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IMPLEMENTATION OF IMO INSTRUMENTS

Proposal to address some causes underlying major areas of recurrent IMSAS audit findings by recognizing the Factual Statements issued by IQARB

Submitted by Canada, Liberia, Marshall Islands, United Kingdom, United States, IUMI, BIMCO, IACS, CESA, INTERTANKO and P&I CLUBS

SUMMARY

Executive summary: This document highlights the development of the International Quality Assessment Review Body (IQARB), the relevant discussions at III 8 and some of the causes underlying the major area of recurrent findings/observations from the IMSAS audits relating to delegation of authority and recognized organization (RO) oversight. In this context, it is proposed that the III Sub-Committee and its Correspondence Group on the III Code Implementation Guidance be instructed to include, within that Guidance, text which will facilitate the use by flag States of IQARB Factual Statements as part of their RO oversight programme to demonstrate that their ROs have effective quality management systems in place.

Strategic direction, if applicable: 1

Output: 1.14

Action to be taken: Paragraph 15

Related documents: MSC 100/19/8, MSC 100/20; MSC 105/13; MSC 102/INF.9; MSC 105/19/3; MSC 106/18/2, MSC 106/INF.9; III 7/INF.27; III 8/9 and III 8/19 (paragraphs 9.14 and 9.16)

Background

1 The Committee, at its 100th session, considered document MSC 100/19/8 (Liberia et al.) and noted views that the International Quality Assessment Review Body (IQARB) could be developed into a fully international and independent quality assessment review body with high, independent quality standards. IQARB could be an optional component to assist Member States in fulfilling some of their obligations under the IMO Instruments Implementation Code (III Code) and the Code for Recognized Organizations (RO Code) with regard to the oversight programme exercised by flag States of their recognized organizations (ROs). However, IQARB should not be seen as an alternative to the sovereign right and duty of a flag State to exercise

effective oversight of the ROs authorized to act on its behalf (MSC 100/20, paragraphs 19.25 and 19.26).

2 MSC 100 agreed to the active participation of the Secretariat in the trial phase of IQARB and for its meetings to be convened by IACS and hosted by IMO, bearing in mind that the participation of the Secretariat would be at no cost to the Organization; and requested the Secretariat to keep it regularly updated on any developments during the trial phase (MSC 100/20, paragraph 19.27). In the IQARB Chair's report contained in the annex to document MSC 106/18/2, it is reported that IQARB's objectives were fully met (paragraph 4), and that IQARB's "proof of concept" has been achieved. Work has therefore now begun to further develop IQARB into a system which could expand beyond the assessment of the quality certification process of IACS members (paragraph 5). Additionally, as reported in paragraph 9 of the IQARB Chair's report, IQARB is now being transitioned into a legal entity.

3 In paragraph 6 of document MSC 100/19/8 (Liberia et al.) it was suggested that IQARB's Factual Statements related to the assessment of IACS classification societies (all of which act as ROs) against quality management system requirements, and recommendations related thereto, released into the public domain, would be available to any third party that seeks further independent corroboration that their certification process as undertaken by the independent Accredited Certification Bodies (ACBs), has been assessed competently, separately and independently by IQARB. The IQARB Factual Statements issued at IQARB 2 and IQARB 4 can be seen in documents MSC 102/INF.9 and MSC 106/INF.9 (Secretariat), respectively.

4 In supporting that approach (MSC 100/20, paragraph 19.26), all delegations that spoke, and subsequently MSC 100, noted that IQARB could be a component to assist Member States to fulfil some of their obligations under the III Code and the RO Code with regard to the oversight programme exercised by flag States over their ROs.

5 In connection to paragraph 4 above, III 8 considered the report of the Intersessional Correspondence Group on the Guidance in Relation to the IMO Member State Audit Scheme (IMSAS) to assist in the Implementation of the III Code by Member States (the III Code Implementation Guidance) (document III 8/9). A working group considered, as part of its terms of reference, the structure, scope and level of detail of the proposed draft III Code Implementation Guidance. During discussions relating to the section on "Delegation of Authority", a proposal was made to include in the draft guidance text which would facilitate the recognition and use of the Factual Statements issued by IQARB demonstrating that the RO has an effective quality management system in place. It was proposed that these be recognized during IMSAS audits as part of the oversight programme of ROs implemented by Member States. The following text was proposed by a Member State (III 8/19, paragraph 9.14) and was supported by a number of delegations:

"The RO Code allows for the use of cooperative agreements and information sharing on RO performance via memorandums of cooperation with other Member States who utilize all or some of the same ROs. In addition, Member States may take into account the Factual Statements issued by the International Quality Assessment Review Body (IQARB) for those organizational elements of the RO Code which are general in nature and related to the implementation of a Quality Management System".

6 In relation to the proposals detailed in paragraph 5 above, III 8 noted the Working Group's view that further considerations could be taken into account based on any decision made by MSC (III 8/19, paragraph 9.14) and subsequently included related task as part of the terms of reference of the Correspondence Group on the III Code Implementation Guidance. III 8 agreed that, based on possible decision of MSC 106, the following ToR are included for

the Correspondence Group's intersessional work between III 8 and III 9 (III 8/19, paragraph 9.16.1.6):

.6 consideration of including in the draft guidance the Factual Statements issued by IQARB, taking into account any decision by MSC, and prepare relevant text as appropriate; and"

Discussion

7 Noting the considerable developments relating to IQARB and its issuance of Factual Statements detailed in the referenced documents and the discussions at III 8 concerning inclusion of related text in the III Code Implementation Guidance outlined above, the co-sponsors support the proposals made by III 8, detailed in paragraph 5 above, highlighting to the Committee the points of discussion as stated in the ensuing paragraphs.

Findings from IMSAS audits

8 III 7 had before it the analysis of four consolidated audit summary reports under IMSAS (III 7/INF.27) containing the outcome of 68 audits, which in paragraph 31 of its annex noted as follows:

"With respect to the delegation of authority, most recurrent findings are related to the Administration's oversight programme of recognized organizations (ROs), agreement between the Administration and the RO, as well as compliance with other relevant provisions of both the RO Code and the III Code."

9 Upon review of the analysis, and having considered the most frequent references under specific conventions, III 7 recommended that MSC:

"endorses that the most frequent references were recorded against the following specific provisions of the mandatory IMO instruments, shown in more detail in appendix 2 of annex 4, demonstrating the lack of effective implementation:

.1 SOLAS 1974 (III 7/INF.27, figure 16): ... authorization of ROs under regulation XI-1/1 (45 instances)...";

The IMO Instruments Implementation Code

10 Paragraph 20 of part 2 of the III Code states:

"Delegation of authority

20 The flag State should establish or participate in an oversight programme with adequate resources for monitoring of, and communication with, its recognized organization(s) in order to ensure that its international obligations are fully met...".

11 Paragraphs 5.2 and 6.1 of part 3 of the RO Code state, respectively:

"5.2 Flag State's supervision of duties delegated to an RO

The flag State's supervision of duties delegated to an RO should consider, inter alia, the following:

.1 documentation of the RO's quality management system;..."; and

"6.1 The flag State should be satisfied that the RO has an effective quality management system in place. The flag State may rely upon the audits carried out by an accredited certification body or equivalent organizations. Intergovernmental cooperation in establishing common auditing practices is encouraged."

12 As can be seen from the above references and the conclusion of MSC 100, the co-sponsors are of the firm view that the Factual Statements issued by IQARB, confirming that the ROs have implemented an effective quality management system, could assist Member States in fulfilling some of their obligations under the above-mentioned provisions of the IMO mandatory instruments and their recommendatory parts. It is further considered that the use of the Factual Statements issued by IQARB may assist Member States in addressing some of the causes for issuance of audit findings linked to implementation of the RO Code. While the IQARB Factual Statements would not replace or fully substitute a Member State's responsibility for effective monitoring of its ROs, the optional use of the Factual Statement could assist them to focus their individual RO oversight programme on any targeted areas and other specific matters pertaining to their ships. Elimination of duplication of effort would significantly benefit Member States in their efforts to deliver on the IMO mission to promote safe, secure, environmentally sound, efficient and sustainable shipping.

Proposal

13 Noting the discussions reported from III 8 under agenda item 9, on the III Code Implementation Guidance, provided in III 8/19, and the status of development of IQARB, the co-sponsors believe that mechanisms to provide needed support to Member States in their assessments of their ROs quality management systems has been demonstrated (MSC 105/19/3 and MSC 106/18/2). The co-sponsors believe that the Factual Statements issued by IQARB can now be recognized by the Committee to enhance the capability of Member States in overseeing their ROs and assist compliance with mandatory and recommendatory IMO instruments thereby addressing some of the underlying root causes for the major areas of recurrent findings/observations found during IMSAS audits.

14 The co-sponsors propose, in line with paragraph 13 above and the information provided in this and referenced documents, that the Committee, in relation to the direction sought by III 8 concerning term of reference 1.6, as detailed in paragraph 6 above and in the report of III 8 (III 8/19, paragraph 9.16.1.6), agrees:

- .1 that the IQARB Factual Statements confirming that ROs have implemented an effective quality management system may assist Member States to focus their individual RO oversight programmes on targeted areas and specific matters pertaining to their ships;
- .2 that the IQARB Factual Statements may be recognized during IMSAS audits as part of the oversight programme of ROs implemented by Member States in relation to evidencing that the RO has an effective quality management system in place; and
- .3 to instruct the Intersessional Correspondence Group on the III Code Implementation Guidance with respect to its term of reference agreed at III 8 (III 8/19, paragraph 9.16.1.6) to take into consideration the Committee's views relating to 14.1 and 14.2 above and prepare aligned relevant text for inclusion in the III Code Implementation Guidance in the section pertaining to the monitoring of recognized organizations.

Action requested of the Committee

15 The Committee is invited to consider the foregoing, in particular the proposal in paragraph 14 of this document, and to take action, as appropriate.
