

# THE REPUBLIC OF LIBERIA

LIBERIA MARITIME AUTHORITY

## REQUIREMENTS FOR MARINE INVESTIGATIONS AND HEARINGS



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RLM-260

SERIES 2025

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**THE REPUBLIC OF LIBERIA  
LIBERIA MARITIME AUTHORITY**

**RULES FOR MARINE INVESTIGATIONS AND HEARINGS**

**TABLE OF CONTENTS**

**ARTICLE 1 –  
AUTHORITY AND PURPOSE**

1.1	Authority .....	1
1.2	Purpose .....	1

**ARTICLE II – DEFINITIONS**

2.1	Marine Casualty .....	1
2.2	Marine Offense.....	1
2.3	Party .....	2

**ARTICLE III  
GENERAL PROVISIONS**

3.1	Place of Proceedings .....	2
3.2	Evidence of Criminal Conduct.....	2
3.3	Public Statement.....	2

**ARTICLE IV  
COOPERATION OF SHIPOWNERS AND MARINERS**

4.1	Owners .....	3
	(1) Requirements.....	3

(2) Records Retention and Witnesses .....	3
(3) Penalties .....	3
4.2 Mariners .....	4
(1) Requirements.....	4
(2) Penalties .....	4

**ARTICLE V  
PRELIMINARY INVESTIGATIONS**

5.1 Generally.....	4
5.2 Preliminary Investigating Officers.....	5
5.3 Powers and Duties of Preliminary Investigating Officers.....	5
5.4 Personal Safeguards .....	5
(1) Warning.....	5
(2) Presence of Counsel .....	5

**ARTICLE VI  
FORMAL INVESTIGATIVE AND ADMINISTRATIVE HEARINGS**

6.1 When Not Required; Summary Action.....	6
(1) Conviction of a Felony.....	6
(2) Failure to Appear.....	6
(3) Failure of Shipowner .....	6
(4) Prima Facie Proof.....	6
(5) Monetary Penalty Only .....	6
6.2 When Required or Advisable .....	6
6.3 Written Submission as Alternative.....	7
6.4 Presiding Officers; Marine Boards .....	7
6.5 Powers of Presiding Officers .....	7
6.6 Recorder; Notice .....	8

6.7	Right to Counsel; Participation.....	8
6.8	General Admission to Hearings .....	8
6.9	Record .....	8
6.10	Opening of Hearing.....	9
6.11	Preliminary Matters.....	9
6.12	Previously Gathered Evidence .....	9
6.13.	Development of Further Evidence .....	9
6.14	Admissibility of Evidence.....	9
6.15	Documentary Evidence .....	9
6.16	Official Notice.....	10
6.17	Impeachment .....	10
6.18	Continuance of Hearing .....	10
6.19	Closing Argument .....	10
6.20	Closing Statement .....	10
6.21	Hearing on Remand.....	10
6.22	Retention of Physical Evidence .....	11

**ARTICLE VII  
WITNESSES**

7.1	Summons.....	11
7.2	Deposit of Documents.....	11
7.3	Testimony by Deposition or Written Questions.....	11
7.4	Order of Appearance and Exclusion .....	12
7.5	Oath.....	12

7.6	Experts.....	12
7.7	Medical Examination .....	12
7.8	Failure to Appear.....	12

**ARTICLE VIII  
REPORTS**

8.1	Generally .....	12
8.2	Form .....	13
8.3	Filing .....	13
	(1) Reports... ..	13
	(2) Accounts of Expense .....	13
8.4	Accompanying Materials .....	13
8.5	Release... ..	13
8.6	Copies to Parties.....	14
8.7	Report on Remand.....	14

**ARTICLE IX  
COMMISSIONER’S DECISION**

9.1	Generally .....	14
9.2	Further Argument.....	14
9.3	Notice of Decision.....	14
9.4	Reopening Proceedings .....	14

**ARTICLE X**  
**APPENDIX OF FORMS AND REFERENCES**

- 10.1 Form RLM-109, Report of Vessel Casualty or Accident
- 10.2 Form RLM-109-1, Report of Personal Injury or Loss of Life
- 10.3 IMO RESOLUTION MSC.255(84), Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident





**THE REPUBLIC OF LIBERIA  
LIBERIA MARITIME AUTHORITY**

**RULES FOR MARINE INVESTIGATIONS AND HEARINGS**

**ARTICLE 1 – AUTHORITY AND PURPOSE**

- 1.1 Authority** – These rules are promulgated under the authority of the Liberian Maritime Law. They shall govern the conduct of all marine administrative proceedings under the Liberian Flag. They are intended to implement and enforce the Liberian Maritime Law and Regulations, and they presume a working familiarity with the Law and Regulations upon the part of Investigating and Hearing Officers.

*Maritime Law Sections 11, 18, 258  
Maritime Regulations, Chapter IX*

- 1.2 Purpose** – Liberian marine administrative proceedings are essentially remedial. Their objective is the promotion of safety of life and property at sea. In particular, all investigations should look to the cause of difficulties experienced, possible means of avoiding them in the future, possible violations of law and possible faults or failures on the part of personnel, shipowners or operators which might require action in respect of any licenses, certificates or documents.

**ARTICLE II – DEFINITIONS**

- 2.1 Marine Casualty** – The term “marine casualty” shall mean any casualty or accident involving any vessel if such casualty or accident occurs upon the navigable waters of the Republic of Liberia, or any casualty or accident wherever occurring, where such casualty or accident involves any vessel documented under the laws of the Republic of Liberia.

*Maritime Regulation 9.256 (1)*

- 2.2 Marine Offense** - The term “marine offense” shall mean any act, failure to act, or offense contrary to the Maritime Law or any Regulations thereunder, including any Marine Notice or Rules made as provided by law and any International Convention or Agreement to which Liberia is a party or which it has implemented.

*Maritime Regulations 1.13, 9.256 (2)*

- 2.3 Party** – A person shall *prima facie* be deemed a “party” if he or she holds a license or certificate issued by the Republic of Liberia and is or may be involved in a marine casualty or offense or, in the case of an investigation only, is an owner or bareboat charter of a Liberian vessel involved in the marine casualty or offense under investigation; and a person may be so deemed, in the case of an investigation only, if an agent or employee of the owner or bareboat charter, or if the Liberian owner of a non-Liberian vessel involved in the matter under investigation .

### **ARTICLE III – GENERAL PROVISIONS**

- 3.1 Place of Proceedings** – Whenever feasible, proceedings under these rules should be conducted in Offices of the Liberia Maritime Authority; but when necessary or helpful, they may be conducted elsewhere with the consent of the official ordering the proceeding.
- 3.2 Evidence of Criminal Conduct** – At any time during the course of a proceeding under these Rules, where it appears to the satisfaction of a single Investigation or Hearing Officer, or in the case of a Marine Board of Investigation to the Chairman or a majority of its Members that evidence of criminal conduct under the Laws of the Republic of Liberia is being developed, the Investigating or Hearing Officer or Chairman shall immediately notify the Minister of Justice of the Republic, via the official ordering the proceeding. And if a witness not represented by counsel appears to be incriminating himself or herself, he or she shall be so advised by the Presiding Officer.
- 3.3 Public Statement** – At no time shall any Presiding Officer under these Rules, other than the Commissioner or a Deputy Commissioner or an Officer Specifically designated by him or her for the purpose, issue any public statement relating to the proceeding at hand other than that of the date, time, place and subject matter of a hearing specified in Maritime Regulation 9.258 (5)(c). All public inquiries and request for information shall be referred to the designated Officer or to the official ordering the proceeding.

## ARTICLE IV – COOPERATION OF SHIPOWNERS AND MARINERS

### 4.1 Owners

- (1) **Requirements** - The owner (or bareboat charter) of a Liberian Flag vessel is required by law to report in detail any marine casualty involving such vessel and resulting in:
- (a) Actual physical damage to property in excess of one hundred thousand dollars (US \$100,000);
  - (b) Material damage affecting the seaworthiness or efficiency of a vessel;
  - (c) Stranding or grounding;
  - (d) Loss of life; or
  - (e) Injury causing any person(s) to remain incapacitated for a period in excess of 72 hours.
  - (f) An incident which has produced a deleterious effect upon the marine environment.
- (2) **Records Retention and Witnesses** – The shipowner (or bareboat charterer) is required to retain any records of or material pertaining to a voyage upon which a casualty requiring a report occurred; to otherwise cooperate in the investigation of marine casualties or offenses; and to produce, when called upon, witnesses in his or her employ and any relevant books, papers, documents and other records in his or her possession; and to permit investigating officers to board and examine vessels and their appurtenances. Any shipowner (or bareboat charterer) who is summoned to attend an investigative hearing under these Rules is required further to disclose in writing to the Recorder, at least 15 days before the date of opening of the hearing, a list of any documents in his or her possession, custody or control which may bear upon the matter; and he or she shall produce as required by the Recorder a specified number of copies of designated documents at the commencement of the hearing.
- (3) **Penalties** – There is a fine of one thousand dollars (US \$1,000) for failure to report a marine casualty. In the event of failure of an owner or bareboat charter or his or her representative to cooperate fully in any marine investigation, any or all of the following consequences may result with respect to the vessel directly involved or to any vessel of the same ownership;
- (a) Cancellation from Liberian registry;
  - (b) Revocation of the Certificate of Registry;
  - (c) Refusal to issue a Certificate of Cancellation from Liberian registry or otherwise to give the consent of the Republic of Liberia to a transfer of ownership or registry;
  - (d) Refusal to accept registration or re-registration under the Liberian Flag;

- (e) Liability for a monetary penalty not to exceed ten thousand dollars (US \$10,000).

*Maritime Law Sections 18, 257*

*Maritime Regulations 9.257, 9.258(2)*

## **4.2 Mariners**

**(1) Requirements** – The master or person in charge of any Liberian Flag vessel is required by law to report any marine casualty as specified in Rule 4.1(1) above, and to retain any records of or material pertaining to a voyage upon which a casualty requiring report occurred. It is the duty of all holders of licenses of competence or other certification issued to mariners by the Republic of Liberia to cooperate in the investigation of marine casualties or offenses; to attend any hearings to which they may be summoned, to testify orally or in writing, or to produce, when called upon, relevant books, papers, documents and other records in their possession; and to permit investigating officers to board and examine vessels and their appurtenances.

**(2) Penalties** – There is a fine of one thousand dollars (US \$1,000) for failure to report a marine casualty. In the event of failure of holders of licenses or other certification to cooperate fully in any marine investigation, any or all of the following consequences may result:

- (a) Suspension or revocation of the licenses or other certification held;
- (b) Refusal to renew or re-issue any licenses or other certification held, before or after expiration;
- (c) Liability for a monetary penalty not to exceed five thousand dollars (US \$5,000).

*Maritime Law Sections 18, 257*

*Maritime Regulations 9.257, 9.258 (3)*

## **ARTICLE V – PRELIMINARY INVESTIGATIONS**

**5.1 Generally** – Preliminary Investigations are to be undertaken with respect to marine casualties or offenses as directed by the Commissioner or a Deputy Commissioner. They may be ordered as an initial step in determining whether a hearing should be held. Whenever the Preliminary Investigating Officer feels that there is a reasonable doubt as to the facts or believes that the casualty or offense is of an unusual character or may call for suspension or revocation of any license, permit or document, he or she shall recommend a formal investigation or suspension and revocation proceeding, as appropriate.

- 5.2 Preliminary Investigating Officers** – The Investigating Officer in a preliminary investigation may be the commissioner or a Deputy Commissioner of Maritime Authority or a person appointed by the Commissioner or a Deputy Commissioner.

*Maritime Regulation 9.258 (4)(a)*

- 5.3 Powers and Duties of Preliminary Investigating Officers** – The Investigating Officer in a preliminary investigation may examine any relevant papers, documents or records, interview witnesses, examine vessels and equipment and visit the scene of the casualty or offense. He or she may obtain and collect evidence including but not limited to affidavits, oral or written signed or unsigned statements, books, papers, documents or records and may make copies, take photographs, and remove and mark any original documents or objects for future identification. It is the duty of every Preliminary Investigating Officer to ensure the complete development of all pertinent facts, to establish to the best of his or her ability the cause of any casualty or the circumstances of any offense, and to make such recommendations in his or her report as will in his or her best judgment aid in preventing a recurrence of the casualty or offense, and in determining whether further action should be taken. In addition to any special *ad hoc* appointees, the Chief or Acting Chief and Staff of the Investigation Division of the Liberia Maritime Authority shall at all times retain the full powers and duties of Preliminary Investigating Officers.

**5.4 Personal Safeguards**

- (1) **Warning** – Before questioning any person whose conduct is under investigation, the Preliminary Investigating Officer shall advise him or her of the nature of the investigation and the substance of any known allegation or charge which has been made against him or her, affording him or her the opportunity to make such statement as he or she may desire. In the ordinary course of preliminary questioning it shall not be necessary, owing to the remedial nature of the investigation, to advise the individual being interviewed of his or her rights to counsel and to remain silent. However, if at the outset or at any subsequent stage of the investigation evidence appears tending towards suspicion of criminal conduct or conduct which could call for the suspension or revocation of a license, permit or other document, such individual should forthwith be advised of his or her right by the Preliminary Investigating Officer.
- (2) **Presence of Counsel** – Upon the request of any individual whose conduct is under preliminary investigation, or upon the request of the Master or the shipowner (or bareboat charterer), counsel declaring his or her representation of such individual may be present during the questioning. However, no counsel for any person other than the individual under questioning may be present unless such counsel also represents the individual and the individual clearly understands this and agrees to his or her presence.

## ARTICLE VI – FORMAL INVESTIGATIVE AND ADMINISTRATIVE HEARINGS

- 6.1 When Not Required; Summary Action** - A hearing is not required and summary action may be taken when the matter concerns a marine offense and:
- (1) **Conviction of a Felony** – In the case of an individual party, the Liberia Maritime Authority is furnished with a duly-authenticated certificate of his or her conviction of a felony, or of the revocation or suspension of his or her national license of competence or other certification; or
  - (2) **Failure to Appear** – In the case of an individual or corporate person holding a license or certificate issued by the Liberia Maritime Authority, and who has been duly summoned to appear at a hearing, such individual or corporate person fails to appear; or
  - (3) **Failure of Shipowner** – In the case of a shipowner, the vessel in question is dropped or suspended from class, or is not timely presented for a required inspection, or breaches an Order of Detention issued by the Liberia Maritime Authority; or
  - (4) **Prima Facie Proof** – There is *prima facie* proof upon the records of the Liberia Maritime Authority that the license, certificate or document in question has been unlawfully altered or was obtained by fraud or is a forgery; or
  - (5) **Monetary Penalty Only** - The offense is one for which only a monetary penalty is sought as provided by law.

Otherwise, the Commissioner or a Deputy Commissioner may, pending a hearing, suspend at any time and without prior notice any license, certificate or document in any matter involving the seaworthiness of a vessel, or whenever such summary action is necessary to effectively implement the Liberian Maritime Law and Regulations, or an International Convention or Agreement. The party against whom any summary action is directed may apply as under Rule 6.3 to make a written submission in defense or mitigation.

- 6.2 When Required or Advisable** – A hearing is required in every instance where revocation or suspension of any license, permit or document is proposed on the basis of a preliminary investigation, or where any of the offenses specified in Maritime Regulation 1.17(4) are alleged but have not been proved. It is advisable to hold a hearing in all cases of serious marine

casualties resulting in loss of life, substantial pollution or substantial property damage.

**6.3 Written Submission as Alternative** – In any matter concerning a marine offense, a party who is the subject of an allegation or charge may apply in writing to the official ordering the proceeding stating his or her consent to have the matter considered as to him or her on the basis of a written submission on his or her behalf. Such application, if granted, shall together with the written submission constitute a waiver of any right to or requirement of a hearing. The Hearing Officer shall in such case set a reasonable time period for the written submission and any written responses, and failure to timely file a written submission or response shall constitute a failure to appear under these Rules. When all submissions and responses have been filed, the Hearing Officer shall proceed with respect to such party as if he or she had appeared and given his or her evidence at a hearing.

**6.4 Presiding Officers; Marine Boards** – Formal investigative and administrative hearings may be carried out by the Commissioner or a Deputy Commissioner or a single Formal Investigating or Hearing Officer appointed by the Commissioner or a Deputy Commissioner, who may also appoint an Assessor or Assessors to aid the single Presiding Officer in technical matters. In cases of very serious marine casualties, a Marine Board of Investigation may be appointed by the Commissioner or by a Deputy Commissioner upon request of the Commissioner, who shall also designate its Chairman. Such a Board shall consist of not less than three nor more than five Members. When a Board has been appointed, the Chairman shall, in the absence of specific direction by the Commissioner or Deputy Commissioner, set a time and place of hearing and notify the Recorder, who shall notify the other Members of the Board. At any hearing before a Board, the presence of the Chairman and one other Member of the Board shall be sufficient to constitute a quorum.

*Maritime Regulation 9.258(1), (5)(a)*

**6.5 Powers of Presiding Officers** – The Presiding Officer in any proceeding under these Rules shall have power to set hearings, administer oaths, require persons having knowledge of the subject matter to attend formal hearings or answer written questions, require the production of relevant evidence including but not limited to books, papers, documents and records, rule upon the nature and admissibility of evidence, board and inspect vessels and their appurtenances and visit the scene of a casualty or offense. This implies the exercise by the Presiding Officer of all control necessary or appropriate to ensure the orderly, impartial and duly procedural conduct of the hearing and the development of all relevant and material facts.

*Maritime Regulation 9.258(5)(b)*

**6.6 Recorder; Notice** – The official ordering the hearing shall appoint a Recorder, who shall give written notice in advance of any hearing to all known parties and, where feasible, to known persons or states interested, specifying the date, time, place and subject matter of the hearing. Alternatively or additionally, upon direction of the official ordering the hearing, notice of the hearing may be given by public announcement. In any case where the suspension or revocation of any license, permit or document is known at the outset to be in issue, a separate written notice to each such party shall also list in detail any allegations or charges then made and shall advise of the right to counsel and, subject to the discretion of the Presiding Officer, to have called and examined witnesses on his or her behalf or to present other evidence provided sufficient return notice is given by such party in advance of the hearing, identifying by name counsel (if any) and proposed witnesses; such notice to a party may be combined with a summons to appear.

*Maritime Regulation 9.258(5)(c & f)*

**6.7 Right to Counsel; Participation** – Any party shall be entitled to be accompanied, advised and represented in argument or examination by counsel of his or her own choice. Any legitimately interested persons or states, whether or not represented by counsel, may apply to participate in the proceedings if they have given adequate advance notice to the Recorder that they desire to participate and have made to him or her a disclosure of any proofs they may offer; but such participation shall only be by leave of and to the extent allowed in the discretion of the Presiding Officer.

*Maritime Regulation 9.258(5)(e & f)*

**6.8 General Admission to Hearings** – The official ordering a hearing may require that any or all sittings are to be held *in camera*. The Presiding Officer may otherwise in his or her discretion admit interested persons, and he or she shall normally admit interested states by counsel or by official representatives or observers to attendance at the hearing. He or she may where matters of confidentiality or questions of public security arise, or public safety is involved, preclude attendance by the media and the general public.

*Maritime Regulation 9.258(5)(d)*

**6.9 Record** – The Recorder shall arrange for the presence of a reporter or voice recorder and any necessary language interpreters, and shall ensure as necessary the production of a complete transcript of the hearing in the English language. A copy of the transcript or recording and, where practicable, of the exhibits in evidence shall be furnished upon request and free of charge to any party; copies may be furnished to others upon request and payment of the full costs thereof.

*Maritime Regulation 9.258(5)(g)*



- 6.10 Opening of Hearing** – The Presiding Officer shall open the hearing with a statement that it is conducted pursuant to these Rules and by the authority of Sections 18 and/or 258 of the Liberian Maritime Law and Regulations thereunder; and he or she shall then proceed to state the subject matter of the hearing including any allegations made against a party. The Liberia Maritime Authority by its counsel or official representative, all parties (by their counsel, if any), any interested persons (by their counsel) and any interested states by their counsel or official representatives shall then be called upon to enter their appearance for the record.
- 6.11 Preliminary Matters** – Any preliminary matters shall then be heard and ruled upon. The Liberia Maritime Authority and each party present shall then be afforded an opportunity to make an opening statement of position, including any charges, or of what is intended to be established by evidence to be submitted, either on the merits or in mitigation of any offense alleged or charged.
- 6.12 Previously Gathered Evidence** – Any previously gathered evidence shall then be submitted for the record, first on behalf of the Liberia Maritime Authority and then on behalf of each party.
- 6.13 Development of Further Evidence** – The single Presiding Officer or Marine Board of Investigation shall then proceed with a full and formal inquiry into the cause of the casualty or circumstances of the alleged offense, with the purpose of establishing any violations of law and making such recommendations as will aid in preventing recurrence. In the course of these proceedings, the Presiding Officer shall swear any witnesses and interpreters. He or she shall then allow the Liberia Maritime Authority and each party to examine and cross-examine any witnesses called by them, and shall afford to himself or herself and any Assessor(s) or fellow Board Members a like opportunity. He or she may, in his or her discretion and subject to Rule 6.7, afford a reasonable opportunity for examination and cross-examination by counsel representing legitimately interested persons or states, either directly or through himself or herself.  
*Maritime Regulation 9.258(5)(e & f)*
- 6.14 Admissibility of Evidence** – All evidence (including any “hearsay”) which is relevant, material, reliable, probative and not unduly repetitious or cumulative shall be admissible. All other evidence shall be excluded. All evidence to be considered in the matter shall be introduced in the course of the hearing and noted in the record, or shall thereafter be produced upon written notice to each party, who shall be afforded an opportunity to object to its admission.
- 6.15 Documentary Evidence** – Documentary evidence may be received subject to Rule 6.14 above, and in determining its ultimate probative value, due consideration shall be given to its source, prior history, degree of authenticity, whether executed under oath, and whether it is the best evidence obtainable.

**6.16 Official Notice** – Notice shall be taken, without introduction into evidence, of:

- (a) The constitution, Laws and Regulations of the Republic of Liberia and any Treaties, Conventions or International Agreements to which Liberia may be a party or which it may otherwise enforce;
- (b) The Liberian Maritime Law and any other bodies of law incorporated therein;
- (c) The Liberian Maritime Regulations and any other bodies of law incorporated therein;
- (d) These Rules; and
- (e) Any publications of the Liberian Liberia Maritime Authority.

In addition, official notice may be taken, upon the record, of matters of elementary common knowledge or common maritime or commercial knowledge. All other matters shall be required to be proved.

**6.17 Impeachment** – Any evidence whether oral, written, physical or documentary, shall be required to be proved.

**6.18 Continuance of Hearing** – The Presiding Officer may, for good cause to be shown on the record, either on his or her own initiative or upon the request of the Liberia Maritime Authority or a party, continue any hearing from day to day or adjourn such hearing to a later date or to a different place by announcement at the hearing or by other appropriate notice. In this regard, careful consideration shall be given to the future availability of witnesses and the prompt dispatch of any vessels involved.

**6.19 Closing Argument** – The Presiding Officer shall, prior to the close of the hearing afford to the Liberia Maritime Authority and to each party an opportunity to make oral or, in his or her discretion, written argument of any relevant contentions, including submission of proposed findings, conclusions and recommendations. Any or all written argument may be received only at the discretion of the Presiding Officer and within a period specified by him or her following the close of the hearing, and he or she shall in such case require the submitting party to transmit copies to all other participants.

**6.20 Closing Statement** – When oral argument, if any, has been concluded and any remaining matters have been disposed of, the Presiding Officer shall declare the hearing closed.

*Maritime Regulation 9.258(5)(e & f)*

**6.21 Hearing on Remand** – Where the Commissioner remands any Report for further hearing, all provisions of this Article (VI) shall apply as in the case of a new hearing.

- 6.22 Retention of Physical Evidence** – All physical evidence collected in the course of a marine investigation, whether or not referred to or produced in the course of a hearing, may be retained at the offices of the official ordering the hearing until the Commissioner has received and acted upon the Report and the time for appeal (60 days) has expired. If an appeal has not then been taken, such physical evidence shall be returned to its owners if they so desire. In cases where an appeal is taken, such physical evidence may be retained pending a final determination of the matter.

*Maritime Regulation 1.34*

## ARTICLE VII – WITNESSES

- 7.1 Summons** – Where any witness summoned by the Recorder is the owner (or representative) of a Liberian Flag vessel or is the holder of a license, permit or other document issued by the Republic of Liberia, his or her attendance and the production of any license, permit or document which he or she may hold is compelled by law. Where the witness so summoned is otherwise within the jurisdiction of the Republic of Liberia, application may be made to a Circuit Court of the Republic for an order compelling such witness to attend. In an appropriate case, application may be made to a Circuit Court of the Republic of Liberia for the issuance of letters rogatory to a court of competent jurisdiction outside the Republic, requesting the cooperation of such court in ordering the appearance and taking the testimony of a witness within its jurisdiction. Where none of the above is applicable, the summons shall be drawn by the Recorder in the form of an invitation to appear and testify.

*Maritime Regulation 9.258(2), (3), (5)(a)*

- 7.2 Deposit of Documents** – Any witness, whether or not a party, who is summoned to attend a hearing shall, if he or she is the holder of any license, permit or other document issued by the Republic of Liberia, be required by the summons to bring such license, permit or document with him or her and shall deposit it with the Presiding Officer, who shall have discretion to return it to the holder at the conclusion of the proceeding or to remit it to the Recorder for safekeeping pending further consideration or until issuance of the Report. Where the investigative Report recommends the suspension or revocation of a license, permit or document so deposited, the official ordering the investigation may, in his or her discretion, cause the Recorder to retain it until receiving the Commissioner's Decision.

- 7.3 Testimony by Deposition or Written Questions** – For good cause, on his or her own initiative or upon reasonable application of any party, the Presiding Officer may permit the taking of the written testimony of any witness, upon oath. Where such testimony is to be upon oral deposition, the Presiding Officer shall give sufficient advance notice to any other parties. Where the testimony is to be by written questions, the Presiding Officer shall afford counsel for the Liberia Maritime Authority, himself or herself and any Assessor(s) or fellow Board Members and each party an opportunity to formulate and present reasonable cross-questions to the witness, and he or she

may, in his or her discretion and subject to Rule 6.7, permit other legitimately interested persons or states to do likewise.

**7.4 Order of Appearance and Exclusion** – Whenever possible, the first fact witnesses to testify orally shall be those who are also parties. Until a fact witness has completed his or her oral testimony he or she shall, even if a party, be excluded from the hearing during the oral testimony of any other fact witness. A fact witness who has not completed his or her oral testimony at the adjournment of any hearing shall be cautioned by the Presiding Officer not to discuss his or her fact testimony with any person prior to retaking the stand.

**7.5 Oath** – Prior to the giving of any testimony whether oral or written, the witness shall take or subscribe before the Presiding Officer or some other person authorized in the place of the testimony to administer oaths, an oath in the following form;

“I do solemnly swear (or affirm) that the evidence I am about to give is true in every respect.”

An appropriate oath shall also be administered to any interpreter.

**7.6 Experts** – A Presiding Officer may, in proper instances and with the advance approval of the official ordering the hearing, retain experts to give testimony on the basis of relevant documents and information furnished to them. All expert testimony shall be given under oath if given orally; but no oath need accompany written evidence prepared by experts.

**7.7 Medical Examination** – where the medical condition of any person is a material issue, such person if the holder of a license, permit or other document issued by the Republic of Liberia may be compelled to undergo a medical examination by a practitioner designed by the Presiding Officer. Where such person is not subject to compulsion, he or she may be requested to undergo a medical examination, or such examination may be made a condition of his or her standing to lodge an allegation or offer evidence.

**7.8 Failure to Appear** – If any duly summoned party fails to appear, the hearing may proceed *in absentia*. Failure of any duly summoned witness to appear may, in the discretion of the Presiding Officer, constitute good cause for an adjournment of the hearing.

## ARTICLE VIII – REPORTS

**8.1 Generally** – Following the termination of a preliminary investigation or a formal investigative or administrative hearing, the Preliminary Investigating Officer, single

Presiding Officer or Marine Board of Investigation shall produce a written Report setting forth findings, conclusions and any recommendations for appropriate action.

- 8.2 Form** – Each Report shall commence with a prefatory statement identifying the official ordering the investigation and stating the date and nature of the occurrence, legal authority for the proceeding, the date of the ordering of the proceeding, the dates and places where any hearing was held, and the date of the conclusion of such hearing. Any allegations or charges made before or during the proceeding shall then be set forth. Separately numbered paragraphs constituting the findings of fact shall follow, and if a hearing was held each material finding should refer to supporting evidence in the record. Separately numbered conclusions of cause, based upon the findings of fact, shall then be stated. Separately numbered recommendations shall then be made, directed to appropriate action in the instant matter and to prevention of recurrence. Finally, the Report in duplicate shall be dated and subscribed by the single Officer or entire Marine Board of Investigation submitting it, and also by any Deputy Commissioner forwarding it. The Report may contain appendices, and shall in every case of formal proceedings annex a list of the exhibits admitted into evidence and a list of participants in the proceeding, to be prepared by the Recorder.

*Maritime Regulation 9.258(6)(a)*

**8.3 Filing**

- (1) **Reports** - All Reports shall be filed with the official who ordered the proceedings, and, if a Deputy Commissioner, he or she or his or her designee shall transmit the Report to the Commissioner together with a copy of the file or record and any appropriate comments.

*Maritime Regulation 9.258(6)(b & c)*

- (2) **Accounts of Expense** - At the time of filing the Report, each Presiding Officer, Assessor, Board Member, official interpreter or expert shall file a proper account of expenses with the official who ordered the proceeding.

- 8.4 Accompanying Materials** - When any Report recommends the suspension or revocation of any license, permit or other document, the official record of any previous action against the holder shall go forward to the Commissioner, together with the Report.

- 8.5 Release** - No Officer shall release or otherwise make public, prior to publication of the Report, all or any portions of any statements, records or reports, unless so instructed by the official ordering the proceeding. Where a Preliminary Investigation is followed by a formal proceeding, the official ordering the Preliminary Investigation shall retain and shall not release the Preliminary Investigation Report; however, all evidence gathered in the course of the Preliminary Investigation shall be turned over to the Recorder. A Report may be released or ordered published by the Commissioner at any time after receipt of the Report by him or her. The Commissioner may, in his or her discretion, retain the Report pending release or publication thereof together with his or her Decision, or he or she may make such release or disclosure as is provided

by law. Portions of a Report held confidential by the Republic of Liberia for any reason of public security may be deleted.

*Maritime Regulation 9.258(8)*

**8.6 Copies to Parties** - Upon the Commissioner's Decision, if not before, a copy of the Report shall be provided free of charge to each party.

*Maritime Regulation 9.258(8)(b)*

**8.7 Report on Remand** - Upon the conclusion of any further proceedings ordered by the Commissioner, a Supplementary Report shall be submitted, together with any accompanying materials.

*Maritime Regulation 9.258(7)(a)(ii)*

## ARTICLE IX – COMMISSIONER’S DECISION

**9.1 Generally** – Upon receipt of the Report and file or record, the Commissioner shall proceed to make and render his or her Decision.

*Maritime Regulation 9.258(7)(a)(i)(iii)*

**9.2 Further Argument** – When any further argument called for by the Commissioner is in written form, it shall be addressed directly to the Commissioner and shall be forwarded to him or her via the Investigation Division of the Liberia Maritime Authority.

*Maritime Regulation 9.258(7)(b)*

**9.3 Notice of Decision** – The Commissioner’s Decision with respect to each party shall be promptly transmitted by the Investigation Division to such party and, where any license, permit or other document is ordered suspended or revoked, a notice that the Decision may be appealed from pursuant to Section 34 of the Maritime Law and Regulation 1.34 shall accompany the Decision.

**9.4 Reopening Proceedings** – In exceptional cases and only for good cause shown to his or her satisfaction, the Commissioner may order a proceeding reopened, in which case the provisions of the Maritime Law, Regulations, and these Rules shall apply as in the case of a new proceeding, save that the Supplementary Report shall state that the original proceeding has been reopened, and shall take into account the original Report in setting forth any new findings, conclusions or recommendations.

**ARTICLE X – APPENDIX OF FORMS AND REFFERENCES**

See items 10.1 – 10.3 following:

**(This form located in RLM-260, Annex 10.1 Form RLM-109, Report of Vessel Casualty or Accident.**



**OFFICE OF THE DEPUTY COMMISSIONER  
OF MARITIME AFFAIRS, R.L.  
LISCR, LLC**

Phone: (703) 790-3434  
Fax: 703-790-5655  
E-Mail: investigations@liscr.com

**REPORT OF VESSEL CASUALTY OR ACCIDENT**

**INSTRUCTIONS**

- |   |   |
|---|---|
| <p>1. An original of this form shall be submitted to the Maritime Administrator as soon after the occurrence of the casualty as possible.</p> <p>2. This form must be completed in full. Entries which do not relate to a particular case should be indicated as not applicable by inserting the initials "N.A."</p> <p>3. Dates should be filled in as yyyy/mm/dd.</p> | <p>4. This form should be completed by the Master or person in charge, or, if neither is available, by the owner or his duly authorized agent.</p> <p>5. Attach crew list to this form. Attach separate Form 109-1 to this report for each person killed or injured and incapacitated in excess of 72 hours as a result of the vessel casualty reported herein.</p> |
|---|---|

**I. PARTICULARS OF VESSEL**

1. Name of Vessel	2. Official Number	3. Year built	4. Gross Tonnage	5. Net Tonnage
6. Type of Vessel (See Note 1.)	7. Propulsion (See Note 2.)	8. Place Built		
9. Name of Owner		10. (a) Name, Address and Telephone of Managing Agent		
		10. (b) Class Society (Abbreviation):		
11. (a) Name of Master or Person In Charge	(b) Citizenship	(c) Date of Birth	(d) License Grade and Date of Issue	

**II. PARTICULARS OF CASUALTY**

12.(a) Date of Casualty	(b) Time(Local or Zone)	(c) Zone Description	(d) Time of Day <input type="checkbox"/> Day <input type="checkbox"/> Night <input type="checkbox"/> Twilight
13. Geographical Location of Casualty (See Note 3.)		14. Geographical Name of Body of Water	
15.(a) If Casualty occurred underway, Port of Departure	(b) Date of Departure	(c) Port to Which Bound	
16.(a) Nature of Cargo (Describe and give amounts in Long Tons)	(b) Amount Dry Cargo	(c) Amount Bulk Liquid	(d) Amount Deck Cargo
17. Speed in Knots Prior to Casualty	18. True Course Prior to Casualty	19. Draft Forward	20. Draft Alt
21. Atmospheric Conditions at Time of Casualty (Check one or more of the following) <input type="checkbox"/> Clear <input type="checkbox"/> Partly Cloudy <input type="checkbox"/> Overcast <input type="checkbox"/> Fog <input type="checkbox"/> Rain <input type="checkbox"/> Snow <input type="checkbox"/> Other (Specify)			
22. Distance of visibility <input type="checkbox"/> Under 2 Miles <input type="checkbox"/> 2-5 Miles <input type="checkbox"/> Over 5 Miles	23. Wind <input type="checkbox"/> Light <input type="checkbox"/> Moderate to Fresh <input type="checkbox"/> Storm to Hurricane	24. Sea <input type="checkbox"/> Smooth to Slight <input type="checkbox"/> Moderate to Rough <input type="checkbox"/> High	25. Wind Direction 26. Direction of Sea 27. Direction of Swell
28. Navigation Equipment (Check one or more of the following) <input type="checkbox"/> Radar   ( <input type="checkbox"/> S Band, or <input type="checkbox"/> X Band) <input type="checkbox"/> ARPA <input type="checkbox"/> VDR/S-VDR <input type="checkbox"/> operative <input type="checkbox"/> Inoperative <input type="checkbox"/> Install <input type="checkbox"/> Used <input type="checkbox"/> Used <input type="checkbox"/> Used <input type="checkbox"/> Data Secured?		29. Communications Equipment (check one or more of the following) <input type="checkbox"/> Radiotelephone <input type="checkbox"/> CW (Key) <input type="checkbox"/> In use with Other Vessels <input type="checkbox"/> In use with Other Vessels <input type="checkbox"/> In use with Shore Stations <input type="checkbox"/> In use with Shore Stations <input type="checkbox"/> Not Used <input type="checkbox"/> Not Used	
30. Auto Alarm Transmitted by your Vessel? <input type="checkbox"/> Yes <input type="checkbox"/> No		31. Rules of the Road Applicable at Time <input type="checkbox"/> International <input type="checkbox"/> Other (specify)	

Note 1. Type of Vessel - General Cargo, Oil Tanker, Ore/Oil Carrier, Passenger, Bulk Carrier, Ore Carrier, Tug, etc.  
 Note 2. Propulsion - Steam Reciprocating, Steam Turbine, Turbo-Electric; Diesel, Diesel, Diesel-Electric, etc.  
 Note 3. Location - If open sea, Latitude and Longitude; give distance to and name of nearest shore; if near coast give distance and true bearing to charted object; if in port, straits, river, channel, etc., give name.



32. Nature of the Casualty (Check one or more of the following. Give pertinent details in item 33.)		
COLLISION WITH OTHER VESSEL(S) (Give Name and Flag of Other Vessels)		EXPLOSION/FIRE (Other)
		GROUNDING
		FOUNDER (Sinking)
COLLISION WITH FLOATING OR SUBMERGED OBJECTS		CAPSIZING WITHOUT SINKING
COLLISION WITH FIXED OBJECTS (Piers, bridges, etc.)		FLOODING, SWAMPING, ETC., WITHOUT SINKING
COLLISION WITH ICE		HEAVY WEATHER DAMAGE
COLLISION WITH AIDS TO NAVIGATION		CARGO DAMAGE (No Vessel Damage)
COLLISION (Other)		MATERIAL FAILURE (Vessel Structure)
EXPLOSION/FIRE (Involving cargo)		MATERIAL FAILURE (Engineering machinery, including main propulsion, auxiliaries, boilers, evaporators, deck machinery, electrical, etc.)
EXPLOSION/FIRE (Involving vessel's fuel)		
FIRE (Vessel's structure or equipment)		EQUIPMENT FAILURE
EXPLOSION (Boiler and associated parts)		CASUALTY NOT NAMED ABOVE
EXPLOSION (Pressure vessels and compressed gas cylinders)		

33. DESCRIPTION OF CASUALTY (Events and circumstances leading to casualty and present when it occurred. Attach diagram and additional sheets, if necessary.)

34. Number of Personnel	Crew	Passengers	Other	Totals	35. Estimated Property Losses	Dollars (USA)
(a) On Board					(a) To vessel	\$
(b) Known dead					(b) To cargo	\$
(c) Missing					(c) To other property	\$
(d) Injured					35. Is Vessel a Total Loss?	<input type="checkbox"/> Yes <input type="checkbox"/> No

37. Remarks (Indicate assistance rendered by shore stations and vessels; recommendations for corrective safety measures pertinent to this casualty; include explanation of any unsatisfactory lifesaving equipment. Attach additional sheets, if necessary.)

38. Deck Officer on Duty at Time of Casualty		39. Engineer on Duty at Time of Casualty	
Name		Name	
Capacity	License No.	Capacity	License No.
40. Date of Report	41. Submitted by (Print name)	42. Signature	43. Title



**OFFICE OF THE DEPUTY COMMISSIONER  
OF MARITIME AFFAIRS, R.L.  
LISCR, LLC**

Phone: (703) 790-3434  
Fax: 703-790-5655  
E-Mail: investigations@liscr.com

**REPORT OF PERSONAL INJURY OR LOSS OF LIFE**

**INSTRUCTIONS**

- |   |  |
|---|--|
| <p>1. An original of this form shall be submitted to the Maritime Administrator as soon after the occurrence of the casualty as possible.</p> <p>2. This form must be completed in full. Entries which do not relate to a particular case should be indicated as not applicable by inserting the initials "N.A."</p> <p>3. Dates should be filled in as yyyy/mm/dd.</p> | <p>4. This form should be completed for every loss of life and for every injury which incapacitates the injured for a period in excess of seventy-two hours (3 days).</p> <p>5. This form should be completed by the Master or person in charge, or, if neither is available, by the owner or his duly authorized agent.</p> |
|---|--|

**I. PARTICULARS OF VESSEL**

1. Name of Vessel		2. Official Number	3. IMO Number
4. Type of Vessel (See Note 1.)	5. Propulsion (See Note 2.)		6. (a) Name, Address, Telephone and Email of Managing Agent / ISM Company
(b) Name of Owner			(c) Name, Address and Email of P&I Club

**II. PARTICULARS OF PERSON INJURED, DECEASED OR MISSING (Believed dead)**

7. (a) Name of Person		(b) Home Address	(c) Date of Birth
		(d) Citizenship	
8. Seaman's Book or Passport No		9. Status or Capacity on Vessel	
10. Activity Engaged in at Time of Casualty		11. If Crew Member or Shore Worker <input type="checkbox"/> On Watch <input type="checkbox"/> Working <input type="checkbox"/> Other	
12. (a) Name of Immediate Supervisor at Time of Casualty		(b) Supervisor's capacity or Status on Vessel	

**III. PARTICULARS OF CASUALTY OR ACCIDENT**

13. (a) Date of Casualty	(b) Time (Local or Zone)	(c) Zone Description	(d) Time of Day <input type="checkbox"/> Day <input type="checkbox"/> Night <input type="checkbox"/> Twilight
14. Geographical Location of Vessel at time of Casualty (See Note 3.)			15. Geographical Name of Body of Water
16. (a) If Casualty occurred underway, Port of Departure		(b) Date of Departure	(c) Port to Which Bound
17. (a) RESULT OF CASUALTY: <input type="checkbox"/> Injury <input type="checkbox"/> Death <input type="checkbox"/> Missing (Complete INJURY or DEATH entries below, as appropriate.)			
(b) Nature of Injury			(c) Total Days Incapacitated
(d) Reason for Death			(e) Location of Individual at Death
			(f) Date of Death
(g) Has next of Kin been notified?: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> When:			
By what means notified – explain:			

Note 1. Type of Vessel - General Cargo, Oil Tanker, Ore/Oil Carrier, Passenger, Bulk Carrier, Ore Carrier, Tug, etc.  
 Note 2. Propulsion - Steam Reciprocating, Steam Turbine, Turbo-Electric; Diesel, Diesel, Diesel-Electric, etc.  
 Note 3. Location - If open sea, Latitude and Longitude; give distance to and name of nearest shore; if near coast give distance and true bearing to charted object; if in port, straits, river, channel, etc., give name.

18. DESCRIPTION OF CASUALTY (Give events leading up to casualty and how it occurred. Attach diagram and additional sheets, if necessary.)

19. WITNESSES TO ACCIDENT (At least two, if possible)

Name	Name
Address	Address
Name	Name
Address	Address

**IV. ASSISTANCE AND RECOMMENDATIONS**

20. (a) MEDICO (Medical) MESSAGE SENT	(b) IF YES, GIVE DATE OF FIRST MESSAGE	(c) IF YES, GIVE TIME OF FIRST MESSAGE (Local or zone and description)
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21. (a) TREATMENT ADMINISTERED <input type="checkbox"/> Yes <input type="checkbox"/> No	(b) IF YES, BY WHOM <input type="checkbox"/> Ship's Doctor <input type="checkbox"/> Other Ship's Personnel <input type="checkbox"/> Other (Specify)
--	--

22. BRIEFLY DESCRIBE TREATMENT (If administered by other than M.D.)

23. (a) Name of Hospital, If Person was Hospitalized	(b) Address of Hospital
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24. Recommendations for Corrective Safety Measures Pertinent to this Casualty

25. Date of Report	26. Submitted by (Print Name)	27. Signature	28. Title
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**RESOLUTION MSC.255(84)**  
**(adopted on 16 May 2008)**

**ADOPTION OF THE CODE OF THE INTERNATIONAL STANDARDS AND  
RECOMMENDED PRACTICES FOR A SAFETY INVESTIGATION  
INTO A MARINE CASUALTY OR MARINE INCIDENT  
(CASUALTY INVESTIGATION CODE)**

THE MARITIME SAFETY COMMITTEE,

RECALLING Article 28(b) of the Convention on the International Maritime Organization concerning the function of the Committee,

NOTING with concern that, despite the best endeavours of the Organization, casualties and incidents resulting in loss of life, loss of ships and pollution of the marine environment continue to occur,

NOTING ALSO that the safety of seafarers and passengers and the protection of the marine environment can be enhanced by timely and accurate reports identifying the circumstances and causes of marine casualties and incidents,

NOTING FURTHER the importance of the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982, and of the customary international law of the sea,

NOTING IN ADDITION the responsibilities of flag States under the provisions of the International Convention for the Safety of Life at Sea, 1974 (regulation I/21) (hereinafter referred to as "the Convention"), the International Convention on Load Lines, 1966 (article 23) and the International Convention for the Prevention of Pollution from Ships, 1973 (article 12), to conduct casualty investigations and to supply the Organization with relevant findings,

CONSIDERING the need to ensure that all very serious marine casualties are investigated,

CONSIDERING ALSO the Guidelines on fair treatment of seafarers in the event of a maritime accident (resolution A.987(24)),

ACKNOWLEDGING that the investigation and proper analysis of marine casualties and incidents can lead to greater awareness of casualty causation and result in remedial measures, including better training, for the purpose of enhancing safety of life at sea and protection of the marine environment,

RECOGNIZING the need for a code to provide, as far as national laws allow, a standard approach to marine casualty and incident investigation with the objective of preventing marine casualties and incidents in the future,

RECOGNIZING ALSO the international nature of shipping and the need for co-operation between Governments having a substantial interest in a marine casualty or incident for the purpose of determining the circumstances and causes thereof,

NOTING resolution MSC.257(84) by which it adopted amendments to chapter XI-1 of the Convention to make parts I and II of the Code of the International Standards and

Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident mandatory under the Convention,

HAVING CONSIDERED, at its eighty-fourth session, the text of the proposed Casualty Investigation Code,

1. ADOPTS the Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident (Casualty Investigation Code), set out in the Annex to the present resolution;
2. INVITES Contracting Governments to the Convention to note that the Code will take effect on [1 January 2010] upon entry into force of the amendments to regulation XI-1/6 of the Convention;
3. REQUESTS the Secretary-General of the Organization to transmit certified copies of the present resolution and the text of the Code contained in the Annex to all Contracting Governments to the Convention;
4. FURTHER REQUESTS the Secretary-General of the Organization to transmit copies of the present resolution and the text of the Code contained in the Annex to all Members of the Organization which are not Contracting Governments to the Convention.

## ANNEX

**CODE OF THE INTERNATIONAL STANDARDS AND RECOMMENDED  
PRACTICES FOR A SAFETY INVESTIGATION INTO A MARINE CASUALTY  
OR MARINE INCIDENT (CASUALTY INVESTIGATION CODE)****Table of Contents**

	<b>Page</b>
Foreword	4
Part I – General provisions	6
Chapter 1 – Purpose	6
Chapter 2 – Definitions	7
Chapter 3 – Application of chapters in Part II and III	10
Part II – Mandatory standards	10
Chapter 4 – Marine safety investigation Authority	10
Chapter 5 – Notification	11
Chapter 6 – Requirement to investigate very serious marine casualties	11
Chapter 7 – Flag State’s agreement with another substantially interested State to conduct a marine safety investigation	12
Chapter 8 – Powers of an investigation	12
Chapter 9 – Parallel investigations	12
Chapter 10 – Co-operation	13
Chapter 11 – Investigation not to be subject to external direction	13
Chapter 12 – Obtaining evidence from seafarers	13
Chapter 13 – Draft marine safety investigation reports	14
Chapter 14 – Marine safety investigation reports	14
Part III – Recommended practices	16
Chapter 15 – Administrative responsibilities	16
Chapter 16 – Principles of investigation	16
Chapter 17 – Investigation of marine casualties (other than very serious marine casualties) and marine incidents	18
Chapter 18 – Factors that should be taken into account when seeking agreement under chapter 7 of Part II	18
Chapter 19 – Acts of unlawful interference	19
Chapter 20 – Notification to parties involved and commencement of an investigation	19
Chapter 21 – Co-ordinating an investigation	20
Chapter 22 – Collection of evidence	21
Chapter 23 – Confidentiality of information	22
Chapter 24 – Protection for witnesses and involved parties	23
Chapter 25 – Draft and final report	23
Chapter 26 – Re-opening an investigation	24

## Foreword

1 This Code incorporates and builds on the best practices in marine casualty and marine incident investigation that were established by the Code for the Investigation of Marine Casualties and Incidents, adopted in November 1997 by the International Maritime Organization (the Organization), by resolution A.849(20). The Code for the Investigation of Marine Casualties and Incidents sought to promote co-operation and a common approach to marine casualty and marine incident investigations between States.

### *Background*

2 The Organization has encouraged co-operation and recognition of mutual interest through a number of resolutions. The first was resolution A.173(ES.IV) (Participation in Official Inquiries into Maritime Casualties) adopted in November 1968. Other resolutions followed including: resolution A.322 (The Conduct of Investigations into Casualties) adopted in November 1975; resolution A.440(XI) (Exchange of Information for Investigations into Marine Casualties) and resolution A.442(XI) (Personnel and Material Resource Needs of Administrations for the Investigation of Casualties and the Contravention of Conventions), both adopted in November 1979; resolution A.637(16) (Co-operation in Maritime Casualty Investigations) adopted in 1989.

3 These individual resolutions were amalgamated and expanded by the Organization with the adoption of the Code for the Investigation of Marine Casualties and Incidents. Resolution A.884(21) (Amendments to the Code for the Investigation of Marine Casualties and Incidents resolution A.849(20)), adopted in November 1999, enhanced the Code by providing guidelines for the investigation of human factors.

4 The International Convention for the Safety of Life at Sea (SOLAS), 1948, included a provision requiring flag State Administrations to conduct investigations into any casualty suffered by a ship of its flag if an investigation may assist in identifying regulatory issues as a contributing factor. This provision was retained in the 1960 and 1974 SOLAS Conventions. It was also included in the International Convention on Load Lines, 1966. Further, flag States are required to inquire into certain marine casualties and marine incidents occurring on the high seas\*.

5 The sovereignty of a coastal State extends beyond its land and inland waters to the extent of its territorial sea\*\*. This jurisdiction gives the coastal State an inherent right to investigate marine casualties and marine incidents connected with its territory. Most national Administrations have legal provisions to cover the investigation of a shipping incident within its inland waters and territorial sea, regardless of the flag.

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\* Reference is made to the United Nations Convention on the Law of the Sea (UNCLOS), article 94(7) or requirements of international and customary laws.

\*\* Reference is made to the United Nations Convention on the Law of the Sea (UNCLOS), article 2 or requirements of international and customary laws.

### *Treatment of Seafarers*

6 Most recently, the International Labour Organization's Maritime Labour Convention, 2006 (which has not yet come into force), provides a provision for the investigation of some serious marine casualties as well as setting out working conditions for seafarers. Recognizing the need for special protection for seafarers during an investigation, the Organization adopted, in December 2005, the "Guidelines on Fair Treatment of Seafarers in the Event of a Maritime Accident" through resolution A.987(24). The Guidelines were promulgated by the IMO and the ILO on 1 July 2006.

### *Adoption of the Code*

7 Since the adoption of the first SOLAS Convention, there have been extensive changes in the structure of the international maritime industry and changes in international law. These changes have potentially increased the number of States with an interest in the process and outcomes of marine safety investigations, in the event of a marine casualty or marine incident, increasing the potential for jurisdictional and other procedural differences between affected States.

8 This Code, while it specifies some mandatory requirements, recognizes the variations in international and national laws in relation to the investigation of marine casualties and marine incidents. The Code is designed to facilitate objective marine safety investigations for the benefit of flag States, coastal States, the Organization and the shipping industry in general.



## PART I

### GENERAL PROVISIONS

#### Chapter 1

#### PURPOSE

1.1 The objective of this Code is to provide a common approach for States to adopt in the conduct of marine safety investigations into marine casualties and marine incidents. Marine safety investigations do not seek to apportion blame or determine liability. Instead a marine safety investigation, as defined in this Code, is an investigation conducted with the objective of preventing marine casualties and marine incidents in the future. The Code envisages that this aim will be achieved through States:

- .1 applying consistent methodology and approach, to enable and encourage a broad ranging investigation, where necessary, in the interests of uncovering the causal factors and other safety risks; and
- .2 providing reports to the Organization to enable a wide dissemination of information to assist the international marine industry to address safety issues.

1.2 A marine safety investigation should be separate from, and independent of, any other form of investigation. However, it is not the purpose of this Code to preclude any other form of investigation, including investigations for action in civil, criminal and administrative proceedings. Further, it is not the intent of the Code for a State or States conducting a marine safety investigation to refrain from fully reporting on the causal factors of a marine casualty or marine incident because blame or liability, may be inferred from the findings.

1.3 This Code recognizes that under the Organization's instruments, each flag State has a duty to conduct an investigation into any casualty occurring to any of its ships, when it judges that such an investigation may assist in determining what changes in the present regulations may be desirable, or if such a casualty has produced a major deleterious effect upon the environment. The Code also takes into account that a flag State shall\* cause an inquiry to be held, by or before a suitably qualified person or persons into certain marine casualties or marine incidents of navigation on the high seas. However, the Code also recognizes that where a marine casualty or marine incident occurs within the territory, including the territorial sea, of a State, that State has a right\*\* to investigate the cause of any such marine casualty or marine incident which might pose a risk to life or to the environment, involve the coastal State's search and rescue authorities, or otherwise affect the coastal State.

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\* Reference is made to the United Nations Convention on the Law of the Sea (UNCLOS), article 94 or requirements of international and customary laws.

\*\* Reference is made to the United Nations Convention on the Law of the Sea (UNCLOS), article 2 or requirements of international and customary laws.

## Chapter 2

### DEFINITIONS

When the following terms are used in the mandatory standards and recommended practices for marine safety investigations they have the following meaning.

2.1 An *agent* means any person, natural or legal, engaged on behalf of the owner, charterer or operator of a ship, or the owner of the cargo, in providing shipping services, including managing arrangements for the ship being the subject of a marine safety investigation.

2.2 A *causal factor* means actions, omissions, events or conditions, without which:

- .1 the marine casualty or marine incident would not have occurred; or
- .2 adverse consequences associated with the marine casualty or marine incident would probably not have occurred or have been as serious;
- .3 another action, omission, event or condition, associated with an outcome in .1 or .2, would probably not have occurred.

2.3 A *coastal State* means a State in whose territory, including its territorial sea, a marine casualty or marine incident occurs.

2.4 *Exclusive economic zone* means the exclusive economic zone as defined by article 55 of the United Nations Convention on the Law of the Sea.

2.5 *Flag State* means a State whose flag a ship is entitled to fly.

2.6 *High seas* means the high seas as defined in article 86 of the United Nations Convention on the Law of the Sea.

2.7 *Interested party* means an organization, or individual, who, as determined by the marine safety investigating State(s), has significant interests, rights or legitimate expectations with respect to the outcome of a marine safety investigation.

2.8 *International Safety Management (ISM) Code* means the International Management Code for the Safe Operation of Ships and for Pollution Prevention as adopted by the Organization by resolution A.741(18), as amended.

2.9 A *marine casualty* means an event, or a sequence of events, that has resulted in any of the following which has occurred directly in connection with the operations of a ship:

- .1 the death of, or serious injury to, a person;
- .2 the loss of a person from a ship;
- .3 the loss, presumed loss or abandonment of a ship;
- .4 material damage to a ship;

- .5 the stranding or disabling of a ship, or the involvement of a ship in a collision;
- .6 material damage to marine infrastructure external to a ship, that could seriously endanger the safety of the ship, another ship or an individual; or
- .7 severe damage to the environment, or the potential for severe damage to the environment, brought about by the damage of a ship or ships.

However, a marine casualty does not include a deliberate act or omission, with the intention to cause harm to the safety of a ship, an individual or the environment.

2.10 A *marine incident* means an event, or sequence of events, other than a marine casualty, which has occurred directly in connection with the operations of a ship that endangered, or, if not corrected, would endanger the safety of the ship, its occupants or any other person or the environment.

However, a marine incident does not include a deliberate act or omission, with the intention to cause harm to the safety of a ship, an individual or the environment.

2.11 A *marine safety investigation* means an investigation or inquiry (however referred to by a State), into a marine casualty or marine incident, conducted with the objective of preventing marine casualties and marine incidents in the future. The investigation includes the collection of, and analysis of, evidence, the identification of causal factors and the making of safety recommendations as necessary.

2.12 A *marine safety investigation report* means a report that contains:

- .1 a summary outlining the basic facts of the marine casualty or marine incident and stating whether any deaths, injuries or pollution occurred as a result;
- .2 the identity of the flag State, owners, operators, the company as identified in the safety management certificate, and the classification society (subject to any national laws concerning privacy);
- .3 where relevant the details of the dimensions and engines of any ship involved, together with a description of the crew, work routine and other matters, such as time served on the ship;
- .4 a narrative detailing the circumstances of the marine casualty or marine incident;
- .5 analysis and comment on the causal factors including any mechanical, human and organizational factors;
- .6 a discussion of the marine safety investigation's findings, including the identification of safety issues, and the marine safety investigation's conclusions; and
- .7 where appropriate, recommendations with a view to preventing future marine casualties and marine incidents.

2.13 *Marine safety investigation Authority* means an Authority in a State, responsible for conducting investigations in accordance with this Code.

2.14 *Marine safety investigating State(s)* means the flag State or, where relevant, the State or States that take the responsibility for the conduct of the marine safety investigation as mutually agreed in accordance with this Code.

2.15 *A marine safety record* means the following types of records collected for a marine safety investigation:

- .1 all statements taken for the purpose of a marine safety investigation;
- .2 all communications between persons pertaining to the operation of the ship;
- .3 all medical or private information regarding persons involved in the marine casualty or marine incident;
- .4 all records of the analysis of information or evidential material acquired in the course of a marine safety investigation;
- .5 information from the voyage data recorder.

2.16 *A material damage* in relation to a marine casualty means:

- .1 damage that:
  - 1.1 significantly affects the structural integrity, performance or operational characteristics of marine infrastructure or a ship; and
  - 1.2 requires major repair or replacement of a major component or components;  
or
- .2 destruction of the marine infrastructure or ship.

2.17 *A seafarer* means any person who is employed or engaged or works in any capacity on board a ship.

2.18 *A serious injury* means an injury which is sustained by a person, resulting in incapacitation where the person is unable to function normally for more than 72 hours, commencing within seven days from the date when the injury was suffered.

2.19 *A severe damage to the environment* means damage to the environment which, as evaluated by the State(s) affected, or the flag State, as appropriate, produces a major deleterious effect upon the environment.

2.20 *Substantially interested State* means a State:

- .1 which is the flag State of a ship involved in a marine casualty or marine incident; or
- .2 which is the coastal State involved in a marine casualty or marine incident; or
- .3 whose environment was severely or significantly damaged by a marine casualty (including the environment of its waters and territories recognized under international law); or
- .4 where the consequences of a marine casualty or marine incident caused, or threatened, serious harm to that State or to artificial islands, installations, or structures over which it is entitled to exercise jurisdiction; or
- .5 where, as a result of a marine casualty, nationals of that State lost their lives or received serious injuries; or
- .6 that has important information at its disposal that the marine safety investigating State(s) consider useful to the investigation; or
- .7 that for some other reason establishes an interest that is considered significant by the marine safety investigating State(s).

2.21 *Territorial sea* means territorial sea as defined by Section 2 of Part II of the United Nations Convention on the Law of the Sea.

2.22 *A very serious marine casualty* means a marine casualty involving the total loss of the ship or a death or severe damage to the environment.

### **Chapter 3**

#### **APPLICATION OF CHAPTERS IN PARTS II AND III**

3.1 Part II of this Code contains mandatory standards for marine safety investigations. Some clauses apply only in relation to certain categories of marine casualties and are mandatory only for marine safety investigations into those marine casualties.

3.2 Clauses in Part III of this Code may refer to clauses in this part that apply only to certain marine casualties. The clauses in Part III may recommend that such clauses be applied in marine safety investigations into other marine casualties or marine incidents.

## PART II

### MANDATORY STANDARDS

#### Chapter 4

##### MARINE SAFETY INVESTIGATION AUTHORITY

4.1 The Government of each State shall provide the Organization with detailed contact information of the marine safety investigation Authority(ies) carrying out marine safety investigations within their State.

#### Chapter 5

##### NOTIFICATION

5.1 When a marine casualty occurs on the high seas or in an exclusive economic zone, the flag State of a ship, or ships, involved, shall notify other substantially interested States as soon as is reasonably practicable.

5.2 When a marine casualty occurs within the territory, including the territorial sea, of a coastal State, the flag State, and the coastal State, shall notify each other and between them notify other substantially interested States as soon as is reasonably practicable.

5.3 Notification shall not be delayed due to the lack of complete information.

5.4 **Format and content:** The notification shall contain as much of the following information as is readily available:

- .1 the name of the ship and its flag State;
- .2 the IMO ship identification number;
- .3 the nature of the marine casualty;
- .4 the location of the marine casualty;
- .5 time and date of the marine casualty;
- .6 the number of any seriously injured or killed persons;
- .7 consequences of the marine casualty to individuals, property and the environment;  
and
- .8 the identification of any other ship involved.

## Chapter 6

### REQUIREMENT TO INVESTIGATE VERY SERIOUS MARINE CASUALTIES

- 6.1 A marine safety investigation shall be conducted into every very serious marine casualty.
- 6.2 Subject to any agreement in accordance with chapter 7, the flag State of a ship involved in a very serious marine casualty is responsible for ensuring that a marine safety investigation is conducted and completed in accordance with this Code.

## Chapter 7

### FLAG STATE'S AGREEMENT WITH ANOTHER SUBSTANTIALLY INTERESTED STATE TO CONDUCT A MARINE SAFETY INVESTIGATION

- 7.1 Without limiting the rights of States to conduct their own separate marine safety investigation, where a marine casualty occurs within the territory, including territorial sea, of a State, the flag State(s) involved in the marine casualty and the coastal State shall consult to seek agreement on which State or States will be the marine safety investigating State(s) in accordance with a requirement, or a recommendation acted upon, to investigate under this Code.
- 7.2 Without limiting the rights of States to conduct their own separate marine safety investigation, if a marine casualty occurs on the high seas or in the exclusive economic zone of a State, and involves more than one flag State, then the States shall consult to seek agreement on which State or States will be the marine safety investigating State(s) in accordance with a requirement, or a recommendation acted upon, to investigate under this Code.
- 7.3 For a marine casualty referred to in paragraphs 7.1 or 7.2, agreement may be reached by the relevant States with another substantially interested State for that State or States to be the marine safety investigating State(s).
- 7.4 Prior to reaching an agreement, or if an agreement is not reached, in accordance with paragraphs 7.1, 7.2 or 7.3, then the existing obligations and rights of States under this Code, and under other international laws, to conduct a marine safety investigation, remain with the respective parties to conduct their own investigation.
- 7.5 By fully participating in a marine safety investigation conducted by another substantially interested State, the flag State shall be considered to fulfil its obligations under this Code, SOLAS regulation I/21 and article 94, section 7 of the United Nations Convention on the Law of the Sea.

## **Chapter 8**

### **POWERS OF AN INVESTIGATION**

8.1 All States shall ensure that their national laws provide investigator(s) carrying out a marine safety investigation with the ability to board a ship, interview the master and crew and any other person involved, and acquire evidential material for the purposes of a marine safety investigation.

## **Chapter 9**

### **PARALLEL INVESTIGATIONS**

9.1 Where the marine safety investigating State(s) is conducting a marine safety investigation under this Code, nothing prejudices the right of another substantially interested State to conduct its own separate marine safety investigation.

9.2 While recognizing that the marine safety investigating State(s) shall be able to fulfil obligations under this Code, the marine safety investigating State(s) and any other substantially interested State conducting a marine safety investigation shall seek to co-ordinate the timing of their investigations, to avoid conflicting demands upon witnesses and access to evidence, where possible.

## **Chapter 10**

### **CO-OPERATION**

10.1 All substantially interested States shall co-operate with the marine safety investigating State(s) to the extent practicable. The marine safety investigating State(s) shall provide for the participation of the substantially interested States to the extent practicable\* .

## **Chapter 11**

### **INVESTIGATION NOT TO BE SUBJECT TO EXTERNAL DIRECTION**

11.1 Marine safety investigating State(s) shall ensure that investigator(s) carrying out a marine safety investigation are impartial and objective. The marine safety investigation shall be able to report on the results of a marine safety investigation without direction or interference from any persons or organizations who may be affected by its outcome.

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\* The reference to “extent practicable” may be taken to mean, as an example, that co-operation or participation is limited because national laws make it impracticable to fully co-operate or participate.



## Chapter 12

### OBTAINING EVIDENCE FROM SEAFARERS

12.1 Where a marine safety investigation requires a seafarer to provide evidence to it, the evidence shall be taken at the earliest practical opportunity. The seafarer shall be allowed to return to his/her ship, or be repatriated at the earliest possible opportunity. The seafarers human rights shall, at all times, be upheld.

12.2 All seafarers from whom evidence is sought shall be informed of the nature and basis of the marine safety investigation. Further, a seafarer from whom evidence is sought shall be informed, and allowed access to legal advice, regarding:

- .1 any potential risk that they may incriminate themselves in any proceedings subsequent to the marine safety investigation;
- .2 any right not to self-incriminate or to remain silent;
- .3 any protections afforded to the seafarer to prevent the evidence being used against them if they provide the evidence to the marine safety investigation.

## Chapter 13

### DRAFT MARINE SAFETY INVESTIGATION REPORTS

13.1 Subject to paragraphs 13.2 and 13.3, where it is requested, the marine safety investigating State(s) shall send a copy of a draft report to a substantially interested State to allow the substantially interested State to make comment on the draft report.

13.2 Marine safety investigating State(s) are only bound to comply with paragraph 13.1 where the substantially interested State receiving the report guarantees not to circulate, nor cause to circulate, publish or give access to the draft report, or any part thereof, without the express consent of the marine safety investigating State(s) or unless such reports or documents have already been published by the marine safety investigating State(s).

13.3 The marine safety investigating State(s) are not bound to comply with paragraph 13.1 if:

- .1 the marine safety investigating State(s) request that the substantially interested State receiving the report to affirm that evidence included in the draft report will not be admitted in civil or criminal proceedings against a person who gave the evidence; and
- .2 the substantially interested State refuses to provide such an affirmation.

13.4 The marine safety investigating State(s) shall invite the substantially interested States to submit their comments on the draft report within 30 days or some other mutually agreed period. The marine safety investigating State(s) shall consider the comments before preparing the final report and where the acceptance or rejection of the comments will have direct impact on the interests of the State that submitted them, the marine safety investigating State(s) shall notify the substantially interested State of the manner in which the comments were

addressed. If the marine safety investigating State(s) receives no comments after the 30 days or the mutually agreed period has expired, then it may proceed to finalize the report.

13.5 The marine safety investigating State(s) shall seek to fully verify the accuracy and completeness of the draft report by the most practical means.

## **Chapter 14**

### **MARINE SAFETY INVESTIGATION REPORTS**

14.1 The marine safety investigating State(s) shall submit the final version of a marine safety investigation report to the Organization for every marine safety investigation conducted into a very serious marine casualty.

14.2 Where a marine safety investigation is conducted into a marine casualty or marine incident, other than a very serious marine casualty, and a marine safety investigation report is produced which contains information which may prevent or lessen the seriousness of marine casualties or marine incidents in the future, the final version shall be submitted to the Organization.

14.3 The marine safety investigation report referred in paragraphs 14.1 and 14.2 shall utilize all the information obtained during a marine safety investigation, taking into account its scope, required to ensure that all the relevant safety issues are included and understood so that safety action can be taken as necessary.

14.4 The final marine safety investigation report shall be made available to the public and the shipping industry by the marine safety investigating State(s), or the marine safety investigating State(s) shall undertake to assist the public and the shipping industry with details, necessary to access the report, where it is published by another State or the Organization.

## **PART III**

### **RECOMMENDED PRACTICES**

## **Chapter 15**

### **ADMINISTRATIVE RESPONSIBILITIES**

15.1 States should ensure that marine safety investigating Authorities have available to them sufficient material and financial resources and suitably qualified personnel to enable them to facilitate the State's obligations to undertake marine safety investigations into marine casualties and marine incidents under this Code.

15.2 Any investigator forming part of a marine safety investigation should be appointed on the basis of the skills outlined in resolution A.996(25) for investigators.

15.3 However, paragraph 15.2 does not preclude the appropriate appointment of investigators with necessary specialist skills to form part of a marine safety investigation on a temporary basis,

neither does it preclude the use of consultants to provide expert advice on any aspect of a marine safety investigation.

15.4 Any person who is an investigator, in a marine safety investigation, or assisting a marine safety investigation, should be bound to operate in accordance with this Code.

## Chapter 16

### PRINCIPLES OF INVESTIGATION

16.1 **Independence:** A marine safety investigation should be unbiased to ensure the free flow of information to it.

16.1.1 In order to achieve the outcome in paragraph 16.1, the investigator(s) carrying out a marine safety investigation should have functional independence from:

- .1 the parties involved in the marine casualty or marine incident;
- .2 anyone who may make a decision to take administrative or disciplinary action against an individual or organization involved in a marine casualty or marine incident; and
- .3 judicial proceedings;

16.1.2 The investigator(s) carrying out a marine safety investigation should be free of interference from the parties in .1, .2 and .3 of paragraph 16.1.1 with respect to:

- .1 the gathering of all available information relevant to the marine casualty or marine incident, including voyage data recordings and vessel traffic services recordings;
- .2 analysis of evidence and the determination of causal factors;
- .3 drawing conclusions relevant to the causal factors;
- .4 distributing a draft report for comment and preparation of the final report; and
- .5 if appropriate, the making of safety recommendations.

16.2 **Safety focused:** It is not the objective of a marine safety investigation to determine liability, or apportion blame. However, the investigator(s) carrying out a marine safety investigation should not refrain from fully reporting on the causal factors because fault or liability may be inferred from the findings.

16.3 **Co-operation:** Where it is practicable and consistent with the requirements and recommendations of this Code, in particular chapter 10 on Co-operation, the marine safety investigating State(s) should seek to facilitate maximum co-operation between substantially interested States and other persons or organizations conducting an investigation into a marine casualty or marine incident.

16.4 **Priority:** A marine safety investigation should, as far as possible, be afforded the same priority as any other investigation, including investigations by a State for criminal purposes being conducted into the marine casualty or marine incident.

16.4.1 In accordance with paragraph 16.4 investigator(s) carrying out a marine safety investigation should not be prevented from having access to evidence in circumstances where another person or organization is carrying out a separate investigation into a marine casualty or marine incident.

16.4.2 The evidence for which ready access should be provided should include:

- .1 survey and other records held by the flag State, the owners, and classification societies;
- .2 all recorded data, including voyage data recorders; and
- .3 evidence that may be provided by government surveyors, coastguard officers, vessel traffic service operators, pilots or other marine personnel.

16.5 **Scope of a marine safety investigation:** Proper identification of causal factors requires timely and methodical investigation, going far beyond the immediate evidence and looking for underlying conditions, which may be remote from the site of the marine casualty or marine incident, and which may cause other future marine casualties and marine incidents. Marine safety investigations should therefore be seen as a means of identifying not only immediate causal factors but also failures that may be present in the whole chain of responsibility.

## Chapter 17

### INVESTIGATION OF MARINE CASUALTIES (OTHER THAN VERY SERIOUS CASUALTIES) AND MARINE INCIDENTS

17.1 A marine safety investigation should be conducted into marine casualties (other than very serious marine casualties – which are addressed in chapter 6 of this Code) and marine incidents, by the flag State of a ship involved, if it is considered likely that a marine safety investigation will provide information that can be used to prevent marine casualties and marine incidents in the future.

17.2 Chapter 7 contains the mandatory requirements for determining who the marine safety investigating State(s) are for a marine casualty. Where the occurrence being investigated in accordance with this chapter is a marine incident, chapter 7 should be followed as a recommended practice as if it referred to marine incidents.

## Chapter 18

## **FACTORS THAT SHOULD BE TAKEN INTO ACCOUNT WHEN SEEKING AGREEMENT UNDER CHAPTER 7 OF PART II**

18.1 When the flag State(s), a coastal State (if involved) or other substantially interested States are seeking to reach agreement, in accordance with chapter 7 of Part II on which State or State(s) will be the marine safety investigating State(s) under this Code, the following factors should be taken into account:

- .1 whether the marine casualty or marine incident occurred in the territory, including territorial sea, of a State;
- .2 whether the ship or ships involved in a marine casualty or marine incident occurring on the high seas, or in the exclusive economic zone, subsequently sail into the territorial sea of a State;
- .3 the resources and commitment required of the flag State and other substantially interested States;
- .4 the potential scope of the marine safety investigation and the ability of the flag State or another substantially interested State to accommodate that scope;
- .5 the need of the investigator(s) carrying out a marine safety investigation to access evidence and consideration of the State or States best placed to facilitate that access to evidence;
- .6 any perceived or actual adverse effects of the marine casualty or marine incident on other States;
- .7 the nationality of the crew, passengers and other persons affected by the marine casualty or marine incident.

## **Chapter 19**

### **ACTS OF UNLAWFUL INTERFERENCE**

19.1 If in the course of a marine safety investigation it becomes known or is suspected that an offence is committed under articles 3, *3bis*, *3ter* or *3quarter* of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988, the marine safety investigation Authority should immediately seek to ensure that the maritime security Authorities of the State(s) concerned are informed.

## Chapter 20

### NOTIFICATION TO PARTIES INVOLVED AND COMMENCEMENT OF AN INVESTIGATION

20.1 When a marine safety investigation is commenced under this Code, the master, the owner and agent of a ship involved in the marine casualty or marine incident being investigated, should be informed as soon as practicable of:

- .1 the marine casualty or marine incident under investigation;
- .2 the time and place at which the marine safety investigation will commence;
- .3 the name and contact details of the marine safety investigation Authority(ies);
- .4 the relevant details of the legislation under which the marine safety investigation is being conducted;
- .5 the rights and obligations of the parties subject to the marine safety investigation; and
- .6 the rights and obligations of the State or States conducting the marine safety investigation.

20.2 Each State should develop a standard document detailing the information in paragraph 20.1 that can be transmitted electronically to the master, the agent and the owner of the ship.

20.3 Recognizing that any ship involved in a marine casualty or marine incident may continue in service, and that a ship should not be delayed more than is absolutely necessary, the marine safety investigating State(s) conducting the marine safety investigation should start the marine safety investigation as soon as is reasonably practicable, without delaying the ship unnecessarily.

## Chapter 21

### CO-ORDINATING AN INVESTIGATION

21.1 The recommendations in this chapter should be applied in accordance with the principles in chapters 10 and 11 of this Code.

21.2 The marine safety investigating State(s) should ensure that there is an appropriate framework within the State for:

- .1 the designation of investigators to the marine safety investigation including an investigator to lead the marine safety investigation;
- .2 the provision of a reasonable level of support to members of the marine safety investigation;
- .3 the development of a strategy for the marine safety investigation in liaison with other substantially interested States;

- .4 ensuring the methodology followed during the marine safety investigation is consistent with that recommended in resolution A.884(21), as amended;
- .5 ensuring the marine safety investigation takes into account any recommendations or instruments published by the Organization or International Labour Organization, relevant to conducting a marine safety investigation; and
- .6 ensuring the marine safety investigation takes into account the safety management procedures and the safety policy of the operator of a ship in terms of the ISM Code.

21.3 The marine safety investigating State(s) should allow a substantially interested State to participate in aspects of the marine safety investigation relevant to it, to the extent practicable.

21.3.1 Participation should include allowing representatives of the substantially interested State to:

- .1 interview witnesses;
- .2 view and examine evidence and make copies of documents;
- .3 make submissions in respect of the evidence, comment on and have their views properly reflected in the final report; and
- .4 be provided with the draft and final reports relating to the marine safety investigation\*.

21.4 To the extent practical, substantially interested States should assist the marine safety investigating State(s) with access to relevant information for the marine safety investigation. To the extent practical, the investigator(s) carrying out a marine safety investigation should also be afforded access to Government surveyors, coastguard officers, ship traffic service operators, pilots and other marine personnel of a substantially interested State.

21.5 The flag State of a ship involved in a marine casualty or marine incident should help to facilitate the availability of the crew to the investigator(s) carrying out the marine safety investigation.

## **Chapter 22**

### **COLLECTION OF EVIDENCE**

22.1 A marine safety investigating State(s) should not unnecessarily detain a ship for the collection of evidence from it or have original documents or equipment removed unless this is essential for the purposes of the marine safety investigation. Investigators should make copies of documents where practicable.

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\* The reference to 'extent practical' may be taken to mean, as an example, that co-operation or participation is limited because national laws make it impractical to fully co-operate or participate.

22.2 Investigator(s) carrying out a marine safety investigation should secure records of interviews and other evidence collected during a marine safety investigation in a manner which prevents access by persons who do not require it for the purpose of the investigation.

22.3 Investigator(s) carrying out the marine safety investigation should make effective use of all recorded data including voyage data recorders if fitted. Voyage data recorders should be made available for downloading by the investigator(s) carrying out a marine safety investigation or an appointed representative.

22.3.1 In the event that the marine safety investigating State(s) do not have adequate facilities to read a voyage data recorder, States with such a capability should offer their services having due regard to the:

- .1 available resources;
- .2 capabilities of the readout facility;
- .3 timeliness of the readout; and
- .4 location of the facility.

## Chapter 23

### CONFIDENTIALITY OF INFORMATION

23.1 States should ensure that investigator(s) carrying out a marine safety investigation only disclose information from a marine safety record where:

- .1 it is necessary or desirable to do so for transport safety purposes and any impact on the future availability of safety information to a marine safety investigation is taken into account; or
- .2 as otherwise permitted in accordance with this Code\*.

23.2 States involved in marine safety investigation under this Code should ensure that any marine safety record in its possession is not disclosed in criminal, civil, disciplinary or administrative proceedings unless:

- .1 the appropriate authority for the administration of justice in the State determines that any adverse domestic or international impact that the disclosure of the

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\* States recognize that there are merits in keeping information from a marine safety record confidential where it needs to be shared with people outside the marine safety investigation for the purpose of conducting the marine safety investigation. An example is where information from a marine safety record needs to be provided to an external expert for their analysis or second opinion. Confidentiality would seek to ensure that sensitive information is not inappropriately disclosed for purposes other than the marine safety investigation, at a time when it has not been determined how the information will assist in determining the contributing factors in a marine casualty or marine incident. Inappropriate disclosure may infer blame or liability on the parties involved in the marine casualty or marine incident.



information might have on any current or future marine safety investigations is outweighed by the public interest in the administration of justice; and\*

- .2 where appropriate in the circumstances, the State which provided the marine safety record to the marine safety investigation authorizes its disclosure.

23.3 Marine safety records should be included in the final report, or its appendices, only when pertinent to the analysis of the marine casualty or marine incident. Parts of the record not pertinent, and not included in the final report, should not be disclosed.

23.4 States need only supply information from a marine safety record to a substantially interested State where doing so will not undermine the integrity and credibility of any marine safety investigation being conducted by the State or States providing the information.

23.4.1 The State supplying the information from a marine safety record may require that the State receiving the information undertake to keep it confidential.

## **Chapter 24**

### **PROTECTION FOR WITNESSES AND INVOLVED PARTIES**

24.1 If a person is required by law to provide evidence that may incriminate them, for the purposes of a marine safety investigation, the evidence should, so far as national laws allow, be prevented from admission into evidence in civil or criminal proceedings against the individual.

24.2 A person from whom evidence is sought should be informed about the nature and basis of the investigation. A person from whom evidence is sought should be informed, and allowed access to legal advice, regarding:

- .1 any potential risk that they may incriminate themselves in any proceedings subsequent to the marine safety investigation;
- .2 any right not to self-incriminate or to remain silent;
- .3 any protections afforded to the person to prevent the evidence being used against them if they provide the evidence to the marine safety investigation.

## **Chapter 25**

### **DRAFT AND FINAL REPORT**

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\* Examples of where it may be appropriate to disclose information from a marine safety record in criminal, civil, disciplinary or administrative proceedings may include:

- 1 where a person the subject of the proceedings has engaged in conduct with the intention to cause a destructive result; or
- 2 where a person the subject of the proceedings has been aware of a substantial risk that a destructive result will occur and having regard to the circumstances known to him or her it is unjustifiable to take the risk.

25.1 Marine safety investigation reports from a marine safety investigation should be completed as quickly as practicable.

25.2 Where it is requested, and where practicable, the marine safety investigating State(s) should send a copy of a draft marine safety investigation report for comment to interested parties. However, this recommendation does not apply where there is no guarantee that the interested party will not circulate, nor cause to circulate, publish or give access to the draft marine safety investigation report, or any part thereof, without the express consent of the marine safety investigating State(s).

25.3 The marine safety investigating State(s) should allow the interested party 30 days or some other mutually agreed time to submit their comments on the marine safety investigation report. The marine safety investigating State(s) should consider the comments before preparing the final marine safety investigation report and where the acceptance or rejection of the comments will have direct impact on the interests of the interested party that submitted them, the marine safety investigating State(s) should notify the interested party of the manner in which the comments were addressed. If the marine safety investigating State(s) receives no comments after the 30 days or the mutually agreed period has expired, then it may proceed to finalize the marine safety investigation report\*.

25.4 Where it is permitted by the national laws of the State preparing the marine safety investigation report, the draft and final report should be prevented from being admissible in evidence in proceedings related to the marine casualty or marine incident that may lead to disciplinary measures, criminal conviction or the determination of civil liability.

25.5 At any stage during a marine safety investigation interim safety measures may be recommended.

25.6 Where a substantially interested State disagrees with the whole or a part of a final marine safety investigation report, it may submit its own report to the Organization.

## Chapter 26

### RE-OPENING AN INVESTIGATION

26.1 Marine safety investigating State(s) which have completed a marine safety investigation, should reconsider their findings and consider re-opening the investigation when new evidence is presented which may materially alter the analysis and conclusions reached.

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\* See chapter 13 where provisions with respect to providing interested parties with reports on request may alternatively be included as a mandatory provision.

26.2 When significant new evidence relating to any marine casualty or marine incident is presented to the marine safety investigating State(s) that have completed a marine safety investigation, the evidence should be fully assessed and referred to other substantially interested States for appropriate input.

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