



भारत सरकार / GOVERNMENT OF INDIA  
पत्तन, पोत परिवहन और जलमार्ग मंत्रालय  
MINISTRY OF PORTS, SHIPPING AND WATERWAYS

नौवहन महानिदेशालय, मुंबई  
DIRECTORATE GENERAL OF SHIPPING, MUMBAI

**F. No. 23-MISC/2/2025-CREW - DGS (C. No. 32562)**

**Date: 04.11.2025**

**DGS Order No. 10 of 2025**

**Subject: Adoption and Enforcement of "Seafarers' Code of Conduct – Compliance & Enforcement Manual" – Reg.**

The Directorate General of Shipping (DGS), as the national maritime authority under the Merchant Shipping Act, 1958, is mandated to regulate and ensure compliance with maritime safety, seafarer welfare, and shipping conduct standards in accordance with national and international conventions including MLC 2006, SOLAS, MARPOL and STCW, etc.

2. In view of the growing complexity and volume of compliance and enforcement activities, and in order to institutionalize a transparent, consistent, and proportionate approach in dealing with violations and promoting voluntary compliance, the Directorate has developed a comprehensive enforcement framework titled:

**"Seafarers' Code of Conduct – Compliance & Enforcement Manual"**

3. The said Manual outlines:
- 3.1 Principles of enforcement and voluntary compliance.
  - 3.2 Procedures for detection, reporting, investigation, and deterrent actions.
  - 3.3 Enforcement matrix, penalty tables, and sanctions for individuals and companies.
  - 3.4 Model documents include Initial Violation Process Form and Show Cause Notice formats.
  - 3.5 Guidance on treatment of mitigating circumstances, defences, and due process.
4. The Manual shall be applicable to all stakeholders operating under the jurisdiction of the Directorate, including but not limited to seafarers, RPSL companies, Maritime Training Institutes (MTIs), ship owners, managers, and other maritime service providers.
5. This Order shall come into force with effect from 01.01.2026. All concerned officers of the Directorate, including MMDs, Government Shipping offices and Seaman Employment Offices, are directed to implement the enforcement protocols contained in the Manual, while ensuring adherence to the principles of natural justice, transparency, and proportionality.


*[Signature]*  
04/11/25

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6. A copy of the said "Seafarers' Code of Conduct – Compliance & Enforcement Manual" is enclosed herewith for strict compliance.

 04/11/25

(Shyam Jagannathan)  
Director General of Shipping

**Encl.:** *Seafarers' Code of Conduct – Compliance & Enforcement Manual*





**Seafarers' Code of  
Conduct  
Compliance &  
Enforcement  
Manual**

## Seafarers' Code of Conduct Compliance & Enforcement Manual

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## **LIST OF ABBREVIATIONS**

<b>Sl. No.</b>	<b>Abbreviation</b>	<b>Definition</b>
1	DGS	Directorate General of Shipping
2	DG(S)	Director General of Shipping
3	ADDL DG	Additional Director General
4	DDG	Deputy Director General
5	MMD	Mercantile Marine Department
6	RPSL	Recruitment and Placement Services License
7	SWFS	Seafarers' Welfare Fund Society
8	SPFO	Seafarers' Provident Fund Organisation
9	MLC	Maritime Labour Convention
10	MS Act	Merchant Shipping Act
11	INDOS	Indian National Database of Seafarers
12	CDC	Continuous Discharge Certificate
13	BSID	Biometric Seafarer Identity Document
14	SID	Seafarer Identity Document
15	COC	Certificate of Competency
16	COP	Certificate of Proficiency
17	STCW	Standards of Training, Certification and Watchkeeping
18	GRO	Grievance Redressal Officer
19	GSU	Grievance Support Unit
20	MEA	Ministry of External Affairs
21	MoPSW	Ministry of Ports, Shipping and Waterways
22	DO Letter	Demi Official Letter
23	CGRC	Central Grievance Redressal Committee
24	ITF	International Transport Workers' Federation
25	e-Gov	e-Governance System
26	BNSS	Bharatiya Nagarik Suraksha Sanhita, 2023
27	CPO	Case Presenting Officer
28	CO <sub>2</sub>	Carbon Dioxide

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Sl. No.	Abbreviation	Definition
29	D&A	Drug & Alcohol (Policy)
30	NIC	No Investigation Conducted
31	NFA	No Further Action
32	PEME	Pre-Employment Medical Examination
33	QHSE	Quality, Health, Safety & Environment
34	SMS	Safety Management System
35	SOLAS	International Convention for the Safety of Life at Sea
36	UN	United Nations
37	UNGPs	UN Guiding Principles on Business and Human Rights
38	VDR	Voyage Data Recorder
39	VTs	Vessel Traffic Service

## **1. INTRODUCTION**

The Seafarers' Code of Conduct Enforcement Policy and Procedures Manual provides details and guidance to DGS Officers/Investigators about the statutory provisions to be complied with by the industry and the procedure to be followed for their enforcement. In this connection, it is vital to keep in mind the difference between compliance and enforcement. Compliance consists of all regulations and safety standards being met. When compliance exists, there is no need for enforcement. Enforcement is the action necessary when compliance is not present. Enforcement requires legal or administrative action.

Compliance and enforcement actions need to be applied as consistently as possible. However, DGS Officers/Investigators shall consider each case individually to determine an appropriate enforcement action. They should recommend actions that, in their professional judgment, will appropriately serve the purposes of the DGS's safety mandate. It is essential that the DGS's compliance and enforcement programme be conducted in as shipping and equitable a manner as possible through application of consistent, transparent, and systematic procedures.

A vital part of this aspect is to achieve uniformity, transparency, and consistency of enforcement action. Similar conduct under similar circumstances should result in the same type of enforcement action. At the same time, it also requires the Officers/Investigators to make every effort to understand a person's position and take it into account, as well as to let the person know the DGS's position. There should not be a rigid adherence to precedent without due regard to unusual circumstances.

Many factors are considered in choosing an appropriate course of action to ensure compliance and provide deterrence to breaches of regulatory requirements or procedures. The weight given to various factors is often left to the discretion of the individual officer/investigator. In the exercise of his discretion, the Officer/Investigator should be guided by the following general approach:

- a. A person who reports making an honest mistake should generally not be prosecuted or fined, nor should their license, certificate or authority be suspended or cancelled for reasons of punishment.
- b. There should be a measured response to less serious contraventions of the safety rules and procedures which may involve counselling and training rather than either criminal prosecution or the suspension or cancellation of licenses, certificates or authorities or imposition of any monetary penalties.
- c. People who consciously and willfully choose to operate outside the rules or procedures and thereby put the lives, marine environment, ship & its cargo at risk



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and tarnish the reputation of Indian seafarers/ shipping industry, should be prosecuted and removed from the industry.

It is imperative that the Directorate General of Shipping and the industry work together in a spirit of mutual understanding and close cooperation with a view to achieve a high standard of shipping safety to benefit all. The success of the enforcement programme as set out in this Manual will depend largely on the good judgment of Officers/Investigators who are able to:

- a. Earn the respect of the shipping community rather than expecting it merely by virtue of their office.
- b. Exercise objectivity and judicious restraint, because failure to do so may provoke disregard for compliance and safety.
- c. Promptly and precisely detect and investigate possible contraventions and report their findings to the Directorate.
- d. Determine whether a contravention has, in fact, occurred and whether it involved a risk to shipping safety.
- e. Consider mitigating factors present at the time of an incident or contravention.
- f. Ensure that the rules/procedures are equally enforced and that all persons and companies are treated equally under the rules.
- g. Recommend or take effective enforcement action in the case of breach of the legal provisions, particularly when such breaches are deliberate, to protect the safety of shipping.

## 2. CODE OF CONDUCT

### 2.1 HUMAN RIGHTS

To conduct and operate ships in a socially responsible and ethical manner that respects the human rights and dignity of all people, in compliance with all legal requirements and applicable conventions.

We uphold nationally and internationally recognized human rights, as set out in the Human Rights Council resolution 56/18, titled "Promoting and protecting the enjoyment of human rights by seafarers", UN Guiding Principles on Business and Human Rights, as well as the International Labour Organization's Declaration on Fundamental Principles and Rights at Work.

Every seafarer to be treated equally on principles of non-discrimination based on race, gender, religion, nationality, or social origin. Ensure fair access to opportunities, promotions, and facilities onboard., fairly, and without discrimination. All seafarers are entitled to work in an environment and conditions that respect their human rights enforce zero tolerance for physical, verbal, or psychological abuse. Create a safe reporting mechanism for grievances, personal health and safety, and dignity.

We respect freedom of association and collective bargaining. Recognize and respect the right to join maritime unions or associations

Working on board ships is a choice. Nobody shall be forced into slavery, imprisonment on board or forbidden practices of child labor, or human trafficking in shipping operations.

This includes transportation, harboring, recruitment, transfer, or receipt of persons by means of threat, force, coercion, abduction, fraud, or payments to any person having control over another person for the purpose of exploitation. Adhere to fair employment practices and contractual obligations.

Accommodate diverse cultural and religious practices without discrimination

### 2.2 HEALTH AND SAFETY

Maritime industry is a people business. The health and safety of our seafarers is paramount. We place equal importance on physical and mental health. Seafarers must be provided with medical coverage, support, and access to outreach services ashore and at sea and certified to **ISO 45001 Occupational Health and Safety Management standards.**

Seafarers are expected to take responsibility for their own health and safety, to ensure they are fit for work, and to always perform their duties safely and responsibly. However,

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this must be balanced with support and resources provided by the company, ensuring seafarers have the tools to meet these expectations.

- Shipping companies typically have internal policies and procedures for addressing breaches of the Code of Conduct. These may include disciplinary measures such as warnings, fines, suspension, or dismissal
- Companies should have procedures for investigating alleged breaches of the Code of Conduct fairly and thoroughly.
- Unions actively monitor working conditions on ships and in ports to identify any breaches of the code. They may conduct inspections, interview seafarers, and review company policies to ensure compliance.

Company policies must aim for 100% compliance and zero injuries, casualties, and accidents. Realizing this goal requires continuous improvement, monitoring, and fostering an environment where safety is everyone's priority

Company Quality, Health, Safety and Environment (QHSE) division must proactively manage health, wellness programmes and safety training, programmes, and campaigns that go beyond minimum regulatory compliance.

Seafarers are required to report any dangerous or unsafe acts, decisions, or situations observed on the job or in the workplace that could jeopardise health and safety. Seafarers should feel confident that reporting will not result in negative consequences.

Seafarer must be equipped to recognize and communicate risks effectively. An open and supportive culture for reporting and addressing safety concerns.

Unions ensure that seafarers are aware of their rights under the code and that these rights are upheld by employers and other stakeholders. They may offer legal advice, support seafarers in lodging complaints, and lobby for stronger regulations.

Unions act on reports of mistreatment, such as unpaid wages, excessive working hours, or harassment. They may gather evidence, provide legal representation, and pressure companies to take action.

### **2.3 EQUAL OPPORTUNITY**

We welcome skilled talent from all backgrounds.

Companies must value diversity and provide an inclusive equal opportunity environment for all Indian seafarers: Ensuring that hiring, promotions, and assignments are based on merit, qualifications, and experience builds trust and morale among seafarers, regardless of their region, religion, language, gender, age, sexual orientation, faith or political beliefs. Skilled talent from all backgrounds must be welcomed. Companies must value diversity and provide an inclusive equal opportunity environment for all Indian seafarers, regardless

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of their region, religion, language, gender, age, sexual orientation, faith or political beliefs. Skilled talent from all backgrounds must be welcomed.

- Seafarers are expected to treat each other with respect and professionalism. There is no room for workplace bullying, intimidation, or harassment of any kind. Gathering evidence of misconduct at sea can be challenging, particularly in cases of bullying, harassment, or discrimination. Women represent a small percentage of the global maritime workforce, often facing barriers in recruitment, workplace culture, and career progression.
- Employers must value individuality and teamwork, new ideas and differences of opinion, and encourage seafarers and employees to speak up for feedback. Regular audits and assessments should evaluate the effectiveness of diversity and inclusion initiatives.

Unions negotiate with employers' associations on behalf of seafarers to secure fair wages, decent working conditions, and adherence to the code. This includes provisions for rest hours, safety measures, and access to healthcare through collective bargaining.

Unions ensure that seafarers have access to fair and impartial procedures for resolving complaints. They may assist seafarers in navigating these mechanisms and advocate for their rights throughout the process.

### 2.4 TRAINING AND DEVELOPMENT

Employers must commit their resources to training and developing Indian seafarers for their ongoing growth, success, and continuous improvement. We believe in equipping our Indian Seafarers with the necessary skills and knowledge to be the best in the world and can compete with other nationalities.

Companies should provide regular training and awareness programs to ensure seafarers understand the Code of Conduct and their obligations

Maritime training institutes are often concentrated in metropolitan areas, making it difficult for aspiring seafarers from remote or rural regions to access them.

The cost of maritime training is often prohibitive, particularly for candidates from economically disadvantaged backgrounds.

Training programs to include aspects like green shipping practices, for seafarers to be prepared for future regulatory changes.

The network of DGS approved Maritime Training Institutes located across India for the training, certification, and continuous upskilling of Indian seafarers of all ranks.

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Seafarers and shore staff are encouraged to undertake training for their further development. Companies must support the career growth of Indian seafarers through promotions, Transfer to different vessel for exposure on different type of vessels, lateral transfers to opportunities in shore-management, and other internal mobility opportunities within the maritime industry.

Unions offer training programs to educate seafarers about the code, their rights, and how to report violations. This empowers seafarers to protect themselves and their colleagues.

Unions encourage a culture of respect for seafarers' rights within the industry. They may organize campaigns, workshops, and awareness-raising activities to promote the code and its principles.



# UN Sustainable Development Goals



## **2.5 SOCIAL RESPONSIBILITY**

Directorate supports the tenets of the Govt of India's development Goals and other internationally recognized Sustainable Development Goals. Directorate believes in corporate social responsibility and the importance of giving back to society.

Maritime companies and seafarers should undertake community initiatives to engage and support those in need, in addition to contributing to worthy causes.

Educating the public about the role of Seafarer and importance of shipping in global trade, safety, and sustainability.

We encourage strong relationships with government authorities, chambers of commerce, industry associations, professional bodies, NGOs, and other groups through active participation, cooperation, and collaboration.

## **2.6 ENVIRONMENTAL STEWARDSHIP**

Directorate values our environment, oceans and biodiversity, championing clean and sustainable ways to take the maritime industry forwards.

We believe in marine and environmental stewardship and are deeply committed to protecting our oceans and sea life through education and responsible shipping. This includes adopting cleaner fuels, practices, and technologies, as well as enforcing strict regulatory compliance, supply chain involvement, and community engagement.

Companies must educate our seafarers, employees and other stakeholders about the need to reduce plastic waste and follow the 4Rs- reduce, reuse, recycle and rethink in the hopes of one day achieving plastic-free oceans for future generations to enjoy.

Shipping accounts for about 3% of global CO<sub>2</sub> emissions and affects marine biodiversity through pollution, ballast water discharge, and noise.

International conventions like MARPOL (Marine Pollution), the Ballast Water Management Convention, and IMO's sulfur cap require proactive measures to protect the environment.

A strong commitment to environmental stewardship enhances the reputation of companies and builds trust with stakeholders.

## 2.7 SUSTAINABILITY

Companies must be strong advocate of climate action, decarbonization, sustainability and strive to achieve carbon-neutral operations, as part of aspirational goal to shape a better future, both maritime and general.

Seafarers' unions are essential for ensuring that the Seafarers' Code of Conduct is effectively implemented and enforced. They act as advocates, monitors, educators, and negotiators to protect seafarers' rights and promote decent working conditions in the maritime industry.

<b>R</b>	<b>ULES   Respect rules and regulations</b> This includes company rules, policies, systems and procedures, plus industry regulations and the law.	
<b>E</b>	<b>NVIRONMENT   Respect the environment</b> Comply with anti-pollution regulations and lead by example bot at work and in your private lives. Educate others too about protecting oceans and marine environment.	
<b>S</b>	<b>AFETY   Respect the safety and health of all</b> Abide by D&A policy. Take rest as required, follow all safety procedures.	
<b>P</b>	<b>ROPERTY   Respect people's integrity</b> Do not commit theft, sabotage or fraud or breaches of confidentiality or privacy. Information is also property.	
<b>E</b>	<b>XCELLENCE   Respect quality standards</b> Adhere to highest quality standards as defined in company SMS manuals.	

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C	<b>COLLEAGUES   Respect your colleagues</b> Do not assault, bully, harass or humiliate your colleagues in person or online.	
T	<b>TAKE ACTION   Respect your duty of care</b> Speak up, intervene when it's safe to do so, and report violations	

## 3. ENFORCEMENT POLICY

### 3.1 INTRODUCTION

3.1.1. The DGS's enforcement policy plays a vital role in the discharge of its responsibility for safety oversight of the operators functioning under its jurisdiction and promotes the goal of improved shipping safety by encouraging voluntary compliance with the provisions of the Merchant Shipping Act, the Merchant Shipping Rules and the directions issued under these statutes. It encompasses that DGS may initiate investigation of alleged violations of these legislations / directions, as and when necessary. The enforcement process should be transparent, and seafarers should be informed of the outcome of investigations and any actions taken.

Determining the appropriate jurisdiction for investigating and addressing violations can be complex, especially in cases involving multinational crews or incidents in international waters.

- Flag states (the countries where ships are registered) have laws and regulations governing the conduct of seafarers. These may include provisions for sanctions or penalties for violations. Flag states may investigate alleged breaches of the Code of Conduct and take appropriate action, which could include fines, license suspension, or revocation.
- When a ship enters a port, Port State Control officers may inspect the vessel and crew to ensure compliance with international and national regulations, including those related to the Code of Conduct.

### 3.2 OBLIGATION

3.2.1. Being a contracting State to SOLAS, STCW, MLC 2006 and a member of the International Maritime Organization (IMO) and International Labour Organisation, India has adopted the Convention in its national law.

- The IMO sets international standards for the maritime industry, including the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), which includes requirements for conduct and competence.
- The ILO has conventions addressing seafarers' rights and welfare, including the Maritime Labour Convention (MLC), 2006, which sets out minimum standards for working conditions and living on board ships.

As a result of international obligation and promulgation of domestic legislation, the enforcement is not only an option, but a legal and social obligation.

3.2.2. Allow RPSL Companies to deal with and resolve, certain events involving certain safety deviations internally, within the context of the service provider SMS and to the satisfaction of the DGS.



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Unions work with governments, ship owners, and international organizations to improve the implementation and enforcement of the code. This may involve participating in industry committees, providing input on policy changes, and raising awareness of seafarers' rights.

### **3.3 VOLUNTARY COMPLIANCE**

DGS is of the firm belief that every person holding a valid seafarer's document issued after undergoing the initial entry certification process, will commit oneself, in exercising the authority of such document, to abide the applicable rules, procedures and best industry practices and work within such parameters ensuring safety. It also recognizes that voluntary compliance with the regulations is the most progressive and effective approach to shipping safety. Voluntary compliance is based on the idea that members of the shipping community have a shared interest, commitment, and responsibility to shipping safety, and that they will operate based on common sense, personal responsibility, and respect for others in conformity with the best practices of the industry. Breaches of the shipping rules and published requirements may occur for many different reasons ranging from a genuine or innocent misunderstanding of that rule to a blatant disregard for shipping safety. Investigations into alleged breaches should be conducted fairly and impartially, with seafarers given the opportunity to respond to allegations.

Therefore, to effectively address its safety obligations in the light of differing circumstances, the following tools are to be used:

- a. Counselling
- b. Warning or admonition
- c. Remedial training
- d. Financial Penalties
- e. Variation, suspension, and cancellation of authorizations/ approvals
- f. Recommending prosecution

These enforcement measures are set out in this Manual. The key focus of DGS would be to address safety by consistent and appropriate enforcement action.

### **3.4 PRINCIPLES OF ENFORCEMENT POLICY**

The 'Public Trust Doctrine' is based on the concept that the powers held by Government officers are, in fact, powers that originate with the people, and are entrusted/ delegated to the government officers only as a means of exercising governance and with the sole objective that such powers shall be exercised in good faith for the benefit of the people. Public power is not for personal gains or favour but always to be used to minimize harm or hazards and optimize the benefits to the people. To do otherwise would be to defy the objectives of this doctrine and betray the trust reposed by the people. Powers exercised contrary to the 'Public Trust Doctrine' would amount to abuse of powers and contravene the rule of law.

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The aim of the Enforcement Policy is to lead the shipping community in India to provide a world-class shipping safety environment, which has public trust and confidence. To achieve trust and confidence from the shipping industry and the members of the public, DGS will take appropriate and timely action to curb the intentional breach or neglect of the statutory provisions. The DGS's enforcement policy determines the way it uses its powers to regulate the shipping industry. DGS shall ensure that due attention is given to the exercise of these powers and that appropriate mechanisms are established to effectively implement the regulatory provisions. Also, a consistent and systematic enforcement process would enhance the confidence level of the compliant RPSL Companies. Gathering and maintaining systematic record of an operator's compliance or lack of compliance with the applicable rules, regulations and approved procedures may also help DGS make an opinion or perception of the track record of an RPSL Company's behaviour.

3.4.1 The DGS is committed to enforce the regulations in a transparent and firm manner and to support the implementation of SMS by

- a) encouraging open communication between service providers and enforcement officers/investigators
- b) ensuring that no information derived from safety data collection and processing systems (Established under an Safety Management System (SMS)) relating to report classified as confidential, voluntary, or equivalent category, is used as the basis for enforcement action.
- c) Using specific review procedures, when a service provider operating under an SMS, unintentionally contravenes (Merchant Shipping Act, Shipping industry Requirements). These procedures will allow the Investigator responsible for the oversight of the service provider the opportunity to engage in dialogue with the organisation that addresses the deficiencies that led to the contravention and to afford the service provider a reasonable time to implement them. This approach aims to nurture and sustain effective safety reporting, whereby service provider's employees can report safety deficiencies and hazards without fear of punitive action. A service provider can therefore, without apportioning blame, and without fear of enforcement action, analyse the event and the organizational or individual factors that may have led to it, to incorporate remedial measures that will best help prevent recurrence.
- d) evaluating the corrective measures proposed by the service provider, and/or the systems currently in place to address the event underlying the contravention, by the officer/Investigator responsible for the oversight for the service provider. If the corrective measures (including any appropriate internal disciplinary actions) proposed are considered satisfactory and likely to prevent recurrence and foster

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future compliance, the review of the violation would be concluded, and no punitive enforcement action will be taken up by the DGS.

In cases where either the corrective measures or the systems in place are considered inappropriate, officer/Investigator will continue to interact with the service provider to find a satisfactory resolution that would prevent enforcement action. However, in cases where the service provider refuses to address the event and provide effective corrective measures, DGS will consider taking enforcement action or other administrative action deemed appropriate, taking the following actions in cases of breaches of shipping regulations:

- (i) providing oral counselling for minor violations or deviation from the requirements where there is no threat to shipping safety.
- (ii) informing offenders of their right to have penalties reviewed; and
- (iii) ensuring that repeat offenders and those who wilfully disregard shipping safety are dealt with firmly.

3.4.2 In the process of ensuring enforcement, the officers shall invariably be guided by the following principles:

- a. Natural Justice and Accountability: Enforcement decisions must be –
  - i. follow due process of law
  - ii. transparent to those involved
  - iii. consistent between like circumstances; and
  - iv. subject to appropriate internal and external review.
- b. Impartiality: Enforcement decisions must not be influenced by –
  - i. personal conflict or agendas of the officers.
  - ii. irrelevant considerations, such as gender, race, religion, political views or affiliation; or
  - iii. personal, political, or financial power of those involved.
- c. Proportionality: Enforcement decisions must be commensurate with the identified breaches and the safety risk they give rise to, in particular –
  - i. DGS's priority shall be to protect the safety of the members of the public.
  - ii. DGS shall take strong action against those who consistently and deliberately operate outside the existing law or approved Procedures.
  - iii. DGS shall endeavour to educate and promote training or supervision of those who are observed to be lacking in proficiency but are willing to comply.
  - iv. DGS shall act when dealing with licensed and certified personnel, who breach the Rules, Regulations, Requirements etc.

### **3.5 CONFLICT OF INTEREST**

## **Seafarers' Code of Conduct Compliance & Enforcement Manual**

Officers/Investigators are required to take measures to prevent real, potential or perceived conflict of interest in accordance with the principles enshrined in the conduct rules. If it becomes apparent that there could be a possible conflict of interest during an investigation, the Officer/Investigator shall inform his or her supervisor of the request to be removed from the case.

### **3.6 EXCEPTIONS**

In the following cases, the policy shall not apply. These cases shall be dealt with vigorous enforcement action in accordance with the enforcement procedures.

- a. If there is evidence of a deliberate effort to conceal non-compliance.
- b. If the service provider fails to maintain an acceptable SMS or its agreed safety performance.
- c. If the service provider is deemed by the DGS as a recurrent violator.

## **4. DETECTION**

### **4.1 INTRODUCTION**

Detection is the discovery of a possible contravention of the legal provisions. It may result from activities such as inspections and surveillance programmes, and public complaints. DGS officials are required to act on observing a contravention or when apprised of one relating to his area of speciality, without waiting for further instructions from the superiors, subject to the delegation of authority. It is also necessary that every DGS officer keeps the Directorate apprised in case the applicable requirements have not been adhered to or contravened. At the very least, an officer is required to carry out the initial violation process and forward it without delay to the Directorate along with all evidence gathered in support of the allegation of a violation. Even when the matter does not require further action, as in the case of oral counselling, the reporting of the initial violation process helps the Directorate in shaping the surveillance/ enforcement programme.

### **4.2 REPORTING OF AN INITIAL VIOLATION PROCESS**

In all cases, where an Officer/Investigator detects contravention or where information about a possible contravention is received, information about the incident shall be gathered as fast as possible. This is necessary to preserve perishable evidence and to provide sufficient information about the contravention to enable a complete and comprehensive investigation. The initial violation process simply provides answers to the questions: WHO, WHERE, WHEN, WHAT, WHY and HOW. The information is required to be recorded and passed on to the Directorate as soon as possible along with any notes or evidence such as photos, logs, videos etc. The decision to conclude the contravention with oral counselling or to refer the matter for further investigation shall entirely be at the discretion of the Directorate.

If the contravention is considered minor, the Officer/Investigator may opt for oral counselling. If the contravention is of a more serious nature, the Officer/Investigator shall refer the incident without delay to the Directorate for further action. The Directorate will then determine if a comprehensive investigation is to be carried out or not.

### **4.3 ASSIGNING OF INVESTIGATOR**

Upon detection of a violation and the completion of the Initial Violation Process Form (Appendix II), an Investigator shall forward the same to DGS headquarters, who will assign an investigator to the case based on the casualty investigation under MLC Convention and MS Act and rules made thereunder. Both the reporting officer and assigned investigator shall continue to coordinate their work as necessary until the conclusion of the case.



## **5. INVESTIGATION**

### **5.1 INTRODUCTION**

An investigation is a systematic search for and documentation of the facts relevant to an event so that a decision to take appropriate action can be made. It is the most significant phase of the action since both individual rights and public safety will depend on its thoroughness and adequacy. For investigators to conduct thorough investigations from the initial complaint to the conclusion of the case, it is imperative that they have a thorough understanding of their delegation of authority and a sound knowledge of their inspection and investigative powers.

Officers/Investigators must also know what constitutes relevant evidence if an action is to be taken against an alleged offender. Sound evidence collected through investigation would be the basis to prove that the violation has taken place.

### **5.2 VDR (VOYAGE DATA RECORDER):**

Use of VDR recordings shall be limited for the purpose of shipping accident/ incident investigations.

### **5.3 NO INVESTIGATION CONDUCTED (NIC)**

Sometimes, it is evident from the original complaint or from the Initial Violation Process that the case does not warrant a comprehensive investigation because of lack of evidence, statutory limitation, low safety item, insufficient resources etc.

Moreover, the facts collected during initial investigation may point to the likelihood that an alleged offender could successfully justify his actions. In such cases, the investigator may opt to terminate the investigation with a recommendation for no further action. The final decision in this regard shall be taken by the Directorate.

### **5.4 COMPREHENSIVE INVESTIGATIONS**

If the initial violation process indicates that a contravention took place and further evidence is necessary to establish the facts, a comprehensive investigation must be commenced. The purpose of the comprehensive investigation is to obtain all the evidence necessary to establish the truth. The investigator's objective is not only to obtain sufficient evidence to prove an alleged offence occurred, but also to ensure that all the facts of the incident are disclosed so that the ends of natural justice are met.

The following procedure shall be followed for conducting a comprehensive investigation:

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- a. Identify all provisions that were possibly contravened.
- b. Analyse the regulations allegedly contravened.
- c. Determine the evidence necessary to prove each element of a violation.
- d. Plan and initiate the steps necessary to obtain such evidence, e.g. interviews, resource personnel, expert witnesses, logbooks, records, search warrant, etc.;
- e. Obtain information from the alleged offender.
- f. Contact the alleged offender in person, by telephone or by mail to advise that an investigation is in progress; and
- g. There is an opportunity for him to offer voluntary information.
- h. This information may be used as evidence.

NOTE: It is mandatory to advise the alleged offender that an investigation is in progress as he may be able to provide valuable evidence. The case file must be annotated to record the issuance of such a notification.

- a. co-ordinate the investigation to prevent overlapping or conflict with other personnel.
- b. establish the cause of the violation. e.g. weather, navigation hazard, equipment, deliberate, inadvertent.
- c. record the relevant information, including a narrative of the facts and circumstances of the event which led to the alleged violation; and
- d. prepare personnel or company enforcement case file incorporating the results of the foregoing activities and including the Initial Violation Process Form (Appendix II).

### 5.5 COMPARISON OF INTERVIEWS OF WITNESSES AND ALLEGED OFFENDERS

Witness	Alleged Offender
<b>AIM</b>	
...to gather information and test its validity to determine the particulars of the matter under investigation.	...to gather information and test its validity in order to determine whether the subject was responsible for or involved in the matter under investigation.
<b>WHO</b>	
...witnesses who are willing to provide the investigator with any information they possess about the matter under investigation.	...persons suspected of offences as well as others who may have information but are reluctant to offer it.
<b>WHEN</b>	

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...interviews should take place as soon as possible after the event has occurred so that statements by witnesses are not affected by memory loss, influence of talking to others, etc. Immediate gathering of information enables the investigator to prepare for interviewing alleged offenders.	...interviews of alleged offenders should take place ideally after the investigator has gathered enough information to make a judgement on how truthful the subject is. An alleged offender interviews is more fruitful after witnesses have been interviewed and physical evidence has been located and evaluated.
<b>LOCATION</b>	
...at a place convenient and familiar to the subject or in a neutral setting. The subject's place of work or any place where privacy is assured is preferred.	...the interview room at the office is best since it enables the Investigator to manage the security of the subject and to control other factors which might tend to be distracting.
<b>TECHNIQUE</b>	
...a low-pressure, informal atmosphere is preferred to allow the subject to relate his information in narrative style. Specific questions should be used to gather more detail and to jog the witness' memory.	...basically, the same method as with witness interviews, but the atmosphere is more formal, and the investigator works toward a more specific purpose.

*Table 1- Interview Protocols: Witnesses vs. Alleged Offenders*

### 5.6 DEFENCES AVAILABLE TO THE ALLEGED OFFENDER

In certain cases where wrongful conduct can be proven or is admitted, the alleged offender may still be able to raise a defence based on necessity, due diligence or officially induced error etc., which are available in both judicial and administrative proceedings. Therefore, utmost care should be exercised to ensure that the case is prepared meticulously leaving no room for any defect or deficiency. The defences generally available to the alleged offender are as follows:

#### i. The Defence of Necessity

The Defence of Necessity originates from common law and may be invoked by an alleged offender when an unlawful act was committed under unavoidable and urgent circumstances. The Head of Directorate must thoroughly assess the facts of each case to determine whether the following conditions are met:

- a. The situation must be so urgent and the threat of harm from inaction so immediate that taking prompt action becomes the only reasonable and necessary response.
- b. Compliance with the law must be genuinely impossible, where the violation is unavoidable and no lawful alternative course of action exists.

- c. The compromise to safety of vessel caused by the contravention was less serious than the hazard posed by complying with the law (e.g. breaking the law is less serious than any accident that might result from complying with it in the specific circumstances).

In addition, the Directorate must be satisfied on reasonable grounds that the urgent situation was not brought about by the alleged offender through negligence or a breach of the regulations. Where the defence of necessity is proven, the alleged offender cannot be found to have contravened the law because the contravention was necessary to avoid an immediate greater danger (in particular, death or injury).

**ii. The Defence of Due Diligence**

To establish this defence, the alleged offender must show that due diligence was exercised (all reasonable steps were taken) to avoid committing the contravention. Where due diligence is proven, the alleged offender cannot be found in contravention of the law because all reasonable steps to avoid the contravention were taken. What constitutes due diligence will, therefore, vary from case to case depending on the facts.

**iii. Officially Induced Error**

The defence of officially induced error is available where an alleged offender has reasonably relied upon the erroneous legal opinion or advice of an official who is responsible for the administration or enforcement of the law. It must be proved, on a balance of probabilities, that the alleged offender relied on the erroneous legal opinion or advice of the official and that this reliance was reasonable. The reasonableness will depend on several factors, including the efforts made by the alleged offender to ascertain the proper law, the complexity or ambiguity of the law, the position of the official and the clarity, definitiveness and reasonableness of the advice given. The defence may at times overlap with the defence of due diligence, but it is separate and distinct.

## **5.7 APPLICATION OF DEFENCES**

Any one of the defences mentioned above can be raised by the alleged offender during the investigation or at any time before a decision to impose a sanction has been made. If the Director concerned is satisfied that a defence has been established and therefore no offence has been committed, then the case must be closed. When a defence of due diligence or necessity has not been proven, a mitigating circumstance may still exist that may be taken into consideration. If an informal meeting is sought by the alleged offender, the same may be granted. If the alleged offender insists the defences are valid, the matter could be decided by the appellate authority or adjudicated by the court.

## **5.8 CASE CLOSURE - NO FURTHER ACTION (NFA)**

A case should terminate with no further action if:

- (a) the alleged offender's identity cannot be ascertained.
- (b) the evidence does not provide reasonable grounds to believe that the violation took place.
- (c) there is an un-correctable technical or other flaw in the case which precludes further action.
- (d) an exemption had been granted which negated the contraventions; or
- (e) a defence of necessity, due diligence or officially induced error is established.

Enforcement correspondence relating to a case in which no further action was taken shall be recorded, but the case shall not be considered as a contravention.

## **5.9 DISCLOSURE OF INFORMATION**

### **5.9.1 Purpose of Disclosure**

The disclosure of information may help-

- a) To ensure that the document holder knows the case to be met and is able to make full answer and defence.
- b) To encourage the resolution of facts at issue; and
- c) To encourage the resolution of the case prior to the hearing.

### **5.9.2 Extent of Disclosure**

A responsible DGS official may disclose to the document holder or his representative all evidence that may assist him in his defence. However, file notes containing personal opinions as well as internal correspondence outlining how to proceed with sanctions shall not be disclosed.

The document holder shall be given at least the following, as is relevant to the case:

- d) particulars of the circumstances surrounding the case
- e) copies of relevant written statements (these may include witness statements, investigative notes, and summaries)
- f) an appropriate opportunity to examine electronic statements and/or Vessel traffic service (VTS) recordings
- g) a copy of relevant electronic evidence, where such taped evidence exists
- h) particulars of the document holder's enforcement record, if applicable
- i) copies of relevant expert witness reports (caution should be exercised so that privileged information is not released or that it is not released to the wrong parties)



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- j) copies of relevant documents and photographs that the case presenting officer (CPO) intends to introduce into evidence during the hearing
- k) details of the documents/ papers inspected
- l) a copy of the show cause notice
- m) particulars of relevant evidence intended to be relied upon at the hearing and any information known to the CPO
- n) if applicable, a copy of the flow chart relating to seaworthiness matter and
- o) the names of witnesses, their employment, and their address, unless there is evidence to indicate that the witness will be harassed or intimidated prior to the hearing. The witnesses should be informed of the action, and inquiries should be made as to whether there is any problem anticipated.

The information that is disclosed should be sent to the document holder by registered mail or through email to registered email id.

### **5.9.3 Exceptions to Full Disclosure**

Certain information that is related to items of public interest may not be disclosed to the document holder. This information includes but is not limited to the following:

- a) information concerning a confidential informant, an ongoing investigation, or investigative techniques
- b) information that may be considered confidential
- c) information that cannot lawfully be disclosed; and
- d) the information, if disclosed, would be injurious to international relations, national defence or security.

### **5.9.4 Return of Evidence**

Evidence that was obtained with the consent of the owner/operator shall be returned to him after the investigation/purpose is over.

## **6. DETERRENT ACTION**

### **6.1 INTRODUCTION**

The most important decision in the enforcement process is determining the appropriate deterrent action to be taken when the evidence indicates that an individual has contravened/ non-compliant of a regulatory provision. This decision may significantly affect the individual's attitude towards shipping safety and compliance in future. The intent of the systematic application of the procedures is to promote fairness and uniformity in the selection of the appropriate deterrent action. It helps to develop a history of the document holder's compliance with the applicable legal provisions so that the holder's attitude towards safety regulations can be gauged. Such a system will also deter document holders from defying the safety regulations as it will affect their image and reputation.

### **6.2 OBJECTIVES OF DETERRENT ACTION**

The major objectives of deterrent action are:

- i) to protect the individual and the public from possible harm;
- ii) to encourage future compliance; and
- iii) to deter others from contravening regulatory provisions.

### **6.3 TYPES OF DETERRENT ACTION**

There are two types of deterrent actions: administrative and judicial. While the administrative action comprises of all measures taken by the DGS pursuant to the provisions of the Merchant Shipping Act/ Rules, such as imposition of financial penalty, restriction, suspension, or cancellation of shipping document(s), including oral counselling. The judicial action involves prosecution of an alleged offender in the criminal courts.

### **6.4 SELECTION OF APPROPRIATE DETERRENT ACTION**

The type of deterrent action depends on the facts and circumstances of the case as well as nature and severity of the contravention/ specific noncompliance.

Minimum enforcement action is sufficient to achieve compliance as stringent sanctions for a first offence are more likely to cause resentment than encourage future compliance. However, where the offence is repetitive in nature or has seriously jeopardized shipping safety, administrative action may not be sufficient. In these cases, judicial action may be more appropriate.

Note: While initiating an enforcement action, legal advice, if required, may be sought from Legal Deptt in the DGS.

## **6.5 ADMINISTRATIVE ACTION**

### **6.5.1 Types**

The following types of administrative action may be taken where a person contravenes a regulatory provision(s):

- Oral counselling.
- Warning/ Admonition.
- Imposition of financial penalties.
- Restriction on a shipping document
- Suspension of a shipping document; or
- Cancellation of a shipping document.

Suspension of a shipping document would be appropriate where the document holder has repeatedly contravened the regulations even though the safety implications are minimal. Cancellation would be appropriate where suspensions are not having the desired effect and the violation is grave and effects safety. The systematic tracking of non-compliance history of a document holder would help in the determination of deterrent actions against the document holder.

### **6.5.2 Determination of Administrative Action**

The administrative action(s) to be taken shall be decided on the basis of nature and severity of the finding/ non-compliance as specified in the Merchant Shipping Act for financial penalties and under Table of Penalties at Appendix I of this manual for other administrative penalties.

Since the aggrieved person may prefer an appeal to the next higher authority or challenge it in the court of law, utmost care should be exercised to make sure that the administrative action is based on sound evidence and the officer has appropriate delegation to take the action.

### **6.5.3 Oral Counselling**

Oral counselling provides the document holder with immediate counselling on the necessity for compliance. Officers/Investigators are required to assess all aspects of the contravention and the attitude of the document holder to determine whether oral counselling will secure future compliance. Oral counselling may be most appropriate in cases of ignorance or misinterpretation of the law, provided shipping safety was not jeopardized, i.e. a minor contravention having little or no impact on safety or where there was no indication of a willful act. Oral counselling is not an option when the alleged offender disputes the allegation. In all cases, the Officer/Investigator is required to maintain a written record of such counselling. If in doubt about the appropriate action to be taken in a given circumstance, the Officer/Investigator is required to refer the matter to the Directorate (Crew Branch) for further investigation.

#### **6.5.4 Warning / Admonition**

Warning/ Admonition is provided in case oral counselling is not considered sufficient and the severity of the contravention/non-compliance does not warrant imposition of financial penalty, or restrictions/ suspension/ cancellation of a shipping document.

#### **6.5.5 Financial Penalties**

Financial penalty is imposed when the severity of contravention or non-compliance of any rule specified in Merchant Shipping Act does not warrant restrictions/ suspension / cancellation of an aviation document and oral counselling or warning/ admonition is not considered sufficient.

Following procedure shall be followed by the designated or appellate officer for adjudication of penalty:

- i) Officer/Investigator who notices/ observes a contravention or non-compliance of a rule must immediately bring the case of violation along-with detailed facts and supporting documents to the attention of the concerned branch of the Directorate who shall immediately take cognizance of the facts/ documents brought before him for deciding the severity of the contravention and relative type of administrative action to be initiated in the matter.
- ii) Where it is decided that the contravention so noticed/ observed warrants initiation of the proceedings for imposition of financial penalty, a comprehensive brief of the case along with supportive documents/ evidence shall immediately be referred to the designated officer competent for adjudication of the penalty with specific comments regarding whether any other enforcement action has also been recommended/ commenced in relation to the said contravention and same cause of action.
- iii) Where an action / omission causes the contravention of more than one severity level, the penalty shall be adjudged corresponding to the highest severity level involved
- iv) The designated officer shall adjudicate only those matter(s) that pertain to the functions of his assigned directorate(s).
- v) The officer involved in an inquiry or investigation of a matter under consideration shall not act as a designated or appellate officer for adjudication of penalty in such matter.
- ix) The designated/ appellate officer may, recording the reasons for doing so, call the relevant documents or information necessary for adjudication of the penalty from the person and/ or organization involved in the alleged contravention.

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xii) The designated officer shall not proceed for imposition of penalty against a person, where it comes to his notice that the proceeding for restriction, suspension or cancellation of license, certificate or approval, has been initiated in pursuance of Merchant Shipping Act.

xiii) The designated officer upon his satisfaction that a person has contravened any of the rule may, after giving a reasonable opportunity of being heard to such person, by an order in writing, impose penalty stating the nature of contravention, the provision of rules which have been contravened along with the reasons for imposing such penalty.

xiv) A copy of penalty order passed along with the demand notice by the designated officer shall be served upon such person through recognised mode of service.

xv) The person aggrieved by the order of imposition of penalty may, within thirty days from the receipt of the copy of such order, prefer an appeal in the prescribed format to an appellate officer having jurisdiction who is next higher in rank to the designated officer who has issued the said order.

xvi) On receipt of the appeal, the appellate officer may, after giving an opportunity of being heard to the appellant, pass a speaking order, confirming, modifying or setting aside the order passed by the designated officer.

xvii) The copy of appellate order passed by appellate officer shall be provided to the appellant and the concerned designated officer.

xviii) The designated officer, within thirty days from the date of the receipt of the order passed by the appellate officer, shall give effect to the order by issuing a revised demand notice to the person against whom the order has been passed.

xix) The penalty thus imposed shall be paid by such person in the manner as laid down by the Director-General within thirty days of the service of demand notice upon the person. xx) In case the person on whom the penalty is imposed fails to pay such amount of penalty within the time as stipulated in demand notice, then, the proceeding for suspension or cancellation of any licence, certificate, authorisation, permit or approval may be initiated.

### **6.5.6 Restrictions**

The restriction(s) on a shipping document for contravention/ non-compliance of a provision of the Shipping Act/ Rules is one of the severe administrative sanctions and it is imposed when the severity of the offence does not warrant suspension/ cancellation of a shipping document but imposition of the penalty is considered insufficient against such a contravention.

The following procedure may be followed for restriction on a shipping document:

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- i) The concerned officer who has power to impose restriction(s), shall determine the appropriate restriction/ condition based on the recommendation of the investigator.
- ii) In order to meet the ends of natural justice, a show cause notice to the alleged contravener shall be required to be issued. The charge is required to be mentioned in the Notice and appropriate time should be given to submit his explanation. The standard format for show cause notice is given in Appendix 4. The Notice shall contain a clear description of the contravention/non-compliance and sufficient details of the contravention so the alleged contravener can identify the incident or incidents constituting the contravention. A copy of investigation report may be enclosed along with the notice.
- iii) The concerned competent officer shall serve the Notice on the alleged contravener personally or send it by registered mail / email. The date appearing on the Notice shall be the date on which the Notice is to be served or sent.

### **6.5.7 Suspension**

The suspension of a Certificate of Competency or Proficiency for contravention of a provision of the Merchant Shipping Act/Rules is amongst the most severe administrative sanction the DGS can impose. Suspension action is taken where continued use of the document would create a hazard to shipping safety.

Where a Certificate of Competency or Proficiency has been suspended, the person to whom it was issued shall return it (Certificate of Competency or Proficiency) to the DGS and shall not exercise the privileges attached to that document until it is restored by the DGS. Suspensions for contravention are punitive in nature and are in effect for a specified time.

The following procedure may be followed for suspension of a shipping document:

- i) The concerned officer who has power of suspension, shall determine the appropriate duration of suspension based on the recommendation of the investigator in accordance with Merchant Shipping (Cancellation or Suspension of Certificate of Competency) Rules.
- ii) In order to meet the ends of natural justice, a show cause notice to the alleged contravener shall be required to be issued. The charge is required to be mentioned in the Notice and appropriate time should be given to submit his explanation. The standard format for show cause notice is given in Appendix III. The Notice shall contain a clear description of the contravention/ non-compliance and sufficient details of the contravention so the alleged contravener can identify the incident(s) constituting the contravention. A copy of investigation report may be enclosed along with the Notice.

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iii) The concerned competent officer shall serve the Notice on the alleged contravener personally or send it by registered mail. The date appearing on the Notice shall be the date on which the Notice is to be served or sent.

iv) Suspended period may be endorsed on the Certificate of Competency or Proficiency.

### **6.5.8 Cancellation**

The procedure to be followed for cancellation is the same as for suspension. However, since cancellation is a very stringent punishment, the powers to do so have been delegated to very senior officers. Therefore, before taking any cancellation action, the delegation of powers must be ascertained with certainty.

### **6.5.9 Assessment of Sanction**

During assessment of the administrative sanction except financial penalty, each count shall be considered separately. A brief reason for sanction shall be recorded for each count. The total period of suspension shall be the sum of the sanctions imposed for each count. Sanctions should be proportionate to the severity of the violation. Where exceptional circumstances warrant, the final sanction may be modified. The reasons for such a modification should be recorded in the case file.

Administrative action(s) except financial penalties shall be taken as per Table of Penalties under Appendix I of this manual. If violation conduct is not included in the Table of Penalties under Appendix I of this manual, DGS shall determine the severity of departure from safety or a safety standard considering the specific facts and circumstances surrounding the violation and decide on the enforcement to be taken. Pending a decision by the Board, the document holder shall be advised not to exercise the privileges of the document.

## **6.6 JUDICIAL ACTION**

Prosecution of a person for a contravention is recommended in cases where, in the opinion of the DGS, the contravention is such that it would be appropriate to seek a significant punishment in court.

### **6.6.1 Initiation of Judicial Action**

Judicial action involves initiation of proceedings against an accused in the criminal courts. For this purpose, the following steps shall be taken:

i) Officer/ Investigator must immediately bring the cases of violation with duly filled in Initial Violation Process Form (Appendix 3) to the attention of the Director General for investigation and collection of the necessary evidence.



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ii) Highest priority must be accorded to all such cases of violation of the regulatory provisions as contained in the Merchant Shipping Act

iii) The evidence must be collected without any delay to avoid losing it. It may be mentioned that since prosecution under the Shipping Act and the Rules made thereunder is of criminal nature, highest degree of proof is required for successful conviction. Further, since the onus of proving the violation lies with the prosecution, the evidence must be legally tenable.

iv) The DGS shall review the material on record and collectively arrive at a decision whether administrative action would suffice or the case warrants initiation of judicial proceedings against the accused. The process for judicial action shall be initiated by the Director General as the case may be, through an officer authorised for the purpose.

### **6.6.2 Filing of Criminal Complaint or First Information Report (FIR)**

The following procedure shall be followed in filing of the Criminal Complaint or FIR:

- i) The criminal proceedings shall be initiated by the DGS as per the procedure laid down in the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). Since offences under the Merchant Shipping Act are non-cognizable, the criminal complaint shall be filed in the court of a Magistrate of competent jurisdiction along with the due sanction in writing by the Director General of Shipping. In case of violation of cognizable offence, an FIR may be registered with the police station where the offence was committed.
- ii) It must be ensured that the complaint is filed within a period of one year from the date on which the offence came to the knowledge.
- iii) The complaint must contain detailed background of the case along with specific reference to alleged violations. It must be supported by all the documents upon which the Directorate is relying.
- iv) As the onus of proof lies with the complainant, it is advisable to have sufficient evidence prior to initiating a complaint.
- v) The authorised officer of the DGS may engage the Government Counsel through Ministry of Law & Justice and seek his help and guidance at every stage of criminal proceedings.
- vi) The outcome or judgment pronounced by the court shall be placed before the Director General for its decision as to further course of action in the matter.

### 6.6.3 Limitation

Judicial action is required to be initiated within a certain period of the commission of the offence failing which it becomes time-barred, and the court may not take cognizance of the offence.

## 6.7 THE CONCEPT OF A "STAR SYSTEM" FOR SEAFARERS

### Performance-Based Systems (Employee Ratings)

Many companies and organizations use a star rating system to assess employee performance, track achievements, and provide feedback. This system often involves both positive ratings (stars for achievements) and corrective feedback (loss of stars for poor performance).

**The concept of a "star system" for seafarers** could be developed as a system of recognition, reward, and deterrence, aimed at encouraging good behaviour and discouraging undesirable actions among seafarers. The system could be used in various maritime contexts, such as shipping, ports, or navigation. Here's how such a system might work:

#### 1. Star Ratings for Seafarers:

- **Positive Stars:** Seafarers would receive stars based on their performance, adherence to safety regulations, professionalism, and contribution to the overall success of a voyage. These stars could be awarded through a combination of self-assessment, peer review, and supervisor assessment.
- **Negative Stars (Deterrent):** Seafarers could also lose stars for actions such as negligence, violation of maritime regulations, causing accidents, or other misconduct. Accumulating too many negative stars could result in penalties or exclusion from certain high-priority assignments.

#### 2. Categories for Star Ratings:

- **Skills and Expertise:** Seafarers could earn stars for demonstrated competency in navigation, maintenance, leadership, and technical expertise.
- **Safety and Compliance:** Stars would be awarded for ensuring adherence to safety protocols, environmental regulations, and ensuring compliance with both international and company policies.

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- **Professionalism:** Seafarers who demonstrate excellent interpersonal skills, team collaboration, and conflict resolution could be rewarded with stars. Those with poor conduct or a history of conflicts could be penalized.
- **Efficient Performance:** Timely delivery of tasks, minimal operational delays, and contribution to the overall efficiency of the ship's operations could also earn stars.

### 3. Mechanism for Deterrence:

- **Star Thresholds:** Establishing thresholds that determine access to certain privileges based on star ratings, such as higher pay, promotions, choice assignments, or luxury accommodations. For instance, seafarers with lower star ratings might face fewer desirable assignments or lower wages.
- **Star Losses:** Negative behaviour, such as poor performance or safety violations, would result in the loss of stars. If a seafarer loses too many stars, this could lead to suspension, fines, or even a ban from working on certain vessels.
- **Transparency:** A transparent system would help create a clear understanding of expectations. Other seafarers would know the standards required to maintain high ratings, fostering a competitive yet professional environment.

### 4. Promoting Good Conduct:

- **Recognition:** High-rated seafarers could receive rewards like public recognition, bonuses, opportunities for leadership positions, or even career advancement.
- **Peer Influence:** The presence of a star system could encourage a culture of accountability, where seafarers are motivated to maintain high standards in order to earn and retain stars.
- **Competition:** A leaderboard, whether on a ship or company-wide, could highlight top-rated seafarers, creating healthy competition among crew members and encouraging better performance.

### 5. Enforcement:

- **Monitoring & Reporting:** A robust reporting mechanism could be implemented where peers, supervisors, or onboard officers can rate and report the actions of fellow seafarers.
- **Independent Review Panel:** To ensure fairness, an independent panel could review any disputes or challenges related to the star ratings, allowing for a system of appeals.

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- **Continuous Evaluation:** Rather than a one-time rating, stars could be continuously evaluated throughout a seafarer's career, ensuring that those who continue to perform well are rewarded, and those who slip in their behaviour or performance are appropriately penalized.

### 6. Benefits:

- **Incentivizing Safety:** By tying stars to safety and compliance, the system could encourage seafarers to prioritize safe and sustainable maritime practices.
- **Fostering Professionalism:** Encouraging teamwork, good behaviour, and professional growth would create a more positive and productive maritime culture.
- **Clear Expectations:** The star system provides clear, quantifiable feedback to seafarers about what is expected of them, leading to fewer misunderstandings and more accountability.
- **Attracting Talent:** A well-structured star system could help attract skilled seafarers who value professionalism, recognition, and career growth opportunities.

By combining rewards for good behaviour and penalties for undesirable actions, the star system concept could motivate seafarers to perform at their best, while also serving as a deterrent to prevent poor conduct that could affect the safety, efficiency, and reputation of maritime operations.

## 7. APPENDIX

### APPENDIX 1: RPSL SANCTIONS & ESCALATION (NON-FINANCIAL)

- A. The tables detailed below shall be used for determining the administrative action except financial penalties to be taken for violations by individuals and organisations against the RPSL Rules and requirements.
- B. **Surveillance Findings:** Non-closure of findings within the prescribed period/ agreed time-period may raise to the next higher level. In case the findings are not addressed within an agreed time-period, enforcement may result.

#### 1. DETERMINATION OF PENALTY FOR RPSL Companies:

- 1.1 Organisation means any organization granted approval/ license by DGS for providing Recruitment & Placement of Seafarers.
- 1.2 The determination of enforcement to be taken for an organization will follow the process listed in Paragraphs 3 to 9 below.

#### 2. DETERMINATION OF PENALTY FOR INDIVIDUALS:

- 2.1 Individual means any person granted approval/ license/ certificate by DGS under the Merchant Shipping Act.
- 2.2 The determination of enforcement to be taken for an individual will follow the process listed in Paragraph 10 below.

#### 3. ORGANISATION: Procedure to be followed for determining the action to be taken for each violation:

- 3.1 Sanction Range Determination. The Enforcement officer shall use the following process to identify the specific sanction range applicable to a single act resulting in a violation.

Step 1: Use the Risk Matrix (Figure 1-1) to identify the severity level of the violation.

Step 2: Use the Sanction Matrix (Figure 1-2) to identify a general sanction range (Low, moderate, High, or Maximum) using the severity level of the violation.

Step 3: Use the Sanction Ranges Table (Figure 1-3) to determine the specific sanction range.

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3.2 On determination of the specific sanction range, the Directorate will propose/ decide the quantum of enforcement to be taken.

Step 1: Determination of Severity Level - The severity of violation has been categorised into three Levels that represent increasingly severe departures from safety or safety standards with Severity Level 1 representing the least severe and Severity Level 3 representing the most severe violations. As a first step, the severity level for the conduct shall be identified using the Table of Penalties (Figure 1-1). The level of severity selected for violation conduct in the Table of Penalties represents the severity of a generic violation.

Step 2: The Sanction Matrix - The Sanction Matrix assigns general sanction ranges from Low to Maximum depending on the severity level of the apparent violation. Based on the determination of the severity of the violation, the officer shall use the Sanction Matrix to identify the applicable general sanction range

Step 3: Sanction Ranges Table - The Sanction Ranges Table assigns specific sanction ranges for punitive actions. Once the general sanction range (Low, Moderate, High, or Maximum) using the Sanction Matrix has been identified, the Sanction Ranges Table shall be used to identify the specific sanction range for the category of violator and the enforcement determined.

## APPENDIX 2: RISK MATRIX & SEVERITY DETERMINATION (TABLE OF PENALTIES GUIDANCE)

7.1 The Risk Matrix (Figure 1-1) shall be used when establishing severity levels for punitive actions.

- a. **General:** The level of severity selected for violation conduct in the Table of Penalties represents the severity of a generic violation. The determination of severity level for a kind of violation is based on the DGS's experience and expertise. In unusual circumstances, the severity level for a particular violation may be higher or lower than the severity level identified in the table.  
If violation conduct is not included in the Table of Penalties, the directorate shall determine the severity of departure from safety or a safety standard considering the specific facts and circumstances surrounding the violation and decide on the enforcement to be taken. More severe departures are generally associated with an increased likelihood of harm to persons or property and, therefore, warrant a higher severity level.
- b. **Violation Conduct with Multiple Applicable Table of Penalties Entries:** When violation conduct implicates more than one entry in the Table of Penalties, the most applicable entry is used, based on the facts and circumstances of the case. If the entries are equally applicable to the facts, the more specific entry is used to determine severity. If none of the entries is more specific, then the higher severity level shall be used.
- c. **Related Table of Penalties Entries with Varying Levels of Severity:** In the Table of Penalties, there are many entries describing related conduct with differing levels of severity. When assessing the applicable severity level, enforcement officer shall consider the facts and circumstances of the case, but not fortuitous aspects of the case. For example, an operational violation may be more hazardous in heavy traffic, but it is not less hazardous because no collision occurred.
- d. **Technical Noncompliance, Potential Effect on Safety, and Likely Effect on Safety:** Some of the related entries with varying severity levels use the phrases "technical noncompliance," "potential effect on safety," and "likely effect on safety."

*Technical Noncompliance (or Technical Non-Conformity):* A violation falls into this category where serious injury, death, or severe damage could not realistically occur because of the violation conduct. Such a consequence may be theoretically possible, but the likelihood is remote.



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**Potential Effect on Safety:** A violation falls into this category where serious injury, death, or severe damage could realistically occur because of the violation conduct, but in the particular facts and circumstances of the case such a consequence would not often occur.

**Likely Effect on Safety:** A violation falls into this category where serious injury, death, or severe damage may occur more often because of the violation conduct.

Risk Severity Classification Matrix	Severity level 1	Severity Level 2	Severity level 3
People	First Aid	Partial or total disability	Fatality
Environment	Spill in water < 7 m3	Spill in water 7 – 700 m3, long term impact on environment	Spill in water > 700 m3, Major Long Term impact on environment
Asset	Financial loss < \$5000	Financial loss = \$5000 to \$2 million	Financial loss > \$2 million
Reputation	Minor effect on commercial venture, minor local reaction	Threat to future commercial business, major media coverage	Severe threat to company, Prolonged International media coverage and public outcry.

*Table 2: Severity Levels – People, Environment, Asset, and Reputation Impact Matrix*

Sl. No.	Sanction Matrix	1st Violation	2nd Violation
1	Severity Level 1 - Minor	Low	Moderate
2	Severity Level 2 - Major	Moderate	High
3	Severity Level 3 - Catastrophic	High	Maximum

*Table 3: Sanction Matrix*

Sl. No.	Sanction Ranges	Low	Moderate	High	Maximum
1	Organisation	Warning	Restriction on Operations / scope of	Restriction on operations/ scope of approval	Suspension (beyond 1 year)/ Cancellation.

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			approval (upto 3 months)	and/or suspension (3 months to 1 year)	
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*Table 4: Sanction Range*

Sl. No.	Violation subject to being proved	Period of Suspension		
		1 <sup>st</sup> time offence	2 <sup>nd</sup> time Offence	3 <sup>rd</sup> time offence
1	Using fraudulent means during the DGS/ MMD Examination	1 year	3 years	Permanent
2	Use of forged certificate to gain employment as seafarer.	1 Year	3 years	5 years
3	Smuggling of contraband on ship	3 Years	Permanent	
4	Violating the Company's Environmental Management System such as MARPOL Violation.	3 Years	Permanent	
5	Violating the Company's D & A Policy / Intoxicated / under the influence of alcohol/ drugs while on duty.	1 year	Permanent	
6	Violation of Drug & Alcohol Policy during off-duty hours on board ship.	6 months	1 year	2 years
7	Causing accident on vessel (Collision/ grounding / explosion/ cargo gas leak) while on watch / command under the influence of alcohol/ banned substance leading to loss of property.	3 years	5 Years	Lifetime
8	Reckless or intentional act causing accident on vessel (Collision/ grounding / explosion/ cargo gas leak) while in charge of operations/ command, leading to loss of life.	5 years	Permanent	
9	Reckless or intentional act causing accident on vessel (Collision/ grounding / explosion/ cargo gas leak) while in charge of operations/ command, leading to marine pollution and fine.	5 years	Permanent	
10	Reckless or intentional act causing damage to ship's property.	3 years	5 years	Permanent
11	False declaration of medical condition during PEME.	Permanent		

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12	Signing off on false / fabricated medical grounds	1 year	3 year	2 years
13	Convicted for unlawful act either in India or abroad	3 years	5 years	
14	Breach of local port/ national regulations	3 months	1 year	3 years
15	Found violating the company's policy Harassment, bullying, assault Bullying, Harassment including sexual harassment and assault.	1 years	2 years	3 years
16	Harassment, bullying, assault leading to loss of life	Permanent		
17	Fake entries in Logbook and ship's records.	6 months	1 years	3 years
18	Disobeying the lawful command of Master / provoking violence on board.	1 years	3 years	5 years
19	Wilful sabotage of ship's appliances	1 years	3 years	5 years
20.	Wilful sabotage of ship's equipment thus effecting the seaworthiness of vessel and endangering life as well as marine environment.	3 years	Permanent	
21.	Unauthorised absence from duty or deserted the ship.	2 years	3 years	permanent
22.	If any seafarer is found indulging in vindictive reporting with intent to cause loss to another party, penalty will apply	3 months	6 months	12 months
23.	If any company is found indulging in vindictive reporting with intent to cause loss to another party, penalty will apply. Penalty may include suspension/ withdrawal/ blocking of privileges of company.	3 months	6 months	12 months
24	Unregistered non-RPSL company engaged in recruitment of seafarers	Not permitted, Register police complaint by respective DSEO		
25	RPSL Company abandoned seafarers in foreign / Indian ports	Not permitted, Licence to be withdrawn as per M.S (RPSL) Rules.		

*Table 5: Action against Individuals*

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26	Non-payment of wages to seafarers by RPSL Company.	Act as per MS (RPSL) Rules.
27	Maritime Training Institutes conducting STCW courses without prior approval from DGS	Not permitted, Register police complaint by respective MMD

*Table 6: Action against Companies*

**APPENDIX 3: STANDARD FORMAT FOR INITIAL VIOLATION  
PROCESS FORM DIRECTORATE GENERAL OF SHIPPING**

**INITIAL VIOLATION PROCESS FORM**

(i)	Name of the person/ company	
(ii)	Date/ time of suspected violation	
(iii)	Location where the incident took place	
(iv)	Description of the event(s) leading to suspected violation	
(v)	Names, addresses, telephone numbers of the witnesses :	
(vi)	Any other relevant information :	

#### APPENDIX 4: SHOW CAUSE NOTICE TEMPLATE

**Directorate General of Shipping**

No. ....

Dated .....

**SHOW CAUSE NOTICE**

WHEREAS during surveillance / investigation, it was observed that Shri ..... (name of contravener) has violated / not complied with ..... (indicate the legal provision), the details of which is set out in the enclosed statement.

NOW, THEREFORE, it is proposed to suspend / cancel ..... (specify the document issued by DGS) issued to..... (name of the contravener); Shri ..... is hereby called upon to show cause as to why the proposed action should not be taken against him. His reply should reach this office within 15 days of the receipt of this Notice.

The representation received from Shri ..... will be considered on merit and a decision will be taken accordingly.

If Shri ..... fails to reply within the stipulated time, it will be assumed that he has nothing to say in his defence and suitable orders will be liable to be passed against him ex parte.

( )

Signature of the Authorised  
Person

To