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COMMITTEE
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Agenda item 11

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REPORTS OF OTHER SUB-COMMITTEES

Report of III 6

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, the Russian Federation, the United Arab Emirates and IACS

SUMMARY

Executive summary: This document proposes revisions to paragraph 6.5.5 of the draft Model agreement with a view to its practical and clear implementation

Strategic direction, if applicable: Other work

Output: OW 38

Action to be taken: Paragraph 13

Related documents: MEPC 75/11/1; MEPC 74/11/1, MEPC 74/18; and III 6/15

Introduction

1 This document is submitted in accordance with the provisions of paragraph 6.12.5 of the document on *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 4.6 of document MEPC 75/11/1 (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, contained in annex 8 to document III 6/15.

Background

2 The Committee, at its seventy-fourth session, owing to time constraints, agreed to defer the consideration of document MEPC 74/11/1 (Marshall Islands et al.) to MEPC 75, and, at the same time, instructed the III Sub-Committee to take necessary actions as per the

instruction of MSC 101 based on its consideration of the outcome of III 5. In this respect, it is recalled that MSC 101 instructed III 6 to consider and review the draft Model agreement, taking into account document MSC 101/10/2 (Marshall Islands et al.) and the concerns raised at MSC 101.

3 Noting the above-mentioned instructions by the Committee to III 6, and having carefully considered the discussion at 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 to 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. Their 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". In the view of the co-sponsors, 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 programme 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.