

CAYMAN ISLANDS



Merchant Shipping Law

MERCHANT SHIPPING (WRECK REMOVAL CONVENTION) REGULATIONS, 2017

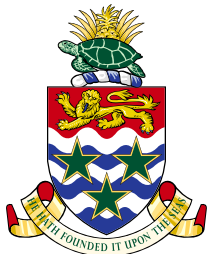
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CAYMAN ISLANDS**Merchant Shipping Law****MERCHANT SHIPPING (WRECK REMOVAL
CONVENTION) REGULATIONS, 2017****(SL 3 of 2017)**

The Cabinet, in exercise of the powers conferred by section 463 of the Merchant Shipping Law (2016 Revision) makes the following Regulations —

PART 1 - PRELIMINARY**Citation and commencement**

1. (1) These Regulations may be cited as the Merchant Shipping (Wreck Removal Convention) Regulations, 2017.
- (2) Regulations 10, 11, 12, 15 and 16(c) and (d) come into force on 20th February 2017.

Interpretation

2. (1) In these Regulations —
 - “**accident**” means a collision of ships, a stranding, another incident of navigation or another event, whether on board ship or not, resulting in material damage, or an imminent threat of material damage, to a ship or its cargo;
 - “**authorised person**” means —
 - (a) a person authorised by the CEO to carry out inspections and audits for these Regulations; and
 - (b) a surveyor of ships appointed under section 419 of the Law;



“**Cayman convention area**” means Cayman Islands ports, Cayman Islands waters and the area up to twenty-five nautical miles seaward from the baselines under the Cayman Islands (Territorial Sea) Order 1989 [U.K. S.I. 1989/2397];

“**convention**” means the Nairobi International Convention on the Removal of Wrecks, 2007, done in Nairobi on 18th May 2007 that came into force on 14th April 2015;

“**convention country**” means a State or territory that is a party to the convention;

“**convention insurance certificate**”, for a ship, means a certificate issued under the convention attesting that the ship has wreck removal insurance;

“**CEO**” means Chief Executive Officer appointed under section 9(1) of the *Maritime Authority Law (2013 Revision)*;

“**non-Cayman Islands ship**” is defined in section 227(1) of the Law;

“**notice**” means a notice in writing;

“**Receiver**” means the Receiver of Wreck appointed under section 274 of the Law; and

“**wreck removal insurance**” means a contract of insurance or other security satisfying the requirements of article 12 (compulsory insurance or other financial security).

- (2) A term used in these Regulations that is not defined in the Law or paragraph (1) has the same meaning that it has in the convention.
- (3) A reference in these Regulations to a numbered article or a paragraph and an article is a reference to the convention article, or paragraph and article, of that number or numbers.

Ships to which Regulations apply

3. (1) These Regulations only apply to ships as follows —
 - (a) Cayman Islands ships anywhere in the world;
 - (b) non-Cayman Islands ships in the Cayman convention area; and
 - (c) ships involved in an accident as a result of which either or both of them, or anything from them, has become a wreck in the Cayman convention area.
- (2) However, these Regulations apply to a ship owned or operated by a State mentioned in paragraph 2 of article 4 (exclusions) only if the ship is the subject of a notice under paragraph 3 of that article.



PART 2 - REPORTING, MARKING AND REMOVING

Wreck reporting requirement

4. (1) If an accident results in a wreck in a convention area and any ship to which these Regulations apply was involved in the accident, the master and the operator of the ship shall report the wreck without delay to —
- (a) if the wreck is in the Cayman convention area, the Minister; or
 - (b) otherwise, the State or territory government for the convention area where the wreck is in.
- (2) The report must include the information mentioned in paragraph 2 of article 5 (reporting wrecks).
- (3) If the ship's master makes the report, the report is taken to have been made by the operator of the ship as well, and *vice versa*.

Locating and marking wrecks

5. (1) This regulation applies if an accident results in a wreck in the Cayman convention area.
- (2) The Minister shall ensure the obligations under articles 7 (locating wrecks) and 8 (marking of wrecks) are complied with in relation to the Cayman convention area.
- (3) For that purpose, the Minister may direct the Receiver to take stated steps relating to the wreck, including, for example, a step mentioned in section 292 of the Law.
- (4) The direction shall be written, or, if it is not reasonably practicable for the direction to be written, confirmed in writing as soon as reasonably practicable.
- (5) The Receiver shall comply with the direction.

Removal by registered owner

6. (1) This regulation applies if a ship has been involved in an accident as a result of which the ship, or anything from it, has become a wreck in the Cayman convention area.
- (2) The Minister may determine whether or not the wreck poses a hazard, after taking into account the criteria under article 6 (determination of hazard).
- (3) If the Minister determines the wreck poses a hazard, the Minister shall take all reasonable steps to give the ship's registered owner a notice (the "removal notice") requiring the owner to comply with paragraphs 2 and 3 of article 9 (measures to facilitate the removal of wrecks).
- (4) The removal notice shall state —

- (a) the deadline set under paragraph 6(a) of article 9 to remove the wreck; and
 - (b) the matters of which paragraph 6(b) and (c) of article 9 requires the registered owner to be informed.
- (5) The Minister may impose conditions on the removal as mentioned in paragraph 4 of article 9 by including them in the removal notice or in a later notice given to the registered owner before removal of the wreck commences.
- (6) The registered owner shall comply with the removal notice and any conditions imposed under paragraph (5).

Ministerial removal power

7. (1) The Minister may remove a wreck in the Cayman convention area in the circumstances set out in paragraph 7 or 8 of article 9.
- (2) Alternatively, the Minister may direct the Receiver to carry out the removal.
- (3) The direction shall be written, or, if it is not reasonably practicable for the direction be written, confirmed in writing as soon as reasonably practicable.
- (4) The Receiver shall comply with the direction.

Liability for costs

8. (1) This regulation applies if —
- (a) a ship has been involved in an accident as a result of which it, or anything from it, has become a wreck in the Cayman convention area; and
 - (b) costs have been incurred in complying with regulations 5 and 7.
- (2) The person who incurred the costs is entitled to recover them from the ship's registered owner in a proceeding, unless the owner proves that an exception set out in paragraph 1 (a), (b) or (c) of Article 10 applies.
- (3) The owner would not be liable for costs under this regulation if or to the extent that liability would conflict with —
- (a) a convention listed in paragraph 1 of Article 11 (exceptions to liability); or
 - (b) an enactment implementing such a convention.
- (4) If the registered owner of each of two or more ships is liable for costs under this regulation, but the costs for which each is liable cannot reasonably be separated, the registered owners shall be jointly liable for the total costs.
- (5) This regulation does not prevent the exercise of the right (if any) to limit liability by virtue of section 396 of the Law.



Limitation period

- 9.** A proceeding under regulation 8(2) about a wreck cannot be brought after the end of the earlier of the following periods to end —
- (a) 3 years from the giving of a removal notice under regulation 6(3) for the wreck; or
 - (b) 6 years from the accident that resulted in the wreck.

PART 3 - INSURANCE**Insurance requirements**

- 10.** (1) This regulation applies to a ship of 300 gross tonnage or more as determined under Annex I to the Tonnage Convention.
- (2) If the ship is a Cayman Islands ship, the master and the operator of the ship shall ensure it does not enter or leave any port in the world and that nobody attempts to navigate it to do so, unless —
- (a) the ship has wreck removal insurance; and
 - (b) the CEO has issued a convention insurance certificate for the ship.
- (3) If the ship is a non-Cayman Islands ship, the master and the operator of the ship shall ensure it does not enter or leave a port in the Islands and that nobody attempts to navigate it do so, unless —
- (a) the ship has wreck removal insurance; and
 - (b) the following has issued a convention insurance certificate for the ship —
 - (i) if the ship is registered in another convention country, that country's government or another body acting under its authority; or
 - (ii) for any other ship, the CEO, a convention country or another body acting under a convention country's authority.

Power to detain ship without insurance or certificate

- 11.** An authorised person may detain a ship if anyone attempts to navigate it out of a port in contravention of regulation 10, but the authorised person shall not in the exercise of that power detain or delay the ship unreasonably.

Requirement to produce certificate

- 12.** (1) This regulation applies to a ship that, under regulation 10, is required to have a convention insurance certificate before entering or leaving a port in the Islands.
- (2) The ship's master shall —

- (a) ensure the certificate is carried on board the ship; and
- (b) if an authorised person or the Receiver asks for the certificate, produce it.

Obtaining certificate

- 13.** (1) This regulation applies if a ship's registered owner applies to the CEO for a convention insurance certificate about —
- (a) a Cayman Islands ship; or
 - (b) a non-Cayman Islands ship not registered in a convention country.
- (2) For a Cayman Islands ship, the CEO shall issue the certificate if satisfied —
- (a) the ship has wreck removal insurance in force for the period to which the certificate will relate; and
 - (b) the obligations of the person providing the insurance will be met.
- (3) For a non-Cayman Islands ship, the CEO may, but need not, issue the certificate if satisfied of the matters in paragraph (2).

Power to cancel certificate

- 14.** (1) The CEO may cancel a convention insurance certificate issued by the CEO for a ship if the CEO has reason to believe the certificate was issued on false or incorrect information.
- (2) The CEO may, by notice to the ship's registered owner, require the certificate to be surrendered as soon as reasonably practicable considering the ship's location.
- (3) The registered owner shall comply with the requirement.

Third parties' rights against insurers

- 15.** (1) This regulation applies if —
- (a) a ship has been involved in an accident as a result of which it, or anything from it, has become a wreck in the Cayman convention area;
 - (b) at the time of the accident the ship had wreck removal insurance; and
 - (c) there is a convention insurance certificate in relation to the insurance.
- (2) A person who is entitled to recover costs from the ship's registered owner under regulation 8 may recover them from the insurer in a proceeding.
- (3) It is a defence for the insurer to prove that the accident was caused by the wilful misconduct of the ship's registered owner.
- (4) The insurer may also rely on any defences available to the registered owner (including regulation 9).
- (5) The insurer may limit liability in respect of claims made under this regulation to the same extent as the registered owner may limit liability by virtue of



section 396 of the Law, or would be able to limit liability under that section were it not for section 396(3) of the Law.

- (6) But an insurer may limit liability whether or not the accident is caused by an act or omission mentioned in section 399 of the Law.

PART 4 - MISCELLANEOUS

Offence for certain contraventions

- 16.** (1) A person who contravenes a provision of these Regulations as follows commits an offence and is liable to a fine of \$55,000 or to imprisonment for a term of 12 months, or both —
- (a) regulation 4(1) or (2) (wreck reporting requirement);
 - (b) regulation 6(6) (removal by registered owner);
 - (c) regulation 10(2) or (3) (insurance requirements);
 - (d) regulation 12(2) (requirement to produce certificate); or
 - (e) regulation 14(3) (power to cancel certificate).
- (2) Paragraph (1) applies despite sections 6(2) and 8 of the *Criminal Procedure Code (2014 Revision)*.

Defences

- 17.** It is a defence for a person charged with an offence against regulation 16 to prove that —
- (a) the offence was committed without the person's knowledge; or
 - (b) the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Electronic notices

- 18.** (1) This regulation applies for a notice that may, under these Regulations, be given to a ship's registered owner by the Minister or the CEO.
- (2) The notice may be given to the owner by sending it electronically to an electronic address if any of the following persons have, from that address, electronically communicated with the Minister or the CEO for any purpose of the Law or these Regulations —
- (a) the owner;
 - (b) a person who had, or had apparently, been, authorised by the owner to communicate with the Minister or the CEO on the owner's behalf; or
 - (c) the owner's electronic agent as defined under section 2 of the *Electronic Transactions Law (2003 Revision)*.

- (3) However, if there has been more than one such electronic address for a person mentioned in paragraph (2), the notice can only be sent to the one that the person most recently used to so communicate with the Minister or the CEO.
- (4) In this regulation —
“electronic address” includes an email address, an internet protocol (IP) address and the address of a digital mailbox.

Access to hard copy of convention**19.** The CEO shall —

- (a) keep a copy of the convention in the CEO’s office or some other suitable public office, library or repository;
- (b) at that place allow members of the public to inspect it; and
- (c) give to anyone who asks a hard copy of the convention on payment of a reasonable, but no more than the actual, cost of producing and giving the copy.

Saving

- 20.** To avoid doubt, if a person incurs a liability under these Regulations, the liability does not affect a claim, or the enforcement of a claim, that the person may have against anyone else for the liability.

Made in Cabinet the 3rd day of January, 2017.

Kim Bullings
Clerk of the Cabinet.

