

PORT STATE CONTROL COMMITTEE INSTRUCTION 48/2015/09

CRITERIA FOR RESPONSIBILITY ASSESSMENT OF RECOGNISED ORGANISATIONS (R/O)

Introduction:

R/O means a Recognised Organisation or other private body carrying out surveys and issuing or endorsing Statutory Certificates on behalf of a flag State and complies with the RO Code (Resolution Msc.349(92) (Adopted On 21 June 2013) Code For Recognized Organizations (Ro Code)) and/or MLC, 2006.

4.1 of Part I of RO Code

*“A flag State **may** delegate authority to an **organization recognized** as complying with the provisions of this Code to perform, on its behalf, **statutory certification and services** under mandatory IMO instruments and its **national legislation**.”*

5.7.3 of Part II of RO Code

*“An RO shall conduct the statutory certification and services of the ship in **conformity with all relevant international requirements** and the requirements of this [RO] Code. When accepting a ship on behalf of the flag State that was constructed originally without a known flag State the RO shall verify that the ship complies with national requirements of that flag State prior to certification.”*

8.1 of RO Code - General

“Under the provisions of regulation I/6 of SOLAS 1974, article 13 of LL 66, regulation 6 of MARPOL Annex I and regulation 8 of MARPOL Annex II and article 6 of TONNAGE 69, a flag State may authorize an RO to act on its behalf in statutory certification and services and determination of tonnages only to ships entitled to fly its flag as required by these conventions. Such authorizations shall not require ROs to perform actions that impinge on the rights of another flag State.”

Regulation 5.1 of MLC 2006 – Flag State responsibilities

*“In establishing an effective system for the **inspection and certification of maritime labour conditions**, a Member **may**, where appropriate, **authorize public institutions or other organizations** (including those of another Member, if the latter agrees) which it recognizes as competent and independent to **carry out inspections or to issue certificates or to do both**. In all cases, the Member shall remain fully responsible for the inspection and certification of the working and living conditions of the seafarers concerned on ships that fly its flag. The public institutions or other organizations referred to in paragraph 3 of Regulation 5.1.1 (“recognized organizations”) shall have been recognized by the competent authority as meeting the requirements in the [MLC] Code regarding competency and independence. The inspection or certification functions which the recognized organizations may be authorized to carry out shall come within the scope of the activities that are expressly mentioned in the [MLC] Code as being carried out by the competent authority or a recognized organization.*

1.2 Note that there is a requirement for the ROs to cooperate with port States, not only in the case of detention but also in the case of reported deficiencies.

6.5.7 of RO Code

"The ROs shall cooperate with port State control Administrations where a ship to which the RO issued the certificates is concerned, in particular, in order to facilitate the rectification of reported deficiencies or other discrepancies."

Standard A5.1.2 of MLC – Authorization of recognized organizations

*"Any authorizations granted with respect to inspections shall, as a minimum, empower the recognized organization to require the rectification of deficiencies that it identifies in seafarers' working and living conditions and to carry out inspections in this regard **at the request of a port State.**"*

1.3 Only surveyors and auditors employed by the RO may carry out surveys and audits.

*"4.2.4 The RO shall perform statutory certification and services by the use of **only exclusive surveyors and auditors**, being persons **solely employed** by the RO, duly qualified, trained and authorized to execute all duties and activities incumbent upon their employer, within their level of work responsibility. While still remaining responsible for the certification on behalf of the flag State, the RO may subcontract radio surveys to non-exclusive surveyors in accordance with section 5.9 of part 2 of this Code."*

1.4 There is also a requirement for flag States to provide the IMO and ILO with ROs that may conduct surveys/audits on their behalf.

RO Code "5 COMMUNICATION OF INFORMATION

*The flag State shall **communicate to, and deposit with**, the Secretary-General of IMO a list of ROs for **circulation to the interested parties** for information of their officers, and a notification of the specific responsibilities and conditions of the authority delegated to ROs." As per MSC/Circ.1010. Currently available via the IMO Global Integrated Shipping Information System (GISIS)*

and;

MLC, 2006

Regulation 5.1.2 – Authorization of recognized organizations

*4. Each Member shall **provide** the International Labour Office with a current **list of any recognized organizations authorized** to act on its behalf and it shall keep this list up to date. The list shall specify the functions that the recognized organizations have been authorized to carry out. The Office shall make the list **publicly available**.*

There is no list currently available from the ILO.

1.5 There should be a careful distinction between a **RO** who issues or endorses Statutory Certificates on behalf of an administration and a **Classification Society** who issues hull and machinery and other non-statutory or ship related certificates.

1.6 Caution should be applied where there is no survey date on a certificate. An indication of the Initial or Renewal survey date is to count back five years from date of expiry and for anniversary survey windows count back each year from expiry date applying +/-3 months to the relevant anniversary/intermediate date.

Note: The date of issue of the certificate is not necessarily the date of the survey.

1.7 Regarding the Safety Management Certificate (SMC) and the Maritime Labour Convention Certificate (MLC), where only one intermediate verification (audit) has to be carried out and the period of validity of the certificate is five years, the intermediate verification should take place between the second and third anniversary dates of the SMC, or MLC. Hence the last verification may have taken place up to three years ago. Note, however, the date of the last audit could include an additional verification for example following a port State control or flag State inspection.

1.8 In addition to the notification procedure in 3.7 of the Paris MoU also the RO(s) which have been deemed responsible should be notified of the detention in writing as soon as reasonably practicable. All notifications should **make it clear whether or not the RO is deemed responsible**. There may be more than one RO deemed responsible, for example, different ROs may have issued or endorsed an ISM SMC, ISPS Certificate and other convention certificates on behalf of the flag State. It is recommended to attach a copy of the affected statutory certificate(s) to the report and include it in THETIS.

Applying Criteria:

2.1 These criteria should be applied to each **detainable deficiency**.

2.2 These criteria apply only to detainable deficiencies that are:
(i) covered by a statutory certificate that has been issued **or** endorsed by the RO with a date of survey **and**

(ii) the RO has carried out the last survey or verification audit for the relevant certificate(s).

| Issued by | Annual / intermediate survey or verification audit carried out by | Can RO responsibility be assigned (if other criteria are met)? |
|-----------|---|--|
| Flag | None | NO |
| Flag | Flag | NO |
| Flag | RO | YES |
| RO | None | YES |
| RO | Flag | NO |
| RO | RO | YES |

2.3. A detainable deficiency is associated with the RO if it is:

(i) a serious structural deficiency including corrosion, wastage, cracking and buckling **unless** it is clear that the deficiency has occurred since the last survey conducted by the RO, or

(ii) a serious deficiency in equipment or non-structural fittings (such as fire main, air pipes, cargo hatches, rails, masts, ventilation trunks/ducts, accommodation and recreational facilities etc.) **AND** it is **less than 90 days** since the last survey conducted by the RO, or

(iii) a serious deficiency in equipment or non-structural fittings which clearly would have existed at the time of the last survey, or

(iv) a serious deficiency associated with out-of-date equipment which was out-of-date at the time of the last survey, or

(v) missing approval or endorsement of Plans and Manuals if required to comply with the provisions for issuance of statutory certificates which clearly would have existed at the time of the last survey, or

(vi) a detainable ISM-deficiency where there is clear evidence of a lack of effective and systematic implementation of a requirement of the ISM Code **AND** where is clear evidence that it existed at the last audit conducted by the RO provided that the audit took place **within the last 90 days**. Operational drills and operational controls may be used to establish supporting evidence of failure and to assign RO responsibility.

(vii) a detainable MLC-deficiency where there is clear evidence of a lack of implementation of a requirement of the MLC Code and that it existed at the last inspection conducted by the RO.

2.4. A detainable deficiency is **not** associated with the RO if it is:

(i) the result of accidental damage;

(ii) missing equipment that is likely to have been stolen. The PSCO should seek evidence that follow up action has been taken by the master, for example an order for replacement equipment, contact with the flag State asking for a condition etc.

(iii) an expired certificate unless the certificate was improperly issued by the RO following a survey conducted on behalf of the flag State.

3. Reporting:

If one or more detainable deficiencies meet the criteria in section 2 above then the detainable deficiency should be listed on Form B as "RO responsibility" by ticking the relevant box and entered into THETIS accordingly.

