

## 澳門特別行政區

## REGIÃO ADMINISTRATIVA ESPECIAL DE MACAU

### 行政長官辦公室

### GABINETE DO CHEFE DO EXECUTIVO

#### 第 4/2015 號行政長官公告

#### Aviso do Chefe do Executivo n.º 4/2015

中華人民共和國是國際海事組織的成員國及一九七四年十一月一日訂於倫敦的《國際海上人命安全公約》（下稱“公約”）的締約國；

Considerando que a República Popular da China é um Estado Membro da Organização Marítima Internacional e um Estado Contratante da Convenção Internacional para a Salvaguarda da Vida Humana no Mar, concluída em Londres em 1 de Novembro de 1974, adiante designada por Convenção;

中華人民共和國於一九九九年十二月十三日以照會通知聯合國秘書長，經修訂的公約自一九九九年十二月二十日起適用於澳門特別行政區；

Considerando igualmente que a República Popular da China, por nota datada de 13 de Dezembro de 1999, notificou o Secretário-Geral das Nações Unidas sobre a aplicação da Convenção, tal como emendada, na Região Administrativa Especial de Macau, a partir de 20 de Dezembro de 1999;

國際海事組織海上安全委員會於二零零八年五月十六日透過第MSC.255 (84) 號決議通過了《海上事故或海上事件安全調查國際標準和推薦做法規則》（《事故調查規則》），該規則自二零一零年一月一日起適用於澳門特別行政區；

Considerando ainda que, em 16 de Maio de 2008, o Comité de Segurança Marítima da Organização Marítima Internacional, através da resolução MSC.255(84), adoptou o Código de Normas Internacionais e Práticas Recomendadas para uma Investigação de Segurança dos Acidentes ou Incidentes Marítimos (Código de Investigação de Acidentes), e que tal Código é aplicável na Região Administrativa Especial de Macau desde 1 de Janeiro de 2010;

基於此，行政長官根據澳門特別行政區第3/1999號法律第六條第一款的規定，命令公佈包含上指規則的第MSC.255 (84) 號決議的中文及英文文本。

O Chefe do Executivo manda publicar, nos termos do n.º 1 do artigo 6.º da Lei n.º 3/1999 da Região Administrativa Especial de Macau, a resolução MSC.255(84), que contém o referido Código, nos seus textos em línguas chinesa e inglesa.

二零一五年一月二十七日發佈。

Promulgado em 27 de Janeiro de 2015.

代理行政長官 陳海帆

A Chefe do Executivo, interina, *Chan Hoi Fan*.

## 第 MSC.255 (84) 號決議

(2008 年 5 月 16 日通過)

通過《海上事故或海上事件安全調查

國際標準和推薦做法規則》

(《事故調查規則》)

海上安全委員會，

憶及《國際海事組織公約》關於本委員會職能的第 28 (b) 條，

關切地注意到，儘管本組織做出了最大努力，但導致人命損失、船舶滅失和海洋環境污染的事故和事件仍不斷發生，

還注意到確定事故和事件的情況和原因的及時而準確的報告能加強海員和乘客的安全及海洋環境的保護，

進一步注意到 1982 年 12 月 10 日訂於蒙特哥灣的《聯合國海洋法公約》以及國際海洋習慣法的重要性，

另外注意到船旗國按照《1974 年國際海上人命安全公約》(下文稱《公約》)(第 I/21 條)、《1966 年國際載重線公約》(第 23 條)和《1973 年國際防止船舶造成污染公約》(第 12 條)進行事故調查及向本組織提供有關調查結果的責任，

考慮到有必要確保所有特別重大海上事故均得到調查，

還考慮到關於出現海上事故時公平對待海員的導則(第 A.987(24) 號決議)，

確認對海上事故和事件的調查和正確分析能對事故的起因有更好的認識，及制定包括更好的培訓在內的補救措施，以加強海上人命安全和海洋環境保護，

認識到需要一部規則，以在國家法律許可情況下提供一個標準的海上事故和事件的調查方法，防止將來的海上事故和事件，

還認識到航運的國際性和對海上事故和事件有重大利益的國家之間開展合作以確定事故和事件的情況和原因的必要性，

注意到第 MSC.257(84) 號決議，海安會以該決議通過了《公約》第 XI-1 條的修正案，使海上事故或海上事件安全調查國際標準和推薦做法規則的第 I 和第 II 部分根據《公約》成為強制性規定，

在其第八十四屆會議上，審議了所建議的《事故調查規則》的案文，

1. 通過列於本決議附件中的《海上事故或海上事件安全調查國際標準和推薦做法規則》；
2. 請《公約》各締約國政府注意，該規則將在《公約》第 XI-1/6 條的修正案生效後，於 2010 年 1 月 1 日生效；
3. 要求本組織秘書長將本決議及其附件中的規則文本的核證無誤副本送交《公約》的所有締約國政府；
4. 進一步要求本組織秘書長將本決議及其附件中的規則文本的副本送交所有非《公約》締約國政府的本組織會員國。

## 前言

1 本規則包含並基於國際海事組織（本組織）於1997年11月以第A.849（20）號決議通過的《海上事故和事件調查規則》所建立的海上事故和海上事件調查的最佳做法。《海上事故和事件調查規則》試圖促進合作以及國家間海上事故和海上事件調查的共同方法。

### 背景

2 本組織曾通過數個決議鼓勵合作和認識共同利益。第一個是1968年11月通過的第A.173（ES.IV）號決議（參加海上事故官方調查）。其他後續決議包括：1975年11月通過的第A.322（IX）號決議（進行事故調查）；1979年11月通過的第A.440（XI）號決議（海上事故調查的信息交換）和第A.442（XI）號決議（主管機關進行事故和違約調查的人力和物力需要）；1989年通過的第A.637（16）號決議（海上事故調查中的合作）。

3 本組織將這些單獨的決議加以組合和擴展後，通過了《海上事故和事件調查規則》。於1999年11月通過的第A.884（21）號決議（對第A.849（20）號決議 - 海上事故和事件調查規則的修正案）通過提供調查人為因素的導則，進一步加強了該規則。

4 《1948年國際海上人命安全公約》（《安全公約》）中包含了一項規定，在調查作為促進因素會有助於確定管理事宜時，要求船旗國對其船舶遇到的任何事故進行調查。此條規定保留在1960和1974年《國際海上人命安全公約》中。它也被列入《1966年載重線公約》

中。另外，還要求船旗國對某些發生在公海的海上事故和海上事件進行調查。

5 沿海國的主權延伸至其領土和內水之外的領海。這一管轄權賦予沿海國固有的權利對與其領土有關的海上事故和海上事件進行調查。多數國家主管機關都有對在其內水和領海內的不論任何船旗的航運事故進行調查的法律規定。

#### *對待海員*

6 最近，國際勞工組織的《2006年海事勞工公約》（尚未生效）對一些嚴重海上事故的調查做出了規定，並定出海員的工作條件。認識到在調查時有必要給與海員特別保護，本組織於2005年12月以第A.987(24)號決議通過了《關於在海上事故中公平對待海員的導則》。該導則於2006年7月1日由海事組織和勞工組織發佈。

#### *通過本規則*

7 自第一部《安全公約》通過以來，國際海運業的結構有了很大變化，國際法也有了變化。這些變化潛在地增加了對海上安全調查的過程和結果有利害關係的國家數量，在海上事故和海上事件上，增加了受影響國家之間潛在的司法上和其他程序上的不同。

8 本規則，在制定一些法定要求的同時，承認關於海上事故和海上事件調查的國際和國家法律的不同。本規則的編撰旨在為了船旗國，沿海國，本組織和航運界的普遍利益，便利客觀的海上安全調查。

## 第 I 部分

### 總則

#### 第 1 章

##### 宗旨

1.1 本規則的宗旨是提供一個通用的方法供各國在對海上事故和海上事件進行海上安全調查時採用。海上安全調查不試圖劃分過失或確定責任。本規則所界定的海上安全調查是為了防止將來的海上事故和海上事件而進行的調查。本規則認為，實現這一宗旨的途徑為，各國：

- .1 採用一致的方式和方法，必要時實現和鼓勵大範圍的調查，以發現引發因素和其他安全風險；及
- .2 提交報告給本組織以實現信息的廣為散發，幫助國際海事界解決安全問題。

1.2 海上安全調查應分離並獨立於任何其他形式的調查。但是，本規則的宗旨並非排除任何其他形式的調查，包括為民事、刑事和行政訴訟進行的調查。另外，本規則的意圖並不是讓進行海上安全調查的國家由於調查結果可推斷出過失或責任而不全面報告海上事故或海上事件的起因。

1.3 本規則認識到，根據本組織的文書，在判斷出調查會有助於

確定現規定中需要修改之處時，或如果事故產生了對環境的有害影響，每個船旗國均有責任對懸掛其船旗的任何船舶發生的任何事故進行調查。本規則還考慮到船旗國須由適當的合格人員一人或數人或在這種人員在場的情況下對某些公海上的航行事件進行調查。但是，本規則還認識到，若一個國家的領土包括領海在內發生了對人命或環境構成風險，或涉及到沿海國搜救當局，或在其他方面影響到沿海國的海上事故或海上事件，該國有權對此海上事故或海上事件的起因進行調查。

## 第 2 章

### 定義

當下列術語用於海上安全調查強制性標準和推薦做法之中時，具有下列含義。

2.1 **代理人**係指代表船東、租船人、或船舶經營人、或貨主從事提供航運服務，包括安排船舶接受海上安全調查的任何自然人或法人。

2.2 **引發因素**係指那些行動、疏忽、事件或條件，如果沒有這些因素，則：

- .1 海上事故或事件將不會發生；或
- .2 與海上事故或海上事件有關的不利後果將不會出現或不會如此嚴重；

.3 與第.1或.2項的後果有關的另一行動、疏忽、事件或條件將可能不會出現。

2.3 **沿海國**係指在其領土包括其領水內發生海上事故或海上事件  
的國家。

2.4 **專屬經濟區**係指《聯合國海洋法公約》第五十五條界定的專  
屬經濟區。

2.5 **船旗國**係指船舶獲准懸掛其船旗的國家。

2.6 **公海**係指《聯合國海洋法公約》第八十六條界定的公海。

2.7 **有關方**係指海上安全調查國確定的對於海上安全調查結果有  
重大利害關係、權利或合法期望的組織或個人。

2.8 **《國際安全管理規則》(《安管規則》)**係指經修訂的本組織以  
第A.741(18)號決議通過的《船舶安全操作及防止污染國際管理規  
則》。

2.9 **海上事故**係指其發生與船舶操作直接相關的、導致下列情況  
的事件，或事件後果：

- .1 人員死亡，或嚴重受傷；
- .2 船上人員失蹤；
- .3 船舶滅失，推定滅失或棄船；
- .4 船舶實質性損壞；
- .5 船舶擱淺或不能使用，或船舶被牽涉到碰撞；



- .6 會嚴重危及船舶本身、其他船舶或個人安全的船舶外部基本結構的實質性損壞；或
- .7 船舶或多艘船舶的損壞造成的對環境的嚴重損害，或潛在的嚴重損害。

但是，海上事故不包括有意危害船舶、個人或環境的故意行為或疏忽。

2.10 **海上事件**係指海上事故之外的、其發生與船舶操作直接有關的、危及或如不改正將要危及船舶、其乘員或任何其他人員或環境的事件或事件後果。

但是，海上事件不包括有意危害船舶、個人或環境安全的故意行為或疏忽。

2.11 **海上安全調查**係指以防止將來的海上事故和海上事件為目的而進行的對海上事故或海上事件的調查或探究（不論一個國家對其稱謂如何）。調查包括對證據的收集和分析、確定引發因素和提出必要的安全建議。

2.12 **海上安全調查報告**係指包含下列內容的報告：

- .1 海上事故或海上事件的基本事實概述，及說明是否導致任何死亡、受傷或污染；
- .2 安全管理證書所列明的船旗國、船東、經營人、公司的身份（以不違反關於隱私的任何國家法律為前提）；
- .3 相關的任何有關船舶的尺度和引擎細節，以及對船員、工

作程序和諸如船上工作時間等其他事宜的描述；

- .4 海上事故或海上事件情況的詳細陳述；
- .5 對引發因素的分析 and 評論，包括任何機械因素、人為因素和組織因素；
- .6 對海上安全調查結果的討論，包括確認安全問題，及海上安全調查的結論；以及
- .7 適用時，旨在防止將來海上事故和海上事件的建議。

2.13 **海上安全調查當局**係指國家中負責按照本規則進行調查的當局。

2.14 **海上安全調查國**係指船旗國或按照本規則相互同意負責進行海上安全調查的一個或多個國家。

2.15 **海上安全紀錄**係指為海上安全調查收集的下列類型的記錄：

- .1 為海事安全調查所採集的所有陳述；
- .2 與船舶操作有關的人員之間的所有通訊；
- .3 與海上事故或海上事件有關人員的所有醫療或個人信息；
- .4 海上安全調查過程中獲取的所有信息分析或證據材料的記錄；以及
- .5 航程數據記錄儀中的信息。

2.16 與海上事故相關的**實質性損壞**係指：

.1 以下損壞：

.1.1 嚴重影響航海設施或船舶的結構完整性、性能或操作特性的損壞；以及

.1.2 需要重大修理或更換一個或多個主要部件的損壞。或

.2 航海設施或船舶的損毀。

2.17 **海員**係指船上僱用、聘用或以任何身份在船上工作的任何人。

2.18 **重傷**係指一個人所受的、從受傷之日起七天之內開始的、導致無法保持正常功能 72 小時以上的傷害。

2.19 **對環境的嚴重損害**係指酌情由受害國或船旗國評定的對環境造成重大有害影響的環境損害。

2.20 **有重大利益的國家**係指：

.1 海上事故或海上事件所涉及船舶的船旗國；或

.2 海上事故或海上事件所涉及的沿海國；或

.3 其環境受到海上事故的嚴重或重大損害的國家(包括其根據國際法得到承認的水域和領土的環境)；或

.4 海上事故或海上事件的後果對其或其有權行使管轄權的人工島嶼、裝置或結構造成嚴重損害或威脅的國家；或

.5 海上事故造成其國民死亡或嚴重受傷的國家；或

.6 具有海上安全調查國認為對調查有用的重要信息的國家； 或

.7 由於其他原因而確立海上安全調查國認為屬重大利益的國家。

2.21 **領海**係指《聯合國海洋法公約》第二部分第二節界定的領海。

2.22 **特別重大海上事故**係指涉及船舶全損或死亡或嚴重環境損害的海上事故。

### 第 3 章

#### 第 II 和 III 部分中各章節的適用範圍

3.1 本規則第 II 部分載有關於海上安全調查的強制性標準。某些條款僅對某些類別的海上事故適用及僅作為對此類別海上事故的海上安全調查的強制性規定。

3.2 本規則第 III 部分中的條款可能提及本部分中僅適用於某些類別的海上事故的條款。第 III 部分中的條款可能建議將此類條款適用於其他海上事故或海上事件的海上安全調查。

## 第 II 部分

### 強制性標準

#### 第 4 章

##### 海上安全調查當局

4.1 各國政府須向本組織提供其國內開展海上安全調查的海上安全調查當局的詳細聯絡信息。

#### 第 5 章

##### 通知

5.1 當海上事故發生於公海上或專屬經濟區內時，涉案船舶的船旗國須儘實際可行地迅速通知其他有重大利益的國家。

5.2 當海上事故發生於沿海國的領土包括其領水之內時，船旗國和該沿海國須相互通知，並一起儘實際可行地迅速通知其他有重大利益的國家。

5.3 通知不得因信息不全而被延遲。

5.4 格式和內容：通知須儘可能多地包括下列已有信息：

- .1 船舶名稱及其船旗國；

- .2 IMO 船舶識別號；
- .3 海上事故的性質；
- .4 海上事故的地點；
- .5 海上事故的時間和日期；
- .6 任何重傷或死亡人數；
- .7 海上事故對人、財產和環境造成的後果；及
- .8 對任何其他涉案船舶的確認。

## 第 6 章

### 調查特別重大海上事故的要求

- 6.1 對每一特別重大海上事故均須進行海上安全調查。
- 6.2 在按照第 7 章達成的任何協議之下，涉及特別重大海上事故的船舶的船旗國負責確保按照本規則開展並完成海上安全調查。

## 第 7 章

### 船旗國與其他有重大利益的國家

#### 開展海上安全調查的協議

7.1 在不限制各國單獨進行其自己的海上安全調查權利的條件下，當海上事故發生於某國領土包括其領海之內時，涉及海上事故的船旗國和該沿海國須進行協商，以達成協議，決定哪個或哪幾個國家按照要求或行動建議擔任海上安全調查國，根據本規則進行調查。

7.2 在不限制各國單獨進行其自己的海上安全調查權利的條件下，當海上事故發生於公海上，或某國的專屬經濟區之內，並涉及到一個以上的船旗國時，則有關國家須進行協商，以達成協議，決定哪個或哪幾個國家按照要求或行動建議擔任海上安全調查國，根據本規則進行調查。

7.3 對於第 7.1 或 7.2 款所述海上事故，有關國家可與另一個有重大利益關係的國家達成協議，由該國或多國擔任海上安全調查國。

7.4 在按照第 7.1、7.2 或 7.3 款達成協議之前，或若不能達成協議，則根據本規則，及根據其他國際法，各國開展海上安全調查的現有義務和權利仍由有關各方承擔，以進行其各自的調查。

7.5 船旗國全面參加由另一有重大利益的國家所開展的海上安全調查，須被視為履行本規則、《安全公約》第 I/21 條、《聯合國海洋法公約》第九十四條第 7 款所規定的義務。

## 第8章

### 調查的權力

8.1 各國均須確保其國內法做出規定，使進行海上安全調查的調查員能夠登船，與船長、船員、及任何其他有關人員面談，以及為海上安全調查獲取證據材料。

## 第9章

### 並行調查

9.1 當海上安全調查國按照本規則進行海上安全調查時，其他有重大利益的國家單獨進行其自己的海上安全調查的權利不受妨礙。

9.2 在認識到海上安全調查國須履行本規則規定的責任的同時，海上安全調查國和任何其他有重大利益的國家在進行海上安全調查時須設法協調其調查的時間，以儘可能避免在要求作證和獲取證據時發生衝突。



## 第 10 章

### 合作

10.1 所有有重大利益的國家均須儘實際可能地與海上安全調查國合作。海上安全調查國須儘實際可能地為有重大利益的國家的參與做好安排。

## 第 11 章

### 調查不受外部指示

11.1 海上安全調查國須確保進行海上安全調查的調查員是公正而客觀的。海上安全調查須能夠報告海上安全調查的結果，不受調查結果可能影響到的任何人或組織的指示或干擾。

## 第 12 章

### 從海員獲取證據

12.1 如海上安全調查需要海員提供證據，須儘實際可能地早日取證。須允許海員儘可能早地返回船舶，或獲得遣返。海員的人權須始終得到維護。

12.2 所有被要求提供證據的海員均須被告知海上安全調查的性質和根據。另外，被要求提供證據的海員須被告知並就下列各項獲得法律諮詢意見：

- .1 在海上安全調查之後的任何訴訟中使自己負罪的任何潛在風險；
- .2 任何不使自己負罪的權利或保持沉默的權利；
- .3 如海員向海上安全調查提供證據，為該海員提供的、旨在避免該證據被用於針對自身的任何保護。

## 第 13 章

### 海事安全調查報告草案

13.1 在遵守第 13.2 和 13.3 條的前提下，當被要求時，海上安全調查國須向有重大利益的國家送交報告草案供其對報告草案發表意見。

13.2 只有在收取報告的有重大利益的國家保證，未經海上安全調查國明確許可或除非該報告或文件已由海上安全調查國公佈，則不散發、造成散發、公佈或允許獲得報告草案或其任何部分，海上安全調查國才有義務遵守第 13.1 條。

13.3 如屬以下情況，海上安全調查國沒有義務遵守第 13.1 條：

- .1 海上安全調查國要求收取報告的有重大利益的國家確認

報告草案中所包含的證據不會用於針對證據提供者的民事或刑事訴訟；並且

.2 該有重大利益的國家拒絕給與確認。

13.4 海上安全調查國須邀請有重大利益的國家在 30 天內或雙方同意的其他時間內對報告草案提出意見。海上安全調查國須在準備最終報告之前，考慮所提意見；在接受或否決該意見將直接影響提交意見國家的利益時，海上安全調查國須將處理意見的方式通知該有重大利益的國家。如果海上安全調查國在 30 天後或雙方同意的時間到期後未收到意見，則可開始完成該報告。

13.5 海上安全調查國須以最實際可行的手段尋求全面核實報告草案的準確性和完整性。

## 第 14 章

### 海上安全調查報告

14.1 海上安全調查國須向本組織提交對每一特別重大海上事故所進行的海上安全調查的海上安全調查報告的最終文本。

14.2 若對非特別重大的海上事故或海上事件進行了海上安全調查，並做出了海上安全調查報告，且其中含有的信息可防止將來的海上事故或海上事件或減少其嚴重性，其最終文本須提交給本組織。

14.3 第 14.1 及 14.2 款所指的海上安全調查報告須利用海上安全調查中獲取的全部信息，同時考慮到為確保包括並了解所有與安全有關的問題所需要的範圍，以便根據需要採取安全措施。

14.4 海上安全調查報告的最後文本須由海上安全調查國向公眾及航運界提供，或者，如由另一國家或本組織公佈，則海上安全調查國須承諾向公眾及航運界提供獲取報告所需的細節。

### 第 III 部分

#### 推薦做法

### 第 15 章

#### 行政責任

15.1 各國應確保海上安全調查當局具有充足的物質和財務資源以及適任的合格人員，以使它們能夠便利該國按照本規則履行對海上事故和海上事件進行海上安全調查的義務。

15.2 任何參加海上安全調查的調查員均應依據第 A.996(25)號決議所列海上安全調查員的技能加以任命。

15.3 但是，第 15.2 款並不排除臨時地適當任命具備所需特殊專業技能的調查員參加海上安全調查，也不排除使用顧問對海上安全調查的任何方面提供專家意見。

15.4 作為海上安全調查員參加或協助海上安全調查的任何人，均有義務按照本規則行事。

## 第 16 章

### 調查原則

16.1 獨立性：海上安全調查應無偏見，以確保自由地獲得信息。

16.1.1 為取得第 16.1 款所述結果，進行海上安全調查的調查員在職能上應獨立於：

- .1 涉及海上事故或海上事件的有關方；
- .2 可針對海上事故或海上事件所涉及的個人或組織決定行政或紀律措施的任何人；及
- .3 司法訴訟。

16.1.2 進行海上安全調查的調查員應不受第 16.1.1 款的 .1、.2 和 .3 項所述各方對下列各項的干擾：

- .1 收集所有與海上事故或海上事件有關的信息，包括航程數據記錄和船舶交通服務的記錄；
- .2 證據分析和確定引發因素；
- .3 做出關於引發因素的結論；
- .4 分發報告草案以徵求意見及準備最終報告；和

.5 在適當時提出安全建議。

16.2 以安全為重點：海上安全調查的宗旨並非確定責任或判定過失分擔。但是，進行海上安全調查的調查員不應由於可從調查結果推斷出過失或責任而不全面報告引發因素。

16.3 合作：當實際可行並與本規則特別是關於合作的第10章的要求和建議相一致時，海上安全調查國應尋求促進開展海上事故或海上事件調查的有重大利益的國家及其他個人或組織之間的合作。

16.4 優先地位：對海上安全調查應儘可能地給與和其他調查，包括國家為刑事目的對海上事故或海上事件進行的調查，同等的優先地位。

16.4.1 按照第16.4款，進行海上安全調查的調查員在獲取證據時不應因為其他人或組織對海上事故或海上事件進行其他調查而受到阻礙。

16.4.2 可隨時獲取的證據應包括：

- .1 船旗國、船東和船級社所持有的檢驗及其他記錄；
- .2 所有記錄的數據，包括航程數據記錄儀；以及
- .3 政府驗船師、海岸警衛隊官員、船舶交通服務操作員、引水員或其他海事人員可提供的證據。

16.5 海上安全調查的範圍：正確辨別引發因素需要及時和有系統的調查，遠遠超出眼前的證據，尋找潛在的條件；它們可能遠離海上事故或海上事件的發生地點，並可能引起其他將來的海上事故或海上事件。因此，海上安全調查應被看作是一種手段，不僅要辨別直接的引發因素，還要辨明在整個責任鏈中可能存在的缺失。

## 第 17 章

### 海上事故（除特別重大事故外）和海上事件的調查

17.1 如認為海上安全調查可能會提供可防止將來海上事故或海上事件的信息，則應由涉案船舶的船旗國對海上事故（除本規則第 6 章所述特別重大事故外）和海上事件進行海上安全調查。

17.2 第 7 章含有確定海上事故的海上安全調查國的強制性要求。當按照本章進行調查的事件為海上事件時，第 7 章應被看作述及海上事件的建議作法而加以遵循。

## 第 18 章

### 按照第 II 部分第 7 章尋求同意時應考慮的因素

18.1 當船旗國、沿海國（如被涉及）或其他有重大利益的國家按照第 II 部分第 7 章就哪一個或哪些國家根據本規則擔任海上安全調查國而尋求同意時，應考慮到下列因素：

- .1 海上事故或海上事件是否發生於某國領土，包括其領海之內；
- .2 發生於公海上或專屬經濟區內的海上事故或海上事件的涉案船舶是否隨後駛入某一國的領海；

- .3 要求船旗國和其他有重大利益的國家動用的資源和投入；
- .4 海上安全調查的潛在範圍和船旗國或其他有重大利益的國家對此範圍的接受能力；
- .5 進行海上安全調查的調查員獲取證據的需求，及對最適於便利獲取證據的一個或多個國家的考慮；
- .6 海上事故或海上事件對其他國家的任何可預見的和實際的不利影響；
- .7 船員、乘客和其他受海上事故或海上事件影響的人的國籍。

## 第 19 章

### 非法干涉的行為

19.1 如果海上安全調查過程中得知或懷疑發生了《1988 年制止危及海上航行安全非法行為公約》第 3 條、第 3 條之二、第 3 條之三或第 3 條之四所列的罪行，海上安全調查當局應立即設法確保有關國家的海上保安當局得到通知。



## 第 20 章

### 通知有關方和開始調查

20.1 當按照本規則開始海上安全調查時，應儘實際可能地迅速通知被調查的海上事故或海上事件涉案船舶的船長、船東和代理人：

- .1 被調查的海上事故或海上事件；
- .2 開始海上安全調查的時間和地點；
- .3 海上安全調查當局的名稱及聯繫細節；
- .4 進行海上安全調查所依據的法律的有關細節；
- .5 受到海上安全調查的有關方的權利和義務；以及
- .6 進行海上安全調查的國家的權利和義務。

20.2 各國應制定詳述第 20.1 款的信息並可電子傳輸給船長、代理人 and 船東的標準文件。

20.3 認識到海上事故或海上事件的任何涉案船舶可能繼續營運，以及除絕對必要外，不應對船舶造成延誤，進行海上安全調查的海上安全調查國應儘實際可能地迅速開始調查，以免對船舶造成不必要的延誤。

## 第 21 章

### 協調調查

21.1 本章中的建議應按照本規則第 10 和 11 章中的原則加以實施。

21.2 海上安全調查國應確保國內有合適的框架以：

- .1 任命海上安全調查的調查員，包括領導海上安全調查的一位調查員；
- .2 向海上安全調查的成員提供合理水平的支持；
- .3 與其他有重大利益的國家聯絡，制定海上安全調查的戰略；
- .4 確保海上安全調查中遵循的方法與第 A.884 (21) 號大會決議所建議的相一致；
- .5 確保海上安全調查考慮到本組織或國際勞工組織所公佈的與進行海上安全調查有關的任何建議或文件；以及
- .6 確保海上安全調查從《國際安全管理規則》的角度考慮到船舶經營人的安全管理程序和安全方針。

21.3 海上安全調查國應儘實際可能地允許有重大利益的國家參加與其有關方面的海上安全調查。

21.3.1 參加應包括允許有重大利益的國家的代表：

- .1 與證人面談；

- .2 查看和檢驗證據及文件複印件；
- .3 就證據提出建議，對最終報告提出意見並將其看法適當地反映在最終報告中；以及
- .4 得到與海上安全調查相關的報告草案和最終報告。

21.4 有重大利益的國家應儘實際可能地幫助海上安全調查國獲取與海上安全調查有關的信息。在實際可行的範圍內，進行海上安全調查的調查員應獲准接觸有重大利益的國家的政府驗船師、海岸警衛隊官員、船舶交通服務操作員、引水員和其他海事人員。

21.5 海上事故或海上事件涉案船舶的船旗國應給與協助，為進行海上安全調查的調查員接觸船員提供方便。

## 第 22 章

### 收集證據

22.1 海上安全調查國不應為收集證據而不必要地扣留船舶或從船上取走文件原件或設備，除非對海上調查有絕對必要。在切實可行時，調查員應複製文件。

22.2 進行海上安全調查的調查員應對詢問記錄和其他海上安全調查中收集的證據加以保護，防止不需要用它作調查的人士獲取。

22.3 進行海上安全調查的調查員應有效地使用所有已記錄的數據，包括航程數據記錄儀（如已安裝的話）。航程數據記錄儀應提供給進行海上安全調查的調查員或所指定的代表以供其下載。

22.3.1 在海上安全調查國沒有適用設施讀取航程數據記錄儀時，有此能力的國家應提供其服務並應充分考慮到：

- .1 可用資源；
- .2 讀取設施的能力；
- .3 讀出信息的及時性；及
- .4 設施所在地。

## 第 23 章

### 信息保密

23.1 各國應確保進行海上安全調查的調查員僅在下列情況下披露海上安全記錄的信息：

- .1 為運輸安全的目的有必要或值得這樣做，並已考慮到對將來的海上安全調查獲取信息可能性的任何影響；或
- .2 按照本規則另有准許。

23.2 按照本規則參與海上安全調查的國家應確保其所持有的任何海上安全記錄不在刑事、民事、紀律或行政訴訟中披露，除非：

- .1 該國有關司法當局認定司法的公眾利益大於披露信息對任何現行或將來的海上安全調查可能會產生的不利的國內或國際影響；及
- .2 當情況適宜時，向海上安全調查提供海上安全記錄的國家授權披露。

23.3 只有在海上安全記錄與海上事故或海上事件的分析有關聯時，方可將它包括在最終報告或其附錄中。無關的部分，及未包含在最終報告中的部分，不應披露。

23.4 只有在不影響提供信息的一個或數個國家正在進行的海上安全調查的公正性和可信性時，各國才需要向有重大利益的國家提供海上安全記錄中的信息。

23.4.1 提供海上安全記錄中的信息的國家可要求接受信息的國家對信息保密。

## 第 24 章

### 保護證人和有關方

24.1 如法律要求某人提供可能會使其負罪的證據，為了海上安全調查，應在國家法律許可的情況下避免將該證據用作針對該人的民事或刑事訴訟的證據。

24.2 被要求提供證據的人應被告知本調查的性質和依據。被要求提供證據的人應被告知並被允許獲得有關下列各項的法律諮詢意見：

- .1 海上安全調查之後的任何訴訟中令自己負罪的任何潛在風險；
- .2 任何不使自己負罪的權利或保持沉默的權利；
- .3 如向海上安全調查提供證據，為避免該證據對其自身不利

而向該海員提供的任何保護。

## 第 25 章

### 報告草案和最終報告

25.1 應儘實際可能地迅速完成關於海上安全調查的海上安全調查報告。

25.2 在得到要求並切實可行時，海上安全調查國應向有關方發送海上安全調查報告的副本，以徵求意見。但是，如果不能保證有關方在未經海上安全調查國明確同意的情況下不散發、造成散發、公佈或允許獲得報告草案或其任何部分，則此建議將不適用。

25.3 海上安全調查國應給與有關方 30 天或雙方同意的其他時間對海上安全調查報告草案提出意見。海上安全調查國應在準備最終報告之前，考慮所提意見；在接受或否決該意見將直接影響提交意見國家的利益時，海上安全調查國應將處理意見的方式通知該有重大利益的國家。如果海上安全調查國在 30 天後或雙方同意的時間到期後未收到意見，則可開始完成該報告。

25.4 當編寫海上安全調查報告的國家的法律許可時，應避免將報告草案和最終報告用作可能導致紀律措施、刑事定罪或確定民事責任的與海上事故或海上事件有關的訴訟的證據。

25.5 在海上安全調查的任何階段均可推薦臨時安全措施。

25.6 當一個有重大利益的國家不同意整個或部分海上安全最終報

告時，該國可向本組織提交其自己的報告。

## 第 26 章

### 重新調查

26.1 在提出了可能從實質上改變所作分析和所下結論的新證據時，已完成海上安全調查的海上安全調查國應重新考慮其調查結果，並應考慮重新調查。

26.2 在向已完成海上安全調查的海上安全調查國提出了與任何海上事故或海上事件有關的重大新證據時，該證據應得到全面評估，並轉給其他有重大利益的國家供其酌情提出意見。

**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.

## 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(IX) (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.

### *Treatment of seafarers*

6 Most recently, the International Labour Organization's (ILO) 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 IMO and 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 ship flying its flag, 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.

#### 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; and
- .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 that may be affected by its outcome.

## 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 seafarer's 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 he/she may incriminate himself/herself 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 him/her if he/she provides 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 The marine safety investigating State(s) is 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) is not bound to comply with paragraph 13.1 if:

- .1 the marine safety investigating State(s) requests 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 which is the marine safety investigating State(s) 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 article 3, *3bis*, *3ter* or *3quater* 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);
- .5 ensuring the marine safety investigation takes into account any recommendations or instruments published by the Organization or the 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 practicable, substantially interested States should assist the marine safety investigating State(s) with access to relevant information for the marine safety investigation. To the extent practicable, 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.

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 an investigator(s) carrying out a marine safety investigation only discloses 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 their 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 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 he/she may incriminate himself/herself 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 him/her if he/she provides the evidence to the marine safety investigation.

## **Chapter 25**

### **DRAFT AND FINAL REPORT**

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 The marine safety investigating State(s) which has 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.

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