exercising right and integrity as prescribed in first schedule to these Rules.

Terms of References to the Board

7.-(1) The Minister shall prepare and give terms of references to the Board.

- (2) The terms of references shall among other things provide for:
- (a) general and specific functions to be performed by the Board;
 - (b) time frame;
 - (c) rules of proceedings of meetings of the Board; and
 - (d) any other thing which may be necessary to be provided for the Board to perform its functions effective and efficiently.

Proceedings of meeting of the Board

8. The Board shall decide the manner in which the proceedings of meeting be conducted if not otherwise specified in the terms of references.

(2) Without prejudice sub rule (1) of this rule, the Board shall consider the common rules and practices of conducting formal proceedings of meeting.

PART THREE RULES AND PROCEDURES OF THE BOARD

Issuing of summons

9.-(1) In the course of conducting enquiry, the Board may summon any person to give information relating to the accident or casualty under investigation.

(2) Any person to whom the summons issued to him, shall appear before the Board on time specified in the summons.

(3) The summons shall specify date, time and place in which the person is required to appear.

(4) Any person to whom the summons issued to him, without any justifiable reason, refused to appear before the Board, commits an offence and upon convictions shall be liable to fine of not less than three hundred thousand shillings or imprisonment for a term of not less than one month or to both such a fine and imprisonment.

Descriptions
of summons

10.-(1) The descriptions of summons shall be as prescribed in the schedule to these Rules.

(2) The Board may add or remove any description of the summons to save a specific situation when the need arise so to do.

Issuing of
notice

11.-(1) If at any time during the preparation for the inquiry it appears likely to the Board that the conduct of any person will be in issue, the Secretary shall serve notice on that person not less than seven days prior to the date of the inquiry, stating the date, time and place, requiring that person to attend.

(2) A person to whom notice has been issued against him under sub rule (1) of this rule, shall be required to appear in person or by his advocate before the Board and answer all questions or allegations against him.

(3) The notice shall contain:

(a) a statement of the facts giving rise to the inquiry; and

(b) a statement of possible questions which the Board may raise during the hearing.

(4) At any time before or during the inquiry, the Board may amend, add to or omit any of the questions contained in the notice.

(5) Service of notice issued under this rule may be effected either personally or by person's last known resident address.

Rules of
evidence

12.-(1) The rules of evidence including but not limited to, rules relating to examination of witnesses, shall be used in the course of proceedings before the Board.

(2) All documents including affidavits (if any), shall be admitted as evidence at the inquiry, provided it is pertinent to the inquiry and is not

contrary to the rules of natural justice.

Preliminary
meeting

13.-(1) At any time before the date set for the commencement of the inquiry, the Chairman may hold a preliminary meeting, at which any direction may be given or any preliminary or interlocutory order as to the procedure may be made.

(2) At the time and place stipulated in the notice for the commencement of the inquiry, the Chairman may proceed with the inquiry whether or not the parties upon whom the notice has been served are present, provided that the Board is satisfied that all persons required by notice to appear have been properly served in accordance with these Rules.

Inquiry shall
be open

14. The proceedings of the inquiry shall be open to the public, except where the Board is of the opinion that it is contrary to the public interest to do so.

Other
procedures

15.-(1) Where it is likely during the course of any inquiry or investigation that the conduct of a person will be called into question or it is likely that a person will be adversely affected by a decision of the inquiry or investigation, the Board shall give that person at least 72 hours' notice of the place, day and hour of the inquiry and furnish that person with:

- (a) a copy of the report of any preliminary investigation in relation thereto; or
- (b) in any other case, a statement of the case on which the inquiry was so ordered.

(2) Every person whose conduct is likely to be questioned during the course of an inquiry or investigation, or who is likely to be adversely affected by the decision of the inquiry or investigation is entitled to:

- (a) attend the inquiry personally and to be represented by advocate;
- (b) be sworn and give evidence before the inquiry;
- (c) summon and call witnesses;
- (d) examine, cross-examine and re-examine all witnesses in accordance with rules of procedure and evidence; and
- (e) address the inquiry, either at the conclusion or at any other proper time.

Other person
wishing to
appear

16. Any person wishing to appear and present evidence before the Board in the course of inquiry may, with the leave of the Chairman, appear and present that evidence in the manner prescribed in rule 10 of these Rules.

PART FOUR PUBLICATION OF FINDINGS AND THE REPORT

Report

17.-(1) The Board shall prepare a report and each member of the Board shall sign the report, with or without reservations.

(2) The report shall contain the findings as to the reasons for the marine casualty or incident or as to any particular matter relating thereto, or as to the conduct or any person involved.

(3) A member may dissent in writing from any report of the Board and a recommendation shall be made on the majority decision of the members.

(4) The report of the Board shall remain to be confidential, unless in the interests of justice or otherwise in the public interest there are good reasons to the contrary, cause the report to be open to public.

Results of
Marine
Inquiry

17. At the end of the inquiry the Board shall make its recommendations as to what legal or administrative actions to be taken by an appropriate authority against any person to whom the findings of the Boards discovers that, he directly or indirectly involved or facilitate upon the causation of the accident.

Temporary
Suspension
order

18.-(1) Where it appears to the Board to be necessary or desirable to do so, may order the suspension order to any seafarer or officer pending the outcome of the inquiry or investigation.

(2) Where as the result of an inquiry or investigation the Board determined that a seafarer or officer had been suspended was not unfit to discharge his duties because of incompetence, misconduct or for any other reason, or has not been seriously negligent in the discharge of his duties, the Board may recommend to the appropriate authority further action be taken as soon as practicable against that seafarer or officer as the case may be.

(3) The Board shall not recommend the cancellation or suspension of the certificate of any master or qualified seafarer, unless a statement of the reasons for the decision has been furnished to the master or seafarer holding the certificate, and where practicable, the master or qualified seafarer has had an opportunity to respond.

Submission
of report

20.-(1) The Board shall, after preparing a report, submit to the Minister, at least five copies of such a report.

(2) For the purpose of this rule, report may include all annexures and other documents used or related to the inquiry.

(3) The Minister shall, after having received a report, take all the necessary actions as per recommendations of the Board.

PART FIVE MISCELLANEOUS PROVISIONS

Costs of the
Inquiry

21.-(1) The Board may make an order in respect of the costs and expenses of the Inquiry or any part thereof, to be paid by a person, it shall state in its report the reasons for making such an order.

Rehearing

22. Any rehearing of an inquiry as may be ordered by the Minister to be held, shall be conducted in accordance with the provisions of these Rules.

Offences and
penalties

23.-(1) Where an inquiry or investigation is held, a person who:

- (a) hinder or obstruct the Board;
- (b) mis-lead or refused to answer any question put to him by the any member of the Board; or
- (c) fail to produce any document or certificate in his possession or under his control when requested to do so by any such person,

commits an offence and shall be liable upon conviction to a fine of not less than one hundred thousand shillings or imprisonment for a term of not less than three months or to both such fines and imprisonment.

Immunities

24. The members of the Board shall not be held liable for any act, matter or thing done in good faith in the execution of the functions of the Board.

SCHEDULE

OATH FOR MEMBERS OF THE BOARD

[Made under rule 6]

I, having been appointed as Chairperson/Member of the Board of Marine Inquiry, do hereby affirm and states that, I will perform my duties faithfully with high integrity in accordance with the law and good practice subject to my knowledge and understanding.

Therefore, I hereby declare that, I will not disclose any information which comes to my knowledge as a Chairperson/ Member of the Board, to any person or institution as contrary to the laws.

MADE on Zanzibar this day of, 20.....

.....

Minister

.....

Chairperson/Member

SUMMONS
[Made under rule 10]

To:
[Name, descriptions and place of residence]

WHEREAS, you are hereby summoned to appear before the Marine Inquiry Board in person or by an advocate duly instructed, and able to answer all material questions relating to the inquiry, or who shall be accompanied by some person able to answer all such questions on the day of20....., at o'clock in the noon.

You must be prepared to produce on that day all the witnesses and documents upon which you intend to rely in support of your defence.

Take notice that, in default of your appearance on the day before mentioned, the inquiry will be heard and any order may be made in your absence.

GIVEN under the hand and the Seal of the Board, this day of, 20.....

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Chairperson

SIGNED on this 12 day of February, 2019

(DR. SIRA UBWA MAMBOYA)
MINISTER OF INFRASTRUCTURE, COMMUNICATION
AND
TRANSPORTATION