

SoP for conduct of Preliminary Inquiry (P.I) u/s 359, and Investigation u/s 389, of the Merchant Shipping Act, 1958.

Date – 15th March 2022

1. Preliminary Inquiry u/s 359 or Investigation u/s 388 of the Merchant Shipping Act 1958, may be conducted as follows:
 - a. Upon receipt of credible information that a shipping casualty^α has occurred, Surveyor shall forthwith report in writing the information received to the Directorate General of Shipping (DGS), and may proceed for making the Preliminary Inquiry (PI) u/s 359 of Merchant Shipping Act, 1958.

^αFor the purpose of the PI, Shipping Casualty shall be deemed to have occurred upon the following:

 - Any ship on or near the coast of India –
 - if any ship is lost, abandoned, stranded, or materially damaged; or
 - if any ship causes loss or material damage to another ship; or
 - any loss of life due to casualty happening on any ship.
 - Indian Ship at any place –
 - if loss, abandonment, stranding, material damage or loss of life, as mentioned above happens to or on board any Indian ship, and if any competent witness is found in India.
 - If any Indian ship is lost, or is supposed to have been lost, and any evidence is obtainable in India as to circumstances under which she proceeded to sea or was last heard of.
 - b. Preliminary Inquiry u/s 359 or Investigation u/s 388 of the Merchant Shipping Act, 1958, is to also be conducted upon specific instructions from the DGS.
2. Upon receiving instructions from the DGS, as mentioned in Para 1(b), the Principal Officer of the jurisdictional Mercantile Marine Department (MMD), shall immediately nominate a Surveyor (Inquiry Officer) u/s 358(2) of the Merchant Shipping Act, 1958, for carrying out the PI u/s 359 of the Merchant Shipping Act, 1958, OR nominate a Surveyor u/s 388 of the Merchant Shipping Act, 1958, to carry out investigation u/s 389 of the Merchant Shipping Act, 1958, as the case may be.
3. In case, a Surveyor receives credible information regarding occurrence of a 'shipping casualty', as mentioned in Para 1(a), the Surveyor shall immediately report in writing the information available to the DGS Casualty Branch, and to the Principal Officer of the jurisdictional MMD, and thereafter proceed to carry the PI u/s 359 of the Merchant Shipping Act, 1958. In addition, in this case the Surveyor shall also inform the DG CommCenter, so that DG CommCenter can seek casualty information from the concerned party.

4. Nominated Inquiry Officer (IO) u/s 358(2) of the Merchant Shipping Act, 1958 or the Officer nominated u/s 388 of the Merchant Shipping Act, 1958, is to liaise with the Casualty Branch of the DGS, as and when necessary.
5. Nominated Inquiry Officer (IO) u/s 358(2) of the Merchant Shipping Act, 1958 or the Officer nominated u/s 388 of the Merchant Shipping Act, 1958, shall coordinate with all concerned stakeholders pertaining to the casualty such as owners, operator, master, crew, charterer, agent, insurer, or any other party concerned in the matter.
6. Jurisdictional MMD in coordination with the DGS Casualty Branch (if required), is to issue notices as per Section 356(J) and/or 356(K) of the Merchant Shipping Act, 1958, as required. Format of the abovementioned notices are enclosed as Annex I and Annex II.
7. Inquiry Officer or Officer nominated, shall commence inquiry immediately without any delay, which shall involve boarding the vessel^β (where feasible), and/or visiting the site^β, or as appropriate depending upon the casualty being investigated. In addition, Officer nominated u/s 388 of the Merchant Shipping Act, conducting investigation u/s 389 of the Merchant Shipping Act, 1958, with the concurrence of the Principal Officer of the jurisdictional MMD, may be accompanied by any other personnel^χ considered necessary for the investigation, and in addition the Officer may remove any equipment^χ or part of it for the purpose of the investigation

^β *Section 454(b) of the Merchant Shipping Act, 1958, empowers the Inquiry Officer to enter and inspect any premises, provided the entry and inspection of which appear to be requisite for the PI being conducted.*

^χ *Section 389 of the Merchant Shipping Act, 1958, empowers the nominated officer to board any ship with all necessary personnel and remove any portion of the ship or machinery thereof for the purpose of the investigation.*

8. Inquiry Officer or Officer nominated, shall inspect^δ any ship, or part thereof, or any machinery, articles on board, or any certificates issued to master or others under the Merchant Shipping Act, 1958. If considered necessary, then in concurrence with the jurisdictional Principal Officer, the officer may require the ship to be taken to dry dock for inspection or survey. The officer shall also ensure that the ship is not unnecessarily detained or delayed for proceeding on any voyage.

^δ *Section 454(a) of the Merchant Shipping Act, 1958, empowers the nominated officer to board any ship and inspect the same, or part thereof, or any of the machinery, equipment, articles, or certificates of master or officers, or requiring to be drydocked for inspection or survey, but shall not unnecessarily detain or delay the ship on proceeding on any voyage.*

9. Inquiry Officer or Officer nominated, shall enforce the production^ε of all relevant documents and data such as, logbooks, movement book, certificates, H&M insurance, P&I insurance, relevant plans & drawings, medical records, voyage data recorders, relevant communication details, etc. for the purpose of the PI being conducted.

^ε*Section 454(d) of the Merchant Shipping Act, 1958, empowers the nominated officer to enforce the presentation of the documents, as mentioned above.*

**Whenever possible, copies of any documents taken are to be endorsed by the master or the person in-charge as applicable.*

10. Inquiry Officer or Officer nominated, shall require attendance of all such persons, as deemed fit, for examining and requiring answers for the purpose of the PI being conducted. Notice for attendance may be formal or informal, in case of issuing a formal notice, format as enclosed in Annex III may be used.

11. In case the person(s) required for attendance, as per Para 10 above, does not present himself to the officer for the purpose of the inquiry or investigation, the Inquiry Officer or Officer nominated shall issue summons^φ in this regard. Format for issuing summon is enclosed in Annex IV.

^φ*Section 454(c) of the Merchant Shipping Act, 1958, empowers the nominated officer to issue summon(s) for requiring attendance of persons as mentioned above.*

12. In case the person(s) issued summons as mentioned in Para 11 above, does not present himself to the officer for the purpose of the inquiry or investigation, the Inquiry Officer or Officer nominated shall in concurrence with the Principal Officer of the jurisdictional MMD, file a complaint in the Court of Judicial Magistrate of the First Class. Format for filing application in the court is enclosed in Annex V.

13. Inquiry Officer or Officer nominated, may administer oath or in lieu oath, shall require every person examined by him to make and subscribe a declaration of the truth of the statements^γ made by them during his examination. Format for the declaration is enclosed as Annex VI.

^γ*Section 454(e) of the Merchant Shipping Act, 1958, empowers Inquiry Officer to examine and take statements as considered necessary.*

14. As stated in Section 454(2) of the Merchant Shipping Act, 1958, no person shall hinder or obstruct the Inquiry Officer or Officer nominated from boarding the ship or otherwise impede him in execution of his duties or exercise of his powers under the Merchant Shipping Act, 1958.

15. Preliminary Inquiry conducted u/s 359 of the Merchant Shipping Act, 1958, shall have two parts i.e 'Preliminary Inquiry Report' and 'Recommendation of the Preliminary Inquiry'.

16. Investigation conducted u/s 389 the Merchant Shipping Act, 1958, may be reported in the same format as that of inquiry conducted u/s 359 of the Merchant Shipping Act, 1958.
17. Following is the recommended structure of the 'Preliminary Inquiry Report' or 'Investigation Report' as mentioned in Para 15& 16, as applicable:
 - a. Background Information
 - b. Description of the incident
 - c. Details of the vessels involved (Vessel Particulars, Certificate details, Classification Society details, Vessel owners details, etc.
 - d. Timeline / Sequence of events leading to the casualty
 - e. Post incident developments
 - f. Causal factors identification and analysis
 - g. Conclusion
 - h. Signature
 - i. Annexures^η

^ηAnnexure shall contain all the documents and data obtained and used for the conduct of the PI, and shall also include the examination and statements as mentioned in Para 13.
18. Following is the recommended structure of the 'Recommendation of the Preliminary Inquiry' or 'Recommendation of the Investigation' as mentioned in Para 15& 16, as applicable:
 - a. Information regarding the Preliminary Inquiry or Investigation conducted
 - b. Recommendations
 - c. Signatures
19. Preliminary Inquiry conducted u/s 359 of the Merchant Shipping Act, 1958, or Investigation conducted u/s 389 of the Merchant Shipping Act, 1958, needs to be completed as soon as possible, however following are the maximum timelines for submission of various reports to the DGS Casualty Branch:
 - a. Initial Report – 3 days
 - b. Interim Report – 30 days
 - c. Preliminary Inquiry Report or Investigation Report – 90 days
 - d. Recommendations of the Preliminary Inquiry or Investigation – 90 days
20. In case, if the recommended timelines as mentioned in Para 19 cannot be met, the reason(s) for same need to be sent to the DGS Casualty Branch in written.
21. Upon completion of the Inquiry or Investigation, both i.e Report and Recommendations as mentioned in Para 17 & 18, are to be submitted to the DGS Casualty Branch, through the Principal Officer of the jurisdictional MMD.

NOTICE UNDER SECTION 356(J) OF MERCHANT SHIPPING ACT, 1958

Whereas, the vessel _____, Official No.____, IMO No._____, Flag _____, Owned _____ by _____, Address _____, India, which is grounded/sunk, in/around position Lat - _____ N, Long - _____ and is approximately bearing _____deg, and distance ____ nm from _____.

And whereas, there is possibility of the escape of oil from the grounded/sunk vessel which may cause pollution to Indian waters and Coastline.

Now therefore, under provisions of Section 356(J) of Merchant Shipping Act, 1958, I am directed to inform that the Master, Owner, Agent, Charterer, Manager, and Operator of the vessel, that they are required to take all necessary steps required to prevent pollution of the Indian waters and coastline due to grounding/sinking of the vessel. The action(s) should include steps for the following:

- (a) Action for preventing the escape of oil from the vessel;
- (b) Action for removal of oil and noxious liquid substance from the vessel;
- (c) Action for removal of the vessel;
- (d) Action for removal of the slicks on the surface of the sea, if it were to occur; and
- (e) Action to disperse the slicks on the surface of the sea, if it were to occur;

This Directorate and the jurisdictional MMD needs to be informed of the actions taken in the matter immediately, and regular updates needs to be provided to all concerned Authorities.

This is issued with approval of the Nautical Advisor to Government of India.

To,

1. Master of Vessel,
2. Owner of Vessel,
3. Charterer
4. Agent
5. Manager

Copy to:

1. MMD
2. MMB
3. Coast Guard
4. Port

NOTICE UNDER SECTION 356(K) OF MERCHANT SHIPPING ACT, 1958

Whereas, the _____ issued notice under section 356(J) of Merchant Shipping, Act 1958, on _____ to the master, owner, charterer, operator, agent of the vessel _____ for clean-up of spilled oil, and to undertake containment and recovery of oil spilled, and to take other necessary action(s) to keep the environment clean, as it was prevailing prior to the incident, and to prevent further spillage of oil into the sea including removal of oil from the shore which spilled due to collision / grounding of vessel _____, and has caused pollution damage in the area.

And Whereas, even though notice under 358 (J) was issued on _____, it was noticed that the oil washed ashore along the coast line and beaches at places like _____, _____, _____ etc., requiring urgent action to be taken by the authorities / agencies to deal with the resulting pollution damage.

Now therefore, all expenses and liabilities incurred for dealing with the said pollution incident shall be a debt to the Central Government by the said vessel(s) _____ [IMO No. _____], and its master, owner, charterer, operator, agent, and all persons interested in the vessels, and is required to be paid as per provisions of the Merchant Shipping Act, 1958.

The Master, owner, charterer, operator, agent, and all persons interested in the vessel shall continue to take all necessary measures to prevent and mitigate the pollution damage caused due to the incident.

To,

1. Master of Vessel,
2. Owner of Vessel,
3. Charterer
4. Agent
5. Manager

Copy to:

1. MMD
2. MMB
3. Coast Guard

NOTICE

TO ATTEND A PRELIMINARY INQUIRY BY THE OFFICER APPOINTED FOR THE PURPOSE UNDER SECTION 358(2) OF THE MERCHANT SHIPPING ACT, 1958.

To,

Name and occupation of person referred to in the summons.		Name and port of registry of ship in respect of which inquiry is to be instituted.	
Name	Occupation or rank on board ship	Name	Port of registry

You are hereby notified, that I, by virtue of the provisions of section 359 of the Merchant Shipping Act, 1958, require you to attend before me at _____, on _____ (date), _____(time), for the purpose of being examined relative to the circumstance attending abovementioned casualty, and that you will bring with you the ship's and/or other relevant papers. The officers, members of the crew of the vessel, or any other witnesses you may desire to produce should also attend.

Issued at: _____

this day of _____ 20

Designation
Officer appointed under section 358(2)
Merchant Shipping Act, 1958.

SUMMONS**TO ATTEND A PRELIMINARY INQUIRY BY THE OFFICER APPOINTED FOR
THE PURPOSE UNDER SECTION 358(2) OF THE MERCHANT SHIPPING ACT,
1958**

To,

Name and occupation of person referred to in the summons.		Name and port of registry of ship in respect of which inquiry is to be instituted.	
Name	Occupation or rank on board ship	Name	Port of registry

Take notice, that I hereby, by virtue of the provisions of section 359 of the Merchant Shipping Act, 1958, require you to attend before me at _____, on _____ (date), _____ (time), for the purpose of being examined in relation to the ship and/or person _____.

(and I also require you, then and there to bring with you and produce the official log book of the ship, and all other documents containing any information on the subject of the casualty)*.

Given under my hand at: _____

this day of _____ 20

Designation
Officer appointed under section 358(2)
Merchant Shipping Act, 1958.

Note – This form is to be used by officers appointed by the Govt. of India when witnesses refuse to attend at a preliminary inquiry under section 359 of the Merchant Shipping Act, 1958.

*The words within the brackets only apply in the case of Master or other person having the charge or the log-book, and are to be erased in all other cases.

Annex V

BEFORE THE HON'BLE (... Magistrate),
(.....address of the Court.....)
(.... Case no.....)

...

MERCANTILE MARINE DEPARTMENT,

Thru *(Name of the Officer)*

Aged *(xx years)*

(Designation)

Office at:

(MMD address)

(Email Id:)

Complainant

Vs

(Name of the person),

(Name of the company)

(Address of the company)

(Email Id:)

Accused

**Complaint for the offence u/s 454(1) & 436 of
the M.S. Act 1958, r/w Section 174 of the
Indian Penal Code.**

MAY IT PLEASE YOUR LORDSHIP:

On behalf of the Complainant above named it is stated and submitted as under :

1. I say that I am a Public Servant within the meaning and definition of Section 21 of the Indian Penal Code. I say that by virtue of being a Public Servant, I am authorised to file the

present complaint on behalf of the Mercantile Marine Department, which is a Central Government Office. I say that I am aware of the facts of the case and hence I am competent to file and depose about the present complaint. Annexed hereto and marked as **Exhibit A** is the letter of authority issued by the Department (*Letter of MMD authorizing the officer to file this complaint*)

2. I say that Mercantile Marine Department is a Department which functions under the Directorate General of Shipping, Ministry of Ports, Shipping & Waterways, Government of India, which implements the provisions of the Merchant Shipping Act, 1958.
3. I say that the Accused (*details of the individual who was issued summons*) having his office at the address mentioned in the cause title.
4. The Complainant submits that by virtue of powers conferred by section 358(2) of the Merchant Shipping Act, 1958, (*Surveyor designation & name*) was authorised to carry out inquiry and investigation into any shipping casualties and to report thereof to the Central Government under section 359 of the Merchant Shipping Act, 1958
5. Thus, being a public servant, on behalf of the Complainant, (*Name of Surveyor*) is carrying out preliminary inquiry U/s 359 of the Merchant Shipping Act, 1958 into the (*incident*) at (*location of the incident*).
6. The Complainant submits (*brief of the incident along with exhibits*).
7. As per the preliminary inquiry being conducted, the statement of the accused was required to be recorded, accordingly the accused was instructed to be present in MMD on _____ at _____ hrs. Since he failed to present himself before the inquiry officer, Summons/s 454(1) of the M.S. Act, 1958, were issued to the accused. (*Details of Notice and Summons issued, relevant documents to be attached as exhibits*)
8. (*Response of the accused, if any.....*)

9. I say that, the Accused even after receiving the summons from the Complainant i.e the Mercantile Marine Department, (*Place*) has not only failed to appear for the inquiry but also tried to deliberately evade the summons (*details*) and has omitted to attend on the date and time, at place as mentioned in the summons and has thus committed an offence under section 174 of Chapter X of Indian Penal Code, 1860.
10. I say that, u/s. 359 R/w section 358, a report of shipping casualties has to be reported to the Central Government and therefore the inquiry is very much necessary and for which the attendance of the Accused is imperative. I say that, upon receipt of summons from a public servant, the concerned person is legally bound to attend, however in the present case, the Accused has been intentionally omitting to remain present and thus by deliberately avoiding/omitting to remain present, the Accused has shown disobedience to summons and has thus committed the offence under section 174 of the Indian Penal Code.
11. I say that the office/department of the complainant falls within the jurisdiction of (*name of the Police station*) which falls within the jurisdiction of this Hon'ble Court and therefore this Hon'ble Court has jurisdiction to try and entertain the complaint.
12. I crave leave to add, and or amend, rescind any of the grounds above.
13. No other complaint with respect to the present subject matter has been filed in any other court of law.
14. In view of the above, it is therefore prayed that this Hon'ble Court be pleased to
- a. Issue process against the Accused under section 174 of the IPC and the Accused be dealt as per law.
 - b. Grant such other and further reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

**AND FOR THIS ACT OF KINDNESS THE COMPLAINANT AS IN DUTY BOUND
EVER PRAY.**

Place:

Dated:

ADVOCATE FOR THE COMPLAINANT

VERIFICATION

I, (Name & designation) **of the Mercantile Marine Department, Government of India** for and on behalf of the Complainant do hereby submit that whatever has been stated above is true and correct to the best of my knowledge, belief and on the basis of the records at the Mercantile Marine Department, Mumbai, and the same is true and correct and nothing is concealed therefrom.

Solemnly Affirmed at Mumbai

Dated

(Name of the officer)

(designation of the officer)

Mercantile Marine Department, Government of
India

Identified by Me

Advocate

BEFORE ME

LIST OF WITNESSES

- 1.
- 2.
- 3

LIST OF DOCUMENTS

1. letter of authority issued by the Department.
2. Copy of the Permanent Certificate of Registry issued by the Registrar of Indian Ships.
3. copy of the Notice dated (date).
4. copy of the Email dated (date)
5. copy of the summons dated (date).
6. copy of emails dated (date)
7. copy of the Summons dated (date).
8. copy of the reply dated (date)
9. copy of the Summons dated (date).
10. copy of the reply dated (date).
11. Any other document with the permission of the Hon'ble Court

ADVOCATE FOR THE COMPLAINANT

Exhibit – A

Letter of Authority

This is to certify that *(Name and Designation of the Officer)*, who is working with the department for last over _____ years and also a Public Servant for past _____ years, is hereby authorized to file the complaint on behalf of Mercantile Marine Department against *(Name of the individual)* before the *(Details of the Magistrate and Court)*, and to do all the necessary acts related to the complaint like deposing on behalf of the Department, verifying the complaint, giving evidence , withdrawing the complaint, signing on any document , for and on behalf of the Mercantile Marine Department, (Place)

Dated:

(Name and Designation of Signing Authority)

STATEMENT

Name .
Designation .
Grade of Certificate .
Certificate Number .
Certificate granted by .
In this ship .

Examined on oath _____ states
Solemn affidavit

Above statement made by me has been read to me and I declare that it is true to the best of my knowledge and belief

Signature of deponent.

Taken before me this day of 20 at.

Officer appointed under section 358(2) of the Merchant Shipping Act, 1958.

.....
Note: The deposition may continue on the reverse or additional pages is necessary, in which case the attestation clause on this page may be deleted.

*Delete, if examination is not under Oath / Solemn affidavit

+This declaration is purely voluntary on the part of the deponent and may be deleted, if consent is not forthcoming.