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CIRCULAR

Barbados – PSC Detentions

C24016 | 15 April 2024

Notice to: Ship Owners / Managers / Operators / Surveyors / Auditors

The Barbados Maritime Ship Registry (BMSR) has issued [Bulletin 006 – Port State Control Detentions](#), which supersedes information bulletins 270, 346 and 289.

The Bulletin applies to all Barbadian flagged vessels detained by Port State Control.

Notification

The BMSR requires the Company to immediately notify the following parties of any detention of a Barbadian vessel:

- the BMSR Operations Department ops@barbadosmaritime.com;
- the Classification Society that issued the Certificate of Class;
- the Recognised Organisation (RO) (i.e., Classification Society) that issued the statutory certificate(s);
- the RO that issued the ISM Code Document of Compliance (DOC) and Safety Management Certificate (SMC); and
- for security/ISPS Code related detentions, the Recognised Security Organisation (RSO) that issued the International Ship Security Certificate (ISSC).

The Company is also required to arrange the attendance of an RO/Class surveyor(s) to assist in clearing the deficiencies.

The following documents, where available, are to be provided to the BMSR at the earliest opportunity:

- a copy of the PSC Report (Form A and B);
- a copy of the Detention Notice;
- confirmation of notification to the parties listed above, as applicable;
- a description of actions taken or planned to rectify all deficiencies at the earliest opportunity.

Follow Up

The Company must perform a Root Cause Analysis (RCA) within 30 days of the detention unless otherwise agreed with the BMSR, and take appropriate corrective and preventative actions to reduce the possibility of similar deficiencies arising in the future.

The RCA report and details of corrective and preventative actions is to cover all deficiencies raised at the detention and should include comments from the Master or Chief Engineer on the deficiencies, as applicable.

When a significant proportion of the Company's fleet has been justifiably detained by PSC, the BMSR will determine the scope and extent of additional inspections, surveys, or audits of shipboard and shore-based safety management systems of a Company.

For deficiencies related to non-payment or delayed payment of wages, the Company (or MLC shipowner if different) must:

- provide documentary evidence to the BMSR confirming that all wages have been paid before the vessel is released from the detention, and
- provide documentary evidence of timely payment of wages as they become due, for a period specified by the BMSR after release from detention.

Assessment after a detention

The BMSR will review the reports and correspondence related to the vessel's PSC and Barbados inspection performance in the 24 months before the detention.

For the **First detention** in a 12-month period, the BMSR may require, before departure from the port of detention:

- "Detention Follow Up";
- external ISM audit;
- MLC inspection; and/or
- ISPS audit.

Depending on the number and type of deficiencies the vessel may be placed under the BMSR Special Inspection Program (SIP).

PSC authorities might also request an additional external ISM audit to be carried out before releasing the vessel from detention.

If the detention occurs within the survey window for a related annual survey, the survey must be completed before the vessel sails.

If the detention occurs within the survey window for a related renewal, periodical, or intermediate survey, that survey should be conducted to the extent possible, except for Safety Equipment, Safety Radio, and IOPP, which must be completed.

Where a survey is incomplete, a schedule for completion of surveys at the next convenient port must be set by the RO and may not be delayed until the end of the window.

If the detention does not occur within any related survey window, the RO surveyor, after clearing the deficiencies, must carry out a general examination of the vessel and decide whether an additional survey is necessary. The extent of the additional survey will be at least that of an annual survey.

For the **Second detention** in 12-months, the vessel will be specially examined to assess whether it remains acceptable for continued registration with the BMSR. This may lead to owners being asked to find an alternative register or deletion of the vessel from the Barbados register.

Should the BMSR decide to retain the vessel in the register, the vessel shall be subject to the above actions with an additional ISM DOC audit of the Company to the extent of an annual audit, not later than 30 days from the date of the detention.

PSC Detentions - Disputes

The Circular advises that there are several ways to handle a detention that is felt to be unjustified. The first step is to discuss the issue, in a professional manner, directly with the PSCO and contact the BMSR to seek advice on potentially avoiding detention.

The Circular notes the following points:

- detention of a vessel is a serious matter involving many issues, the PSCO may consider it in their best interest to cooperate with the Company, the BMSR, and/or the RO responsible for issuing the relevant certificates;
- without limiting the PSCO's discretion in any way, the involvement of the BMSR, Company, and RO could result in a safer vessel, avoid subsequent arguments relating to the circumstances of the detention, and prove advantageous in the case of litigation involving "undue delay";
- serious deficiencies could be dealt with by the PSCO "as agreed with the flag or Recognised Organisation" (usually action codes 47 and 48) instead of "Detention" (action code 30).

National Appeal

The Circular advises that the shipowner or operator generally has the right to appeal against a PSC detention. Such appeals are generally made directly to the PSC Authority involved, and the Master should receive the procedure for appealing when given the notice of detention. The Circular provides links to the appeal procedures for the various MoUs.

The Circular also notes:

- The BMSR is not usually involved in the formal appeal process but will provide, on request, a supporting statement where there are grounds to believe that the detention is not justified.
- If the PSC authority's appeal procedure requires the appeal to be made by the flag State, then BMSR will appeal only where the detention is considered unjustified or inappropriate in the circumstances. In these cases, the Company will be required to provide its consent to the appeal before it is lodged.
- A positive outcome to a national appeal results in the PSC detention being deleted from the PSC regime database and, in some countries, may be used in any claim for financial compensation.
- There are time limits for the filing of an appeal, and these vary between MoUs and between PSC authorities within the same MoU.
- If an appeal is made against a PSC detention to the Port State authority, this may exclude a subsequent review of the PSC detention by the MoU concerned.

Complaints

When a disagreement cannot be resolved within a reasonable time, or in cases where no appeal is made, Companies may present a complaint to the BMSR, who may approach the PSC authority and ask it to reconsider its position.

Companies are expected to present a robust case to ensure that the complaint has the best chance of success, and the BMSR will only proceed if the evidence supporting the complaint has sufficient merit.

PSC Detention Review under the MoU

Most PSC regimes grant the opportunity for a detention review under the relevant MoU, even when an owner or operator has not used the official national appeal procedure, but still wishes to dispute a PSC detention. The request for such a review may be made to the MoU secretariat and to the relevant MoU Review Panel (where established; not all MoUs have a detention review panel).

The BMSR should be made aware of the Company's intention to request a review and will review the PSC report and provide guidance and advice on how to prepare the request. The BMSR will also provide a supporting statement to explain why the detention is deemed not valid or justified.

The review panel delivers an opinion that may lead to the Port State reconsidering its decision, however, the Port State is under no obligation to reconsider. The opinion of the Review Panel is not binding on the Port State and cannot be used in any claim for financial compensation.

The Circular also reminds us that the Code of Good Practice for PSC Officers can be found in IMO MSC-MEPC.4/Circ.2 and as Appendix 1 to IMO Resolution Res. A.1155(32)

Act now

Ship Owners / Managers / Operators/ Surveyors/ Auditors should take note of the contents of the BMSR Bulletin 006 and be guided accordingly.