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Agenda item 14

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IMPLEMENTATION OF IMO INSTRUMENTS

Comments on the draft MSC-MEPC.5 circular on Model agreement for the authorization of recognized organizations acting on behalf of the Administration

Submitted by Norway, Russian Federation, United Arab Emirates and IACS

SUMMARY

<i>Executive summary:</i>	This document proposes revisions to paragraph 6.5.5 of the draft Model agreement for the authorization of recognized organizations acting on behalf of the Administration, with a view to its practical and clear implementation
<i>Strategic direction, if applicable:</i>	Other work
<i>Output:</i>	OW 38
<i>Action to be taken:</i>	Paragraph 13
<i>Related documents:</i>	MEPC 75/11/3; MSC 102/14 (paragraph 2.6); MSC 101/10/2; MSC 101/24 (paragraphs 10.13 and 10.14) and III 6/15 (paragraphs 8.23 to 8.26 and annex 8)

Introduction

1 This document is submitted in accordance with the provisions of paragraph 6.12.5 of the *Organization and method of work of the Maritime Safety Committee and the Marine Environment Protection Committee and their subsidiary bodies* (MSC-MEPC.1/Circ.5/Rev.1) and provides comments on paragraph 2.6 of document MSC 102/14 (Secretariat), in particular on the draft MSC-MEPC.5 circular on Model agreement for the authorization of recognized organizations acting on behalf of the Administration (Model agreement), as contained in annex 8 of document III 6/15.

Background

2 MSC 101 instructed III 6 to further consider and review the draft Model agreement, taking into account document MSC 101/10/2 (Marshall Islands, Russian Federation and IACS) and the concerns raised at MSC 101.

3 Having carefully considered the discussion at MSC 101 and III 6, the co-sponsors offer the following comments on, and the proposal for improvement of, paragraph 6.5.5 of the draft Model Agreement that is contained in annex 8 of document III 6/15 with a view to its practical implementation.

Discussion

4 Paragraph 6.5.5 of the draft Model agreement states:

"5 the RO shall inform the flag State Administration, as soon as possible, of any dangerous occurrences, accidents, machinery or structural breakdowns, or failures that they are aware of on a ship;"

5 The co-sponsors consider that the intention of the reporting requirements within the RO Code is adequately covered in paragraphs 6.4, 6.5.2 and 6.5.3 of the draft Model agreement (III 6/15, annex 8). At the same time, the terms "dangerous occurrences" and "accidents" which appear in paragraph 6.5.5 quoted above, are considered to be vague and undefined. Its use in a delegation of authority agreement will impose a consequential burden on both Member States and ROs and could lead to non-uniform application on a global basis due to different interpretations of "dangerous occurrences" and "accidents". The co-sponsors consider that paragraph 6.5.5 is superfluous, vague and should be deleted.

6 However, if the Committee decides that paragraph 6.5.5 is to be retained, then the scope of the required reporting should be clearly defined. In this regard, the co-sponsors note that paragraph 7.1.3.3.2 of Part 3 of the RO Code recognizes that "deficiencies and outstanding requirements" issued by the RO against the provisions of statutory instruments so delegated, are those more significant deficiencies, non-conformities and safety-related issues. Those deficiencies, non-conformities and issues require rectification by a given deadline. As part of the flag Administration's oversight program of the RO, the flag Administration has electronic access to allow it to "review the effectiveness of the control and rectification of deficiencies and outstanding requirements within the deadlines established by the flag State through the RO".

7 The co-sponsors would also draw attention to the requirement in paragraph 9.1 of Part A of the ISM Code in respect of reporting to the Company of such occurrences, as part of the Safety Management System (SMS). If the Administration needs to be aware of deficiencies, non-conformities and safety-related issues other than those identified in paragraph 6, the co-sponsors consider it more appropriate and efficient for the Administration to gain access to those deficiencies, non-conformities and safety-related issues reported by the Company under the ISM Code.

8 The co-sponsors also note that paragraph 2.10 of 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 resolution MSC.255(84), defines a "marine incident" as follows:

"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".

9 In the same Code, paragraph 2.16 defines "a material damage in relation to a marine casualty" as follows:

"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".

Proposal

10 Taking into account the discussion in paragraph 5, the co-sponsors propose to delete draft paragraph 6.5.5 from the draft Model agreement. However, if the Committee decides to retain draft paragraph 6.5.5, then considering the discussion in paragraphs 6 to 9 above, the co-sponsors consider that in order to provide practicable and reasonable implementation, and be better understood by both Member States and ROs, paragraph 6.5.5 should be revised as follows:*

".5 the RO shall inform the flag State Administration, as soon as possible, of any ~~dangerous occurrences, accidents,~~ machinery or structural breakdowns, or failures requiring immediate repair or repair by a given due date that they are aware of on a ship".

11 The comma after "breakdowns" is removed to qualify/clarify that machinery breakdowns, structural breakdowns, machinery failures and structural failures that would require immediate repair or repair by a given due date, should be reported.

12 The co-sponsors believe that the above changes would correctly align the intent of the reporting requirements in the RO Code with the Model agreement.

Action requested of the Committee

13 The Committee is invited to consider the foregoing, in particular, the proposal in paragraph 10, and take action as appropriate.

* Tracked changes are indicated using "strikeout" for deleted text and "grey shading" to highlight all modifications and new insertions, including deleted text.