

MEMORANDUM CIRCULAR NO. MS-2022- 01
Series of 2022

**TO : ALL SHIP OWNERS, OPERATORS, MANAGERS,
CHARTERERS AND ALL CONCERNED**

**SUBJECT : RULES AND REGULATIONS ON THE CONDUCT OF MARINE
SAFETY INVESTIGATION INTO MARINE CASUALTY/
INCIDENT**

Pursuant to the IMSAS¹ audit scheme requirement under the III Code², Executive Order 125/125A³ and Republic Act 9295⁴ and in reference to the obligations and responsibilities of the Philippines as State Party to UNCLOS⁵, SOLAS⁶, Load Line⁷, MARPOL⁸ and MLC⁹ Convention to conduct casualty investigation based on the Casualty Investigation Code¹⁰, the following rules and regulations are hereby adopted and prescribed:

I. OBJECTIVES

1. To provide standard guidelines in the conduct of marine safety investigations into marine casualties and incidents;
2. To adhere with the obligations and responsibilities of the flag Administration in conducting and reporting marine safety investigation; and
3. To ascertain, as far as practicable, the underlying causes of the casualty and its surrounding circumstances, including the contributing factors, by systematic data gathering and analyzing information prior to drawing of conclusions in order to prevent similar casualties in the future.

II. COVERAGE

This Circular shall cover the following ships involved into a marine casualty/incident:

1. All ships flying under the Philippine flag;
2. Ships flying the flag of another State with Filipino seafarers; and
3. Ships flying the flag of another State involved into a marine casualty with Philippine flagged ship.

¹ International Maritime Organization (IMO) Member State Audit Scheme is mandatory audit under IMO Res. A.1070 (28).
² IMO Instruments Implementation Code, Resolution A.1070 (28) adopted on 04 December 2013, Section 38.
³ Reorganizing the Ministry of Transportation and Communications, Defining its Powers and Functions and for other purposes.
⁴ An Act Promoting the Development of Domestic Shipping, Shipbuilding, Ship Repair and Ship Breaking, Ordaining Reforms in Government Policies towards Shipping in the Philippines and for other purposes.
⁵ United Nations Convention on the Law of the Sea, Article 94 "Duties of the Flag State".
⁶ International Convention for the Safety of Life at Sea, 1974, Regulation 1/21.
⁷ International Convention on Load Lines, 1966, Article 23.
⁸ International Convention for the Prevention of Pollution from Ships, 1973, Article 12.
⁹ Maritime Labour Convention, 2006, Regulation 5.1.6.
¹⁰ Code of International Standards and Recommended Practices into a Maritime Casualty and Maritime Incident International Maritime Organization (IMO) Resolution MSC. 255 (84), as well as MSC-MEPC. 3/Circ. 3

III. DEFINITION OF TERMS

For the purpose of this Circular, the following terms shall be defined, as follows:

1. **"Administration"** refers to the Maritime Industry Authority (MARINA);
2. **"Causal Factor"** refers to an actions, omissions, events, existing or pre-existing conditions or a combination thereof, which led to the casualty or incident;
3. **"Investigation"** refers to a process conducted for the purpose of casualty prevention which include the gathering and analysis of information, drawing of conclusions including the identification of the circumstances, determination of causal and contributing factors, and when appropriate, formulation of safety recommendations;
4. **"Investigator"** refers to a person or persons qualified and appointed to conduct preliminary inquiries/fact-finding, investigate a casualty or incident;
5. **"Marine Casualty"** refers to an event, or a sequence of events, that has occurred directly in connection with the operations of a ship and has resulted in any of the following:
 1. Death of, or serious injury to, a person; the loss of a person from ship;
 2. Loss, presumed loss or abandonment of a ship;
 3. Material damage of the ship;
 4. Stranding or disabling of a ship, or involvement of a ship in a collision;
 5. Material damage to marine infrastructure external to a ship that could seriously endanger the safety of the ship, another ship or an individual; and/or
 6. Severe damage to the environment, or the potential 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.

6. **"Marine Incident"** refers to 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.
7. **"Marine Safety Investigation or MSI"** refers to an investigation or inquiry into a maritime casualty or incident, conducted with the objective of preventing such occurrences in the future. The investigation includes the collection and analysis of evidence, the identification of causal factors, and the making of safety recommendations as necessary.

8. **"Marine Safety Records"** refers to 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; and
 5. Information from the voyage data recorder.
9. **"Material damage"** refers to damage, in relation to a marine casualty, means:
 1. Significantly affects the structural integrity, performance or operational characteristics of marine infrastructure or a ship; and
 2. Requires major repair or replacement of a major component or components; or
 3. Destruction of the marine infrastructure or ship.
10. **"Seafarer"** refers to any person who is employed or engaged or works in any capacity on board a ship
11. **"Substantially Interested State"** refers to the State of any of the following:
 1. flag State of the ship that is subject of an investigation; or
 2. coastal State involved in a marine casualty or marine incident; or
 3. where a marine casualty caused serious harm or threatened the environment of that State, or within those areas over which the State is entitled to exercise jurisdiction as recognized under international law;
 4. where the consequences of a marine casualty or incident caused serious harm or threatened that State, or artificial islands, installations, or structures over which it is entitled to exercise jurisdiction;
 5. where, as a result of casualty, citizen/s of that State lost their lives or suffered serious injuries;
 6. where important information has at its disposal that may be of use to the investigation; or
 7. where for some other reason establishes an interest that is considered significant by the lead investigating State.

IV. GENERAL PROVISIONS

1. The Code of International Standards and Recommended Practices into a Marine Casualty or Incident (Casualty Investigation Code) and its

subsequent amendments are hereby adopted as an integral part of this Circular.

2. This Circular adopts the following classification of marine accidents as defined by the International Maritime Organization (IMO):
 1. **"Less Serious Marine Casualty"** refers to a term used to describe any marine casualty that does not qualify as a Very Serious Marine Casualty or a Serious Marine Casualty;
 2. **"Serious Marine Casualty"** refers to a marine incident which does not qualify as a very serious casualty and which involves:
 1. Fire, explosion, grounding, contact, heavy weather damage, ice damage, hull cracking or suspected hull defect, etc., resulting in;
 2. Structural damage rendering the ship unseaworthy, such as penetration of the hull underwater, immobilization of main engines, extensive accommodation damage;
 3. Pollution (regardless of quantity); and/or
 4. Breakdown necessitating towage or shore assistance.
 3. **"Very Serious Marine Casualty"** refers to a marine incident which involves the total loss of ship, loss of life, or severe damage to the environment.
3. The marine safety investigation (MSI) shall be conducted on the following cases:
 1. Philippine ships involved in very serious marine casualties;
 2. Philippine ships involved in serious marine casualties; and
 3. Philippine ships involved in less serious marine casualties or other casualty/incident, if the marine casualty investigation will provide vital information that can be used to prevent marine casualties/incidents in the future.
4. MSI may be conducted on ships of foreign flag when a Filipino seafarer is involved in the marine casualty upon notification/request/consent from the flag State or other substantially interested parties.
5. The MSI shall not seek to apportion blame or to determine liability. The conduct of MSI shall aim to improve marine safety standards from lessons learned and causal factors following a marine casualty accident/incident.
6. The MSI shall be separate from, and independent of any other form of investigation. However, it is not the purpose of the MSI to preclude any other form of investigation, including investigations for action in civil, criminal, and administrative proceedings.
7. All marine safety records derived from the MSI shall be treated with confidentiality and shall not be disclosed in any criminal, civil and/or administrative proceedings unless otherwise required by a competent court.

V. SPECIFIC PROVISIONS

1. The conduct of MSI shall be in accordance with the Quality Procedure Manual developed by the Administration.
2. The investigation shall primarily look into the following parameters and considerations:
 1. Seriousness of the marine casualty or incident;
 2. Type of ship and/or cargo involved;
 3. Potential hazards in the area of the incident;
 4. Initial investigation strategy;
 5. Scope of the investigation;
 6. Potential and actual consequences of the casualty;
 7. Disruption or potential disruption of major port operations or other activities;
 8. Data gathering/familiarization with existing/available information prior to actual investigation;
 9. Causal factor and material damage of the accident; and/or
 10. Conduct of interviews with key witnesses or persons directly involved in the marine incident.
3. The Administration may require and invite persons, seafarers or entities to appear before an investigative body and answer questions under oath or affirmation on matters relevant to investigation and may require a person or entity to provide for documentary evidence or material relating to the occurrence.
4. All applicable safety recommendations emanating from the MSI shall be deemed in aid of policy formulation with the end view of raising the bar of safety culture in the maritime industry.
5. The final investigation report of very serious marine casualty shall be submitted to the Marine Casualties and Incidents Module database of the IMO Global Integrated Shipping Information System (GISIS¹¹).

VI. SEPARABILITY CLAUSE

Should any provisions of this Circular be declared by a Competent Authority to be invalid or unconstitutional, the remaining provisions or parts thereof shall remain in full force and effect shall continue to be valid and effective.

¹¹ GISIS allow on-line access to the information and data supplied to the IMO by maritime administrations, its member States, in compliance with IMO instruments, regulations and guidelines.

VII. EFFECTIVITY

This Circular shall take effect fifteen (15) days after its publication in a newspaper of general circulation.

Manila, Philippines NOV 25 2022.

BY THE AUTHORITY OF THE BOARD:


Atty. HERNANI N. FABIA
Administrator

SECRETARY'S BOARD CERTIFICATE

This is to certify that Memorandum Circular No. MS-2022-01 has been approved by the MARINA Board in a meeting held on 28 October 2022.


Atty. SHARON L. DE CHAVEZ - ALEDO
Corporate Board Secretary

Date of Publication: 07 December 2022

Business Mirror

Date of Submission to ONAR: _____