



IMO
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MERCHANT SHIPPING (MARINE ACCIDENT INVESTIGATION) REGULATIONS

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PART 1:

EXPLANATORY NOTE

1.1 Introduction

Man's venture to sea is always laced with some element of danger. The uncontrollable nature of the sea and the weather makes the maritime venture an often risky one. For centuries, man has tried to make the seas safer by adopting regulations aimed at improving safety of life and property at sea, such as the ban imposed by the Romans in ancient times on sailing during winter where no ship could leave port without a sailing permit, or the introduction by the French in the 1870s of legislation on the carriage of dangerous goods.¹

The International Maritime Organisation (IMO) aims at encouraging and facilitating the general adoption of the highest practicable standards in matters of maritime safety, efficiency of navigation and prevention and control of marine pollution from ships.² Unfortunately, most of the regulations that have come about have been as a result of some major incident. Indeed, the International Convention on the Safety of Life at Sea (SOLAS), 1974³ was promulgated in its original version in response to the Titanic disaster in 1914.

It is believed 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.⁴ Identification of the causes of such incidents and the related safety issues would aid in the elaboration of measures aimed at preventing or minimising such incidents. As such, the Code of International Standards and Recommended

¹ Philippe Boisson, *Safety at sea: Policies, regulations & international law/ Philippe Boisson ; translated from the French by Denis Mahaffey* (Edition Bureau Veritas 1999); Philippe Boisson, 'The History of Safety at Sea' <<http://www.imo.org/en/KnowledgeCentre/ReferencesAndArchives/HistoryofSafetyatSea/Documents/P.%20Boisson%20History%20of%20safet%20at%20sea%20extract.htm>> accessed 27 April 2016

² Convention on the International Maritime Organisation (adopted 06 March 1948 and entered into force 17 March 1958) Article 1(a)

³ International Convention for the Safety of Life at Sea (SOLAS), 1974 (Adopted 1 November 1974 and entered into force 25 May 1980) 1184 UNTS 278; 14 ILM (SOLAS)

⁴ 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) (adopted on 16 May 2008) Resolution MSC.255(84)

Practices for a Safety Investigation into a Marine Casualty or Marine Incident (Casualty Investigation Code)⁵, promulgated by the IMO in 2008, is mandatory under SOLAS 1974.

Seychelles being a party to SOLAS, there is some provision in the national laws for the conduct of investigation into maritime incidents. However, the Casualty Investigation Code has not yet been incorporated into the laws of Seychelles.

The country's size and limitations in resources puts it in somewhat relatively disadvantageous position. Seychelles presently has a fleet of thirteen ships engaged in international voyages,⁶ mostly oil and chemical tankers, and also smaller ships in international voyages (mostly fishing vessels) to which requirements of the International Convention for the Prevention of Pollution from Ships (MARPOL) 1973/78⁷ and the International Convention on Load Lines, 1966 (LL Convention 1966)⁸, as amended by the Load Lines Protocol 1988⁹, apply. The policy in place is that only ships of less than fifteen years of age are accepted on the Seychelles Register of Ships.

Although Seychelles' international trading fleet is small, being an archipelagic State with a lot of islands, there is significant maritime activity between the islands which needs to be properly regulated. As heavily reliant on imports as we are, and being a popular touristic destination attracting cruise liners, the port sees quite its share of activity.

So far the incidence of marine casualties in Seychelles' waters has not been high. Indeed, most of the incidents that have occurred in the last decade have involved small local vessels. However, increasing maritime activity involving international voyages augments the probability of occurrence of accidents. Furthermore, the recent boost in Seychelles' tourism industry not only means an increase in the number of cruise liners calling at Seychelles port, but also increased maritime traffic between the islands, notably in the form of inter-island ferry services, and chartered leisure vessels.

⁵ The Code of The International Standards And Recommended Practices For A Safety Investigation Into A Marine Casualty Or Marine Incident (Casualty Investigation Code) (adopted on 16 May 2008) Resolution MSC.255(84)

⁶ www.marinetraffic.com

⁷ International Convention for the Prevention of Pollution from Ships (adopted 20 November 1973 (Convention), 1978 (Protocol)), entered into force 2 October 1983) 1340 UNTS 184 (MARPOL)

⁸ International Convention on Load Lines, 1966 (adopted 5 April 1966, entry into force 21 July 1968) 640 UNTS 13 (LL Convention)

⁹ Protocol of 1988 relating to the International Convention on Load Lines, 1996 (Load Lines Protocol 1988)

The most notable recent accident involving a foreign flag ship was the running aground of the Korean flagged fishing vessel *M/V Oriental Kim*, which raised concerns about potential environmental impact. This incident put the authorities in the spotlight - and particularly the Marine Accident Investigation Board (MAIB) as it had to conduct an investigation into the incident and make safety recommendations thereafter. In such circumstances, it would be beneficial for investigators to have set guidelines laid down in the law for them to follow, rather than having to determine as and when accidents occur, how to proceed.

The objective of this explanatory note is to put forth the reasons behind the necessity to incorporate the Casualty Investigation Code¹⁰ into national law in order to enable Seychelles to implement and fulfil her obligation locally and in the international maritime field.

1.2 States' duty to conduct a casualty investigation

Most jurisdictions have legal provisions in their national framework covering the investigation of a shipping incident within their inland waters and territorial sea, regardless of the flag. Where a marine casualty or marine incident occurs within the territory, including the territorial sea, of a State, the sovereignty enjoyed and exercised by that State affords to it 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.

1.3 Specific provisions under international law

States' duty to investigate marine incidents can be found in various international instruments. UNCLOS, which embodies customary international law, imposes a duty on States to investigate incidents that occur on the high seas involving their flag ships. Additionally, some of the existing regulations impose upon flag States an obligation to conduct casualty investigations and to supply the IMO with their relevant findings.

1. UNCLOS

Article 94(7) of the United Nations Convention on the Law of the Sea (UNCLOS) 1982 provides that:

¹⁰ The Code of The International Standards And Recommended Practices For A Safety Investigation Into A Marine Casualty Or Marine Incident (Casualty Investigation Code) (adopted on 16 May 2008 and entered into force 1 January 2010) Resolution MSC.255(84)

“Each State shall cause an inquiry to be held by or before a suitably qualified person or persons into every marine casualty or incident of navigation on the high seas involving a ship flying its flag and causing loss of life or serious injury to nationals of another State or serious damage to ships or installations of another State or to the marine environment. The flag State and the other State shall cooperate in the conduct of any inquiry held by that other State into any such marine casualty or incident of navigation.”

This Article requires Flag States to conduct an inquiry every time an incident occurs on the high seas involving a ship bearing their flag and an element of another State, and which results in loss of life or serious injury or serious damage to ships, installations or the marine environment. This provision also calls for cooperation between the States concerned when conducting the inquiry.

2. SOLAS

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 subsequent amendments of the Convention.¹¹ Regulation I/21 of SOLAS, 1974 provides for casualties as follows:

- (a) Each Administration undertakes to conduct an investigation of any casualty occurring to any of its ships subject to the provisions of the present Convention when it judges that such an investigation may assist in determining what changes in the present Regulations might be desirable.
- (b) Each Contracting Government undertakes to supply the Organization with pertinent information concerning the findings of such investigations. No reports or recommendations of the Organization based upon such information shall disclose the identity or nationality of the ships concerned or in any manner fix or imply responsibility upon any ship or person.

3. Other international Conventions relating to the investigation of casualties

Parallel provisions were also retained in other IMO instruments. Article 23 of the LL Convention, 1966 and Article 12 of MARPOL have produced almost identical wording to that of Regulation I/21 of SOLAS, 1974.

Additionally, Article 8 of MARPOL requires a report to be made in incidents involving harmful substances.¹² The reporting State shall is also required to make arrangements for the

¹¹ Namely, SOLAS 1960 and SOLAS 1974

¹² These substances are specified in Protocol I to MARPOL 73/78, Art II

circulation of such report to the IMO and to other parties to the Convention, to IMO Member States, the Flag State and any other State which may be affected.

1.4 The Casualty Investigation Code

1.4.1 Overview of the Casualty Investigation Code

In 2008 the IMO's Maritime Safety Committee (MSC) adopted the Casualty Investigation Code. Relevant amendments to SOLAS Chapter XI-1 were also adopted, to make parts I and II of the Code mandatory.¹³ This Code came into effect on 01 January 2010 upon entry into force of the amendments to regulation XI-1/6 of the SOLAS Convention. The Casualty Investigation Code incorporates and builds on the best practices in marine casualty and marine incident investigation as established by the Code for the Investigation of Marine Casualties and Incidents, adopted by the IMO in November 1997, by Resolution A.849(20).

The Casualty Investigation Code recognizes that under the IMO 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.¹⁴ It lays upon the flag State of a ship involved in a very serious marine casualty the responsibility for ensuring that a marine safety investigation is conducted and completed in accordance with the Code.

The Code aims to provide a common approach for States to adopt in the conduct of marine safety investigations into marine casualties and marine incidents. The Code defines a "marine safety investigation" as:

“(A)n 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.”¹⁵

Marine safety investigations, therefore, aim at the prevention of future marine casualties and marine incidents by identifying safety issues directly related and having contributed to such incidents. The objective of this type of investigation is not to apportion blame or to determine

¹³ International Maritime Organisation, 'Casualties'

<<http://www.imo.org/en/OurWork/MSAS/Casualties/Pages/Default.aspx>> accessed 1 May 2017

¹⁴ As provided in SOLAS (n2) Reg I/21(a), LL Convention 1966 (n6) Art 23(1), and MARPOL (n5) Art 12(1)

¹⁵ Casualty Investigation Code, para 2.11

liability.¹⁶ The investigating body has to produce a report of the marine safety investigation – termed “marine safety investigation report” under the Code – discussing the findings of the investigation, providing a discussion of the marine safety investigation’s findings. This report should identify any safety issues, relate the marine safety investigation’s conclusions, and, where appropriate, make recommendations with a view to preventing future marine casualties and marine incidents.

1.4.2 Structure of the Code

Although the Code specifies some mandatory requirements, it is acknowledged that there are variations in international and national laws in relation to the investigation of marine casualties and marine incidents.¹⁷ Rather than overlooking these differences, the Code seeks rather to promote the application of 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. It also hopes to facilitate a wide dissemination of information to assist the international marine industry to address safety issues by requiring States to provide reports to the IMO.¹⁸

The Code is divided in three parts. Part I contains the general provisions. Part II deals with the mandatory standards for marine safety investigations. Some of the clauses apply only in relation to certain categories of marine casualties and are mandatory only for marine safety investigations into those marine casualties. Part III of the Code sets out recommended practices. Certain clauses in this part apply only to certain marine casualties.

1.4.3 Flag State’s agreement with another substantially interested state to conduct a marine safety investigation

Under the Code, flag States may come to an agreement with another substantially interested State to conduct a marine safety investigation. Chapter 7 of the Code provides:

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.

¹⁶ Ibid, para 1.1

¹⁷ Ibid, Foreword, para 8

¹⁸ Ibid, para 1.1.2

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.

For such marine casualties, it may be decided by agreement of the relevant States with another substantially interested State for that State or States to be the marine safety investigating State(s). Until such agreement is reached, or in the event of failure to reach such agreement, the respective parties may each conduct their own investigation in accordance with the existing obligations and rights of States under the Code, and under other international laws, to conduct a marine safety investigation. Nothing prejudices the right of another substantially interested State to conduct its own separate marine safety investigation whilst the marine safety investigating State(s) is conducting its marine safety investigation.

A marine safety investigation should be separate from, and independent of, any other form of investigation. However, the Code does not preclude any other form of investigation, including investigations for action in civil, criminal and administrative proceedings.

As the purpose of marine safety investigation is not to apportion blame or to determine liability, it is usually conducted in parallel with the State's internal investigations by its authorities, such as for example, a police investigation or judicial enquiry. Nonetheless, 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.¹⁹

Indeed, these various forms of investigation have different purposes and thus call for different procedures. The information required for the purposes of a marine safety investigation and that required for a police investigation, for example, may not be obtainable through the same means, and therein lies the main motive for requiring marine safety investigations to be separate and independent from other forms of investigation.

The investigators carrying out the marine safety investigation have to remain impartial and objective. Further, the investigating States should ensure the marine safety investigating body 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.

¹⁹Ibid, para 16.2

1.4.4. Notification and mutual cooperation

Given the nature of shipping, one will often find that marine accidents involve more than one interested state. Indeed there is now an increased 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. For example, if a vessel flying the flag of State A is involved in a marine accident within State B and the crew is from State C: State B will be the party obligated to investigate the incident and produce a report, State A would need to be notified that one of its vessels was involved in an incident, and State C would be concerned about its nationals involved who may have lost their lives or suffered serious injuries. The Code imposes an obligation to notify other substantially interested States as soon as reasonably practicable, which notification shall not be delayed due to lack of complete information. Part II, which contains the mandatory provisions, provides in Chapter 5:

- 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.

“Substantially interested State” under the Code refers to either the flag State, the coastal State involved, a state whose environment (including the environment of its waters and territories recognized under International law) is severely or significantly damaged by a marine casualty, or one to which the consequences of the incident causes or threatens serious harm either to that State itself or to artificial islands, installations and structures over which it exercises jurisdiction, a State whose nationals are involved in the incident, any State which may have at its disposal important information deemed useful to the investigation, or a State that for some other reason establishes an interest which the investigating State considers significant.²⁰

The Code also imposes upon the investigating States an obligation to submit the final version of the marine safety investigation report to the IMO whenever the incident involves a very serious casualty, which is defined as “a marine casualty involving the total loss of the ship or

²⁰ Ibid, para 2.20

a death or severe damage to the environment”.²¹ This scheme thus further ensures the desired transparency promoted through the Code.

Chapter 10 makes it mandatory for all substantially interested States to co-operate with the marine safety investigating State(s) to the extent practicable. To facilitate this, the marine safety investigating State(s) shall provide for the participation of the substantially interested States to the extent practicable.²² 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. 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(7) of the United Nations Convention on the Law of the Sea.²³

Ideally, if this set of standards is applied universally, co-operation and a common approach to marine casualty and marine incident investigations between States would be achieved and the findings and recommendations made by the investigating State readily accepted.

The Code is thus designed to facilitate objective marine safety investigations for the benefit of flag States, coastal States, the IMO and the shipping industry in general.

1.5 The Seychelles perspective

In light of the fact that it is a small island developing State, the maritime industry in Seychelles is an important one. Heavily reliant on imports, Seychelles depends primarily on maritime trade to meet the country’s needs. Additionally, in recent years, there has been renewed interest in offshore oil and gas in the Seychelles, thus resulting in an increase in seabed activities. As such, there is a need to ensure that safety is maintained for ships navigating Seychelles waters.

1.5.1 Existing legal framework for the investigation of maritime accidents under the Laws of Seychelles

The Merchant Shipping Act of 1995 (Cap 127A) is the main legislation governing the maritime sector in Seychelles, supplemented by other pieces of legislation, such as the Harbour Act and the Hire Craft Act. The Merchant Shipping Act makes some provision for

²¹ Ibid, para 2.22

²² Ibid, para 10.1

²³ Ibid, para 7.5

investigation to be carried out in very limited circumstances, as discussed below. The law also provides for the establishment of the MAIB, which now has the mandate to carry out, as its name suggests, investigations into maritime accidents.

A. Definition of marine casualties

The only reference to “casualty” under the Merchant Shipping Act can be found in Part XII, entitled “Shipping Casualties”, which begins with the provision in Section 204(1) imposing upon the master of a ship registered in Seychelles, a ship engaged in local voyages/trade, or being within Seychelles or the territorial waters thereof, a duty report any of the following casualties:

- (a) the loss or presumed loss, stranding grounding, abandonment of, or damage to a ship;
- (b) a loss of life caused by fire on board, or by any accident to, a ship or ship's boat, or by any accident occurring on board a ship or ship's boat; or
- (c) any damage caused by a ship

The term casualty does not appear anywhere else in the Act, save for this provision.

Section 170 provides for an inquiry to be held in case of death or serious injury, but provides no definition for what constitutes a “serious injury”.

The Casualty Investigation Code, on the other hand, provides clear definitions of both terms. It defines a “marine casualty”²⁴ as 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, this definition excludes any deliberate act or omission, with the intention to cause harm to the safety of a ship, an individual or the environment.

²⁴ Ibid, para 2.9

A “serious injury” is defined under the Code as an injury which is sustained by a person, resulting in incapacitation where the person is unable to function normally for more than seventy-two (72) hours, commencing within seven days from the date when the injury was suffered.²⁵

A “very serious marine casualty” under the Code means a marine casualty involving the total loss of the ship or a death or severe damage to the environment.²⁶

As it provides for investigation to be carried out in cases of marine casualty and of marine incidents, the Code also goes on to provide a definition of what constitutes a “marine incident”. The term is defines 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.²⁷ This definition also excludes deliberate acts or omission, with the intention to cause harm to the safety of a ship, an individual or the environment.

The lack of clear definitions in the existing legislation as to what constitutes marine casualties and serious injury may lead to certain incidents not being investigated. This can be remedied by importing the definitions under the Casualty Investigation Code. The III Code provides at paragraph 41:

"Flag State investigations - Ship casualties shall be investigated and reported in accordance with the relevant international instruments, taking into account the Casualty Investigation Code, as may be amended, and guidelines developed by the (IMO)"

B. Preliminary investigation

The Merchant Shipping Act imposes upon the owner or master of the ship an obligation in case of a marine casualty to, as soon as practicable, report the casualty to the Harbour Master and provide to him or to such other person as he may specify a report in writing.²⁸ Failure of the owner or master to comply with this requirement constitutes an offence.²⁹ The section allows the Minister responsible for transport to cause a preliminary investigation into the casualty to be held by a person appointed for the purpose by the Minister, and, whether or not

²⁵ Ibid, para 2.18

²⁶ ibid, para 2.22

²⁷ ibid, para 2.10

²⁸ Merchant Shipping Act, 1995, Section 204(1)(i)

²⁹ Ibid, Section 204(2)

such preliminary investigation into the casualty has been held, cause a Marine Inquiry to be held.³⁰ It is also provided that the Harbour Master is not precluded from investigating the casualty and making such order as he may deem just or necessary in the interest of safety of shipping, protection of life or the environment, and where the orders are not complied with by the owner or master of the vessel, from taking such measure as may be just or necessary in the circumstances.³¹

This preliminary investigation envisaged in section 204 is clearly not within the scope of that featured in the Casualty Investigation Code. Indeed, the term preliminary investigation is not defined, save to the extent that Section 205 of the Act provides for the powers such person as appointed by the Minister to carry out the preliminary investigation may have in carrying out the investigation. That is to say, such person may go on board any ship involved in the casualty, require any person to answer questions relating to the casualty, and require the production to him of any certificate relating to any ship involved in the casualty. Such person is also required, upon conclusion of the investigation, to send to the Minister a report containing a full statement of the case and of his opinion thereon, accompanied by such report on or extracts from the evidence and such observations as he thinks fit.

C. Marine inquiry

As regards a Marine Inquiry, the person appointed for such purpose under section 206 of the Act, and two assessors nominated by the Minister to assist, are extended the same powers as an investigator under section 205 of the Act as well as the same reporting obligation.³² Unlike the marine safety investigation envisaged in the Casualty Investigation Code, the Inquiry may apportion blame and determine liability, and the persons leading the Inquiry may order the cancellation or suspension of any certificate of competency of the master, qualified officer or other seaman or censure the master, qualified officer or other seaman, whose unfitness or negligence have led to or contributed to the casualty.

Neither the preliminary investigation nor the Marine Inquiry provided under the Act meet the requirements for fulfilment of Seychelles' international obligations. These provisions appear to be geared for administrative purposes rather than for safety purposes. Further, it makes no provision to any specific authority within the State to carry out such investigations. Rather, it

³⁰ *ibid*, Section 204(1) (iii)

³¹ *Ibid*, Section 204 (3)

³² *Ibid*, Section 206 (3) and (4)

is done on an ad hoc basis, at the discretion of the Minister and by persons appointed by him for that purpose.

Section 170 of the Merchant Shipping Act makes provision for an inquiry to be conducted in the event of death or serious injury of a person on board a ship or a seaman away from the ship. Section 170(2) provides that:

“Subject to section 171(2), where —

- (a) a person dies or suffers a serious injury in a ship; or
- (b) a seaman belonging to a ship dies or suffers a serious injury away from the ship,

an inquiry into the circumstances surrounding the death or serious injury shall, unless the Minister otherwise directs, be held by the Marine Accident Investigation Board or by a person so authorised by the Marine Board at the next port in Seychelles at which the ship calls.”

This section also makes reference to loss of life or serious injury whilst offering no definition of “serious injury” or at least how the severity of the injury is to be assessed. Section 170 also places the duty to conduct the inquiry on the MAIB³³, whose mandate is discussed in the ensuing section. It is to be noted that the MAIB was, until 2014, the Marine Board, as established under Section 227 of the Merchant Shipping Act and, as discussed below, its mandate did not specifically include the investigation of accidents and casualties. Section 171 above also vests with the Minister the authority to “direct otherwise” in case of an incident requiring investigation. This suggests that the MAIB may be dependent on instruction by the Minister to perform this function – that the Minister may direct someone other than the MAIB to conduct an inquiry. And once again, this inquiry is not necessarily designed to address safety issues.

Section 171 provides for the holding of the inquiry. For this Purpose, the MAIB, or any such other person appointed by the Minister for this purpose, is authorised to go on board a ship at any time and inspect the ship or any article on board the ship, and to require the production of any document which in the opinion of the MAIB or, as the case may be, the person so authorised, is relevant to the inquiry. This provision also allows the MAIB to summon any person to appear before it.

Section 171 also requires a report of the findings to be produced in writing, for the Minister, and the Minister may make a copy of the report available —

³³ See 1.5.2 below for discussion on the MAIB

- (a) in the case of a person who has died —
 - (i) to the next of kin of the deceased person; or
 - (ii) to any other person who requests such a copy and who appears to the Minister to be interested; and
- (b) in the case of a person who has suffered a serious injury —
 - (i) to that person, or to a person acting on his behalf, or
 - (ii) to any other person who requests such a copy and who appears to the Minister to be interested.

The above sections make no provision for marine safety investigation to be carried out when the accident results in effects other than personal injury or loss of life – such as, for example, material damage, stranding, loss or abandonment of the ship, actual or potential damage to the environment, in case of the involvement of the ship in a collision. They are also limited to local incidents and does not include incidents involving flag ships outside the jurisdiction.

D. Merchant Shipping (Certification of Seafarers of International Ship) Regulations³⁴

In 2014, the Merchant Shipping (Certification of Seafarers of International Ship) Regulations were passed. Section 49 of these Regulations provides for inquiry of accidents and casualties, as follows:

- (1) In case of any accident or casualty, such as, grounding, fire, loss of life or cargo or any other unusual happening including security incidents on board any Seychelles registered ship or any foreign flag ship in Seychelles territorial waters, the Master, owner of ship or local agent shall report the accident or casualty to the Director General within 24 hours of such accident or casualty.
- (2) The Director General may order an inquiry to be held by the Marine Accident Investigation Board into any such occurrence depending on the gravity of the occurrence or the public interest in the matter.
- (3) The Marine Accident Investigation Board shall-
 - (a) hold such inquiry as may be required; and
 - (b) require any witness to be present in person and give evidence at the inquiry.

This provision attempts to give some indication as to what constitutes a marine casualty, but it does not provide absolute clarity. It requires the master, owner or agent of the ship to report “any accident or casualty (listed examples) or any other unusual happening including security incidents”.

³⁴ S.I. 51 of 2014, Merchant Shipping (Certification of Seafarers of International Ship) Regulations, 2014 (28th July 2014)

Section 49(2) gives the Director General³⁵ discretion to order the MAIB to hold an inquiry. In principle, the MAIB does not act at the direction of the Director General, as it is established as an independent body mandated to carry out investigations into marine accidents, casualties and incidents.

The section goes on to provide for measures to be taken by the Director General on the basis of the report of the inquiry by the MAIB. These measures include suspension, cancellation and revocation of any Certificate of Competence or endorsement or document issued, or suspension of a person from performing certain duties.

E. Conclusion on the current legal framework on casualty investigation

It is apparent that the above provisions relating to marine incidents or casualties, limited as they are, do not adequately cater to the safety aspect. Indeed, investigation under section 204 of the Act and under section 49 of the above Regulations seem to encourage determination of liability and authorises the disqualification or censure of the master, qualified officer or other seaman deemed liable by cancelling or suspending their certificate of competency.

The act also makes no provision for the procedure or guidelines to be followed in the conduct of the investigation. As it has been in the past, not every marine casualty or incident was investigated from the maritime perspective, but limited to any mandatory police or administrative investigation. Indeed, for the cases that have been investigated, it can be said that the investigators relied on their discretion and expertise in determining how to proceed in the absence of set procedures.

Further, it should be noted that none of these provisions make specific provision for the independence or impartiality of the investigator.

1.5.2 The Marine Accident Investigation Board

Section 227 of the Merchant Shipping Act (Cap 127A) provides for the establishment of the MAIB and its mandate:

- (1) There shall be a Marine Accident Investigation Board consisting of such members as the Minister may, from time to time, in writing appoint.

³⁵ Reference to the “Director General” means the Director General of the Seychelles Maritime Safety Administration (SMSA), established in the Merchant Shipping Act and falling under the Department of Transport as the maritime regulatory and supervisory authority

- (1A) The Marine Accident Investigation Board, in pursuance of the provisions contained in Part XIV of this Act, shall –
- (a) examine and investigate all types of marine casualties, accidents, incidents on board Seychelles flag ships worldwide;
 - (b) address all complaints made by ship owners, training institutes, seafarers or International Maritime Organisation; and
 - (c) any other matters provided in the Act as the Minister may order in writing.”

The MAIB, which was established as an independent panel directly reporting to the Minister responsible for transport, has been given the authority, through the Merchant Shipping (Amendment) Act, 2014, for investigation of all types of marine casualties, accidents and incidents on board ships flying the flag of the State. Prior to this amendment, the MAIB was the Marine Board and its mandate was only a local one, and did not include the investigation into marine accidents. Any marine incidents that occurred were dealt with on an administrative basis. The scope of authorization did not include investigation of casualties where Seychelles may be involved as coastal or port State. The MAIB is constituted in accordance with the provisions of the Merchant Shipping Act and the members are representative of both government entities and the private sector.

In the aftermath of the IMO Member State Audit conducted in June 2016, Seychelles has come up with a corrective action plan. One of the points therein is the undertaking by the State to establish a procedure and process to ensure the results of casualty investigations are reported in accordance with the relevant IMO conventions and the Casualty Investigation Code. There is also a need to ensure that when a casualty investigation is completed, the mandatory report shall be communicated to the IMO or made public, as appropriate and within the required timeframe.

As regards the composition of the MAIB, the current members are representative of the Seychelles Maritime Safety Administration, the Seychelles Ports Authority, the Attorney-General’s Chambers, the Department of Transport, Ministry of Labour, marine surveyors (classification society representative) and the private sector (shipyard representative). The members are generally nominated by their respective Ministers or heads of department, the names submitted to the Minister for approval and official appointment. As per section 227(3) of the Merchant Shipping Act, a person appointed to the MAIB holds office for three years, unless another period is specified by the Minister in the instrument of appointment, and is eligible for re-appointment.

One of the issues that arose in the course of the member state audit was that there appeared to be a potential for conflict of interest within the board which needed to be addressed. It was established that, although the organizational position of MAIB is well placed to ensure organizational independence, the principles of independence and impartiality was not necessarily maintained in the selection of its members. The reason for this is that Seychelles is a small developing island state with limited human as well as infrastructural resources. However, the State has since sought assistance from the IMO in training of investigators for the conduct of marine accident investigation. Training and capacity building programs for MAIB members and potential investigators are being facilitated and regional experts will be sourced out as and when required.

In light of the above, there is a need to establish detailed responsibilities of MAIB, as well as policies and guidelines to support its work and to ensure ready access to expertise in all required areas, as and when necessary.

Presently, as investigations are conducted simultaneously with any police or administrative investigations or inquiries, the MAIB and the other authorities often rely on each other during the course of their respective investigations and information and evidence is often shared. This is not in compliance with the Casualty Investigation Code.

1.5.3 General aim of the Regulations

The proposed Merchant Shipping (Marine Accident Investigation) Regulations (the Regulations) are aimed at bringing Seychelles in line with its international obligations relating to maritime accident investigations. Whilst attempts have been made in recent years to address some of the State's limitations in this regard, mainly through amendment to the Merchant Shipping Act to provide for marine accident investigations, there are as yet no procedures or guidelines laid down for the conduct of such investigation.

The proposed regulations implement the standards and guidelines in the Casualty Investigation Code into domestic law. It lays down the procedure to be followed in the event of a marine casualty or incident. Whilst a revision of the entire Merchant Shipping Act has been proposed, this would be a long and arduous process and in the meantime, steps have to be taken to ensure that marine accident investigations are properly carried out.

1.5.4 The importance of implementing the Casualty Investigation Code for Seychelles

The first IMO Member State Audit was undertaken June 2016 and identified several issues which needed to be addressed in order for the State to be fully compliant with its international obligations. Marine accident investigation is one that can be addressed with slightly less difficulty. With the primary legislation having already been recently amended to specifically include marine accident investigation within the mandate of the MAIB, this needs to be followed by detailing the procedure to be followed in the conduct of such investigation. A significant step has already been undertaken by ensuring the training of not only current members of the MAIB but also potential investigators. The Instrument Implementation Code (III Code), paragraph 39 provides as follows:

"Flag State investigations - The flag State is recommended to ensure that individual investigators have working knowledge and practical experience in those subject areas pertaining to their normal duties. Additionally, in order to assist individual investigators in performing duties outside their normal assignments, the flag State is recommended to ensure ready access to expertise in (specified) areas, as necessary [...]"

The recent trend of increased sea-based activity, coupled with Seychelles' significant interest in the development of the blue economy marked by the promotion of marine-based industries, places the maritime sector in the limelight. This makes it necessary to have a maritime legal and regulatory framework that is up to par with the international standards and obligations. Generally, there is lack of adequate provisions in the current legislation for the proper conduct of marine casualty investigations by the MAIB, in line with the State's international obligations.

Abiding by the internationally set and accepted standards would bring Seychelles up to par with other maritime states. This could also prove beneficial when attempting to secure foreign, preferably regional assistance in the conduct of investigations, as the expertise sought would already be familiar what is required for such investigation. This is of particular interest to Seychelles, which needs to secure ready access to expertise in all relevant areas as and when necessary. Such expertise may not always be readily available within the State, or if it is, issues of impartiality may arise given the realities and dynamics of a small island developing state. Additionally, it could prove advantageous to the State in case of an incident involving a Seychelles flag ship in foreign waters. For example, there was no investigation

by Seychelles into the casualty related to grounding of the tanker *M.T. Seychelles Patriot* in Brazilian waters in 2014.³⁶

Furthermore, whilst the Seychelles fleet is relatively small, it is still a Flag State and as such, is required to meet the obligations imposed on Flag States under international law.³⁷

1.6 Implementing the Code into national legislation

Seychelles operates under a dualist system, which means that positive action is required for the transposition of international instruments into national law. The Merchant Shipping Act provides that SOLAS shall have force of law.³⁸ As the Casualty Investigation Code is a mandatory instrument under the Convention, it is applicable to Seychelles.

As the law already makes provision for an authority responsible for carrying out investigations into marine casualties and accidents in the form of the MAIB, the main task is to establish the form and procedure for the conduct of these investigations. The Merchant Shipping Act allows the Minister to make regulations pertaining to the functions of the MAIB, as follows:

Section 228

- (1) The Regulations may make provision with respect to —
 - (a) the manner in which the Marine Accident Investigation Board shall exercise or perform any of its functions under this Act;
[...]
- (2) Subject to Regulations made pursuant to subsection (1)(b), the Marine Board may determine its own procedures.

Therefore, the Code should be implemented in the form of Regulations catering for section 228(1)(a).

The proposed regulations import the mandatory standards under the Casualty Investigation Code and the recommended practices where and as appropriate. The regulations as such lay down the procedures to be followed, considerations to be made as well as providing definitions. It follows the essence of the Code in its design, aimed at the facilitation of objective marine safety investigations for the benefit of flag States, coastal States, the IMO and the shipping industry in general.

³⁶ 'MT Seychelles Patriot Refloated' <<http://worldmaritimenews.com/archives/139850/grounded-mt-seychelles-patriot-still-stuck/>> accessed 1 May 2017

³⁷ See 1.3 above

³⁸ Merchant Shipping Act, 1995 (Cap 127A) Section 85(1)

Part 2: Overview of the Draft Regulations

Part I – Preliminary

Part I of the Regulations deals with Preliminary matters. It includes the Short title and the manner of commencement of the Regulations and the general Interpretation section. The definitions are imported from Chapter 2 of the Casualty Investigation Code, with some amendments.

The definition of “investigator” has been included. The definition of “territorial sea” is that of Section 4 of the Maritime Zones Act. Reference in the Regulations to “Administration” means the Seychelles Maritime Safety Administration, as established under the Merchant Shipping Act. All other terms have the same meaning as under the parent legislation, the Merchant Shipping Act, 1995.

Part II - Marine Safety Investigation

Part II deals with the Marine Safety Investigation. Section 3 compels the Marine Accident Investigation Board to conduct marine safety investigations in accordance with the procedures laid down in the Regulations.

Section 4 incorporates the notification obligations laid down in Chapter 5 of the Casualty Investigation Code. It imposes a duty on the Administration to notify substantially interested States in cases where a flag ship of another State is involved in a marine casualty occurring in the Seychelles exclusive economic zone or territory, including the territorial sea. Territory in this sense also includes the archipelagic waters within the meaning of the Maritime Zones Act.

Section 5 incorporates Chapter 20 of the Casualty Investigation Code on notification to the parties involved and commencement of the investigation. The parties envisaged in this provision are the master, the owner and agent of a ship involved in the marine casualty. The section also lists the specific information which the Administration is required to provide to these interested parties. In recognition that a 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, section 4(2) requires the marine safety investigation to be commenced as soon as is reasonably practicable, without delaying the ship unnecessarily.

Sections 8 to 10 provides for agreement and co-operation where more than one State has an interest in the marine casualty. Under section 8 Seychelles shall seek reach an agreement with another substantially interested state as to which State is to conduct a marine safety investigation where the casualty involves another flag ship, or where it involves a Seychelles flag ship in the territory of another State. This provision incorporates the mandatory standards under Chapter 7 of the Casualty Investigation Code as well as the recommended practices set out in Chapter 18. Where a marine safety investigation is being carried out in parallel with another state's investigation, the timing of the investigations are to be co-ordinated to avoid conflicting demands upon witnesses and access to evidence, where possible.

The Regulations provide for investigators to have working knowledge and practical experience in those subject areas pertaining to their normal duties, and allows the Chairman of the MAIB to appoint investigators with the necessary specialist skills, or consultants, to assist with specific investigations. This is followed by a requirement for impartiality and objectivity. The Casualty Investigation Code makes reference to skills for investigators outlined in resolution A.996(25), the Code for the Implementation of Mandatory IMO Instruments, 2007 (III Code). Section 11 incorporates Article 39 of the III Code.

The Regulations also lay down guidelines for the collection of evidence, and in particular it sets out standards to be observed when collecting evidence from seafarers.

Section 16 provides for confidentiality of the marine safety record and section 17 requires that persons from whom evidence is sought be informed of and allowed legal advice regarding the nature and basis of the investigations and the implications of the evidence sought.

Part III - Marine Safety Investigation Report

Part III of the Regulations deals with the marine safety investigation report. It incorporates the definition of marine safety investigation report as defined in paragraph 2.12 of the Casualty Investigation Code, as the standards laid down I Chapter 14 and the recommended practices of Chapter 25.

Section 18 of the Regulations lists the elements that the marine safety investigation report should contain. It also allows for a draft report to be provided to other substantially interested States for comment before the report is finalised. Under the Regulations the MAIB may require the substantially interested State receiving the draft report to give an undertaking to not circulate, publish or give access to the draft marine safety investigation report, or any part thereof, without the express consent of the MAIB, and to not cause to evidence included in the draft report to be admitted in civil or criminal proceedings against a person who gave the evidence.

Under this Part the MAIB is also required to circulate the final version of the marine safety investigation report. It is required to submit to the IMO the report of any marine safety investigation conducted into very serious marine casualties, and in other cases where the report contains information which may prevent or lessen the seriousness of marine casualties or marine incidents in the future. The final report also has to be made available to the public and the shipping industry.

Part IV - Miscellaneous

Section 20 provides for interim safety measures, which may be recommended at any stage during the marine safety investigation.

Section 21 deals with responsibility of the Administration to ensure the availability of sufficient material and resources and suitably qualified personnel at the MAIB's disposal for the conduct of marine safety investigations.

Section 22 incorporates paragraph 16.2 of the Casualty Investigation Code, which establishes that the objective of a marine safety investigation is not to determine liability, or apportion blame.

Section 23 deals with the possibility of re-opening an investigation when new evidence is presented after the investigation has been completed.

**Part 3: The Draft Merchant Shipping (Marine Accident Investigation)
Regulations, 2017**

Arrangement of Sections

Part I - Preliminary

Section

- 1 Citation and commencement
- 2 Interpretation

Part II - Marine Safety Investigation

- 3 Conduct of Investigation
- 4 Notification to Substantially Interested State
- 5 Notification to Parties Involved and Commencement of Investigation
- 6 Requirement to Investigate Very Serious Marine Casualties
- 7 Investigation of Other Marine Casualties and Marine Incidents
- 8 Agreement with another Substantially Interested State to Conduct a Marine Safety Investigation
- 9 Parallel Investigations
- 10 Co-operation
- 11 Investigators
- 12 Investigation Not To Be Subject To External Direction
- 13 Collection of Evidence
- 14 Obtaining Evidence from Seafarers
- 15 Acts of Unlawful Interference
- 16 Confidentiality of Information
- 17 Persons from whom evidence is sought

Part III - Marine Safety Investigation Report

- 18 Marine Safety Investigation Report
- 19 Circulation of the Marine Safety Investigation Report

Part IV - Miscellaneous

- 20 Interim Safety Measures
- 21 Administrative Responsibilities
- 22 Investigation to be Safety focused
- 23 Re-Opening an Investigation

MERCHANT SHIPPING ACT

(CAP 127A)

Merchant Shipping (Marine Accident Investigation) Regulations, 2017

In exercise of the powers conferred by section 228 of the Merchant Shipping Act, 1995 (Cap 127A), the Minister hereby makes the following regulations-

PART I – PRELIMINARY

1. (1) This Act may be cited as the Merchant Shipping (Maritime Accident Investigation) Regulations 2017. Citation and Commencement

(2) These Regulations commence on

2. In these Regulations, unless the context otherwise requires – Interpretation

“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.

“causal factor” means actions, omissions, events or conditions, without which:

- (a) the marine casualty or marine incident would not have occurred; or
- (b) adverse consequences associated with the marine casualty or marine incident would probably not have occurred or have been as serious;
- (c) another action, omission, event or condition, associated with an outcome in (a) or (b), would probably not have occurred.

“coastal State” means a State in whose territory, including its territorial sea, a marine casualty or marine incident occurs.

“Exclusive economic zone” means the exclusive economic zone as defined the Maritime Zones (Exclusive Economic Zone and Continental shelf) Order, 2014.

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

“Interested party ” means an organization, or individual, who has significant interests, rights or legitimate expectations with respect to the outcome of a marine safety investigation.

“investigator” means a member of the Marine Accident Investigation Board or any person appointed under section 11(2) carrying out a marine safety investigation;

“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:

- (a) the death of, or serious injury to, a person;
- (b) the loss of a person from a ship;
- (c) the loss, presumed loss or abandonment of a ship;
- (d) material damage to a ship;
- (e) the stranding or disabling of a ship, or the involvement of a ship in a collision;
- (f) material damage to marine infrastructure external to a ship, that could seriously endanger the safety of the ship, another ship or an individual; or
- (g) 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.

“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.

“marine safety investigation ” means an investigation or inquiry 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.

“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 these Regulations.

“marine safety record” means the following types of records collected for a marine safety investigation:

- (a) all statements taken for the purpose of a marine safety investigation;
- (b) all communications between persons pertaining to the operation of the ship;
- (c) all medical or private information regarding persons involved in the marine casualty or marine incident;
- (d) all records of the analysis of information or evidential material acquired in the course of a marine safety investigation;
- (e) information from the voyage data recorder.

“material damage” in relation to a marine casualty means:

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

“seafarer” means any person who is employed or engaged or works in any capacity on board a ship.

“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.

“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.

“substantially interested State” means a State:

- (a) which is the flag State of a ship involved in a marine casualty or marine incident; or
- (b) which is the coastal State involved in a marine casualty or marine incident; or
- (c) whose environment was severely or significantly damaged by a marine casualty (including the

environment of its waters and territories recognized under international law); or

- (d) 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
- (e) where, as a result of a marine casualty, nationals of that State lost their lives or received serious injuries; or
- (f) that has important information at its disposal that the Marine Accident Investigation Board considers useful to the investigation; or
- (g) that for some other reason establishes an interest that is considered significant by the marine safety investigating State(s).

“territorial sea” means territorial sea as defined by Section 4 of the Maritime Zones Act.

“very serious marine casualty” means a marine casualty involving the total loss of the ship or a death or severe damage to the environment.

PART II – MARINE SAFETY INVESTIGATION

Conduct of investigations

- 3.** The Marine Accident Investigation Board shall conduct marine safety investigations in accordance with these regulations.

Notification to Substantially Interested States

- 4.** (1) When a ship flying the flag of another State is involved in a marine casualty that occurs –
 - (a) in the exclusive economic zone of Seychelles; or
 - (b) within the territory, including the territorial sea, of Seychellesthe Administration shall notify any other substantially interested States as soon as is reasonably practicable.
- (2) When a Seychelles flag ship and a ship flying the flag of another State are involved in a marine casualty that occurs on the high seas, the Administration shall notify any substantially interested States as soon as is reasonably practicable.
- (3) Notification shall not be delayed due to the lack of complete information.
- (4) The notification shall contain as much of the following information as is readily available:
 - (a) the name of the ship and its flag State;

- (b) the IMO ship identification number;
- (c) the nature of the marine casualty;
- (d) the location of the marine casualty;
- (e) time and date of the marine casualty;
- (f) the number of any seriously injured or killed persons;
- (g) consequences of the marine casualty to individuals, property and the environment; and
- (h) the identification of any other ship involved.

5. (1) When a marine safety investigation is commenced under these Regulations, 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:

Notification to Parties Involved and Commencement of Investigation

- (a) the marine casualty or marine incident under investigation;
- (b) the time and place at which the marine safety investigation will commence;
- (c) the name and contact details of the Marine Accident Investigation Board;
- (d) the relevant details of the legislation under which the marine safety investigation is being conducted;
- (e) the rights and obligations of the parties subject to the marine safety investigation; and the rights and obligations of the State or States conducting the marine safety investigation.

(2) The marine safety investigation should be commenced as soon as is reasonably practicable, without delaying the ship unnecessarily.

6. A marine safety investigation shall be conducted into every very serious marine casualty.

Requirement to Investigate Very Serious Marine Casualties

Subject to any agreement in accordance with section 8, where a Seychelles flag ship is involved in a very serious marine casualty, the Administration shall be responsible for ensuring that a marine safety investigation is conducted and completed in accordance with these Regulations.

7. A marine safety investigation should be conducted into marine casualties, other than very serious marine casualties, and marine incidents where a Seychelles flag ship is 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.

8. (1) Where a marine casualty occurs –
- (a) within the territory, including the territorial sea, of Seychelles involving a ship flying the flag of another State;
 - (b) within the territory or exclusive economic zone of another coastal State, involving a Seychelles flag ship; or
 - (c) on the high seas, involving a Seychelles flag ship and another flag ship
- the Administration shall consult with that other State to seek agreement on which State or States will be the marine safety investigating State(s)
- (2) Prior to reaching an agreement, or if an agreement is not reached, in accordance with paragraph (1), then the existing obligations and rights of States under international law to conduct a marine safety investigation, remain with the respective parties to conduct their own investigation.
- (3) When an agreement is being sought in accordance with paragraph (1) on which State or States will be the marine safety investigating State(s) under this Code, the following factors should be taken into account:
- (a) 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;
 - (b) the resources and commitment required of the flag State and other substantially interested States;
 - (c) the potential scope of the marine safety investigation and the ability of the flag State or another substantially interested State to accommodate that scope;
 - (d) 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;
 - (e) any perceived or actual adverse effects of the marine casualty or marine incident on other States;
 - (f) the nationality of the crew, passengers and other persons affected by the marine casualty or marine incident.
- (4) Where a Seychelles flag ship is involved in a marine casualty, by fully participating in a marine safety

investigation conducted by another substantially interested State, Seychelles 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.

9. Where a marine safety investigation is being conducted in parallel with another substantially interested State's own separate marine safety investigation, the Marine Accident Investigation Board shall seek to co-ordinate the timing of their investigations, to avoid conflicting demands upon witnesses and access to evidence, where possible.

Parallel
Investigations

10. (1) Where a marine safety investigation is being conducted by another substantially interested State, the Administration shall co-operate with that other State to the extent practicable.

Co-operation

(2) Where a marine safety investigation is being carried out by the Marine Accident Investigation Board should make allowance for any substantially interested State to participate in aspects of the marine safety investigation relevant to it, to the extent practicable.

(3) Participation should include allowing representatives of the substantially interested State to:

- (a) interview witnesses;
- (b) view and examine evidence and make copies of documents;
- (c) make submissions in respect of the evidence, comment on and have their views properly reflected in the final report; and
- (d) be provided with the draft and final reports relating to the marine safety investigation.

(4) Where the marine casualty or marine incident involves a Seychelles flag ship, the Administration should help to facilitate the availability of the crew to the investigator(s) carrying out the marine safety investigation.

Investigators

11. (1) (a) An investigator forming part of a marine safety investigation should have working knowledge and practical experience in those subject areas pertaining to their normal duties.
(b) To assist investigators in performing duties outside their normal assignments, the Administration should

ensure ready access to expertise in the following areas, as necessary:

- (i) navigation and the Collision Regulations;
- (ii) flag State regulations on certificates of competency;
- (iii) causes of marine pollution;
- (iv) interviewing techniques;
- (v) evidence gathering; and
- (vi) evaluation of the effects of the human element.

- (2) The Chairman of the Marine Accident Investigation Board may appoint, as appropriate to assist with specific investigations, -
 - (a) investigators with necessary specialist skills to form part of a marine safety investigation on a temporary basis; or
 - (b) consultants to provide expert advice on any aspect of a marine safety investigation.
- (3) All investigators carrying out a marine safety investigation should have functional independence from:
 - (a) the parties involved in the marine casualty or marine incident;
 - (b) 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
 - (c) judicial proceedings;

Investigation Not
To Be Subject To
External Direction

- 12.** (1) Marine safety investigations shall be carried out in an impartial and objective manner.
- (2) The Marine Accident Investigation Board 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.
- (3) All investigators carrying out a marine safety investigation should be free of interference from the parties in section 11 (3) with respect to:
 - (a) the gathering of all available information relevant to the marine casualty or marine incident, including voyage data recordings and vessel traffic services recordings;
 - (b) analysis of evidence and the determination of causal factors;
 - (c) drawing conclusions relevant to the causal factors;

- (d) distributing a draft report for comment and preparation of the final report; and
- (e) if appropriate, the making of safety recommendations.

13. (1) The Marine Accident Investigation Board 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.

Collection of
Evidence

(2) Investigators 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.

(3) (a) Investigators should make effective use of all recorded data including voyage data recorders if fitted.

(b) Voyage data recorders should be made available for downloading by the investigators or an appointed representative.

14. Where marine safety investigation requires a seafarer to provide evidence to it -

Obtaining Evidence
from Seafarers

(1) the evidence shall be taken at the earliest practical opportunity;

(2) the seafarer shall be allowed to return to his ship, or be repatriated at the earliest possible opportunity;

(3) the seafarers human rights shall, at all times, be upheld;

(4) all seafarers from whom evidence is sought shall be informed of the nature and basis of the marine safety investigation; and

(5) a seafarer from whom evidence is sought shall be informed, and allowed access to legal advice, regarding:

(a) any potential risk that he may incriminate himself in any proceedings subsequent to the marine safety investigation;

(b) any right not to self-incriminate or to remain silent; and

- (c) any protections afforded to the seafarer to prevent the evidence being used against them if they provide the evidence to the marine safety investigation.

Acts of Unlawful
Interference

- 15.** Notwithstanding section 16, 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 Accident Investigation Board should immediately seek to ensure that the maritime security Authorities of the State(s) concerned are informed.

Confidentiality of
Information

- 16.** (1) The Marine Accident Investigation Board should only disclose information from a marine safety record where:
- (a) 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;
 - (b) where information from a marine safety record needs to be provided to an external expert for their analysis or second opinion; or
 - (c) as otherwise permitted in accordance with these Regulations.
- (2) The Marine Accident Investigation Board should ensure that any marine safety record in its possession is not disclosed in criminal, civil, disciplinary or administrative proceedings unless:
- (a) The Court 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
 - (b) where appropriate in the circumstances, the substantially interested State which provided the marine safety record to the marine safety investigation authorizes its disclosure.
- (3) Parts of the marine safety records which are not pertinent to the analysis of the marine casualty or marine incident should not be included in the final report and should not be disclosed.

(4) Information from a marine safety record should only be supplied to a substantially interested State where doing so will not undermine the integrity and credibility of any marine safety investigation being conducted or of the Marine Accident Investigation Board or Administration.

(5) The Marine Accident Investigation Board may require that a substantially interested State receiving information in relation to a marine safety investigation undertake to keep such information confidential.

17. Any person from whom evidence is sought should be informed and allowed access to legal advice, regarding –
- (a) the nature and basis of the investigation;
 - (b) any potential risk that they may incriminate themselves in any proceedings subsequent to the marine safety investigation;
 - (c) any right not to self-incriminate or to remain silent; and
 - (d) any protections afforded to the person to prevent the evidence being used against them if they provide the evidence to the marine safety investigation

Persons from whom evidence is sought

PART III – MARINE SAFETY INVESTIGATION REPORT

18. (1) Whenever a marine safety investigation is carried out, the Marine Accident Investigation Board shall produce a marine safety investigation report.

Marine Safety Investigation Report

- (2) The report in paragraph (1) shall contain -
- (a) 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;
 - (b) the identity of the flag State, owners, operators, the company as identified in the safety management certificate, and the classification society;
 - (c) 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;
 - (d) a narrative detailing the circumstances of the marine casualty or marine incident;
 - (e) analysis and comment on the causal factors including any mechanical, human and organizational factors;

- (f) a discussion of the marine safety investigation's findings, including the identification of safety issues, and the marine safety investigation's conclusions; and
 - (g) where appropriate, recommendations with a view to preventing future marine casualties and marine incidents.
- (3) Marine safety investigation reports from a marine safety investigation should be completed as quickly as practicable.
- (4) Subject to (5) and (6), where it is requested, the Marine Accident Investigation Board 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.
- (5) The Marine Accident Investigation Board shall only be bound to comply with paragraph (4) 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 Accident Investigation Board or unless such reports or documents have already been published by the Marine Accident Investigation Board.
- (6) The Marine Accident Investigation Board shall not be bound to comply with (4) where the substantially interested State receiving the draft report -
 - (a) is requested 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 the substantially interested State refuses to provide such an affirmation;
 - (b) does not guarantee that it 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 Accident Investigation Board.
- (7) Where the Marine Accident Investigation Board provides a draft report to a substantially interested State, the Marine Accident Investigation Board shall invite the substantially interested State to submit their comments on the draft report within 30 days or some other mutually agreed period, and the Marine Accident Investigation Board shall -
 - (a) 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 Accident Investigation Board shall notify the substantially interested State of the manner in which the comments were addressed; or

(b) if no comments are received after the 30 days or the mutually agreed period has expired, then it may proceed to finalize the report.

(8) The marine safety investigation report 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.

(9) Marine Accident Investigation Board shall seek to fully verify the accuracy and completeness of the draft report by the most practical means.

19. (1) The Marine Accident Investigation Board shall submit the final version of a marine safety investigation report to the International Maritime Organisation for every marine safety investigation conducted into a very serious marine casualty.

Circulation of the
Marine Safety
Investigation
Report

(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 International Maritime Organisation.

(3) The final marine investigation report shall be made available to the public and the shipping industry.

(4) Where a marine safety investigation report is published by another State or the International Maritime Organisation, the Administration shall undertake to assist the public and the shipping industry with details, necessary to access the report.

PART IV – MISCELLANEOUS

Interim Safety
Measures

20. At any stage during a marine safety investigation the Marine Accident Investigation Board may recommend interim safety measures.

Administrative
Responsibilities

21. The Administration shall ensure that the Marine Accident Investigation Board has available to it sufficient material and financial resources and suitably qualified personnel to enable them to facilitate the State's obligations to undertake maritime safety investigations into marine casualties and marine incidents.

Investigation to
be Safety focused

22. 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.

Re-Opening an
Investigation

23. (1) Where a marine safety investigation has been completed and new evidence is presented which may materially alter the analysis and conclusions reached, the Marine Accident Investigation Board should reconsider their findings and consider re-opening the investigation.

(2) When significant new evidence relating to any marine casualty or marine incident is presented to the Marine Accident Investigation Board after a marine safety investigation has been completed, the evidence should be fully assessed and referred to other substantially interested States for appropriate input.