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Circular Letter No.4204/Add.19
2 June 2020

To: All IMO Member States
United Nations and specialized agencies
Intergovernmental organizations
Non-governmental organizations in consultative status with IMO

Subject: **Coronavirus (COVID-19) – Guidance for flag States regarding surveys and renewals of certificates during the COVID-19 pandemic**

1 All ships must be surveyed and verified by officers of the flag State Administrations or their recognized organizations (ROs) / recognized security organizations (RSOs) / nominated surveyors so that relevant certificates can be issued to establish that the ships are designed, constructed, maintained and managed in compliance with the requirements of IMO conventions, codes and other instruments. This system of survey and certification forms the backbone of the maritime safety and security and environmental protection regime of the Organization and it is critically important that ships remain subject to the existing statutory regime to the greatest extent possible.

2 Most IMO instruments contain requirements regarding the extension of the period of validity of a certificate, including SOLAS and MARPOL and associated codes mandatory under these Conventions, as well as the Load Line, BWM,¹ STCW and STCW-F Conventions. It is generally provided that if a certificate expires when a ship is not in a port where it can be surveyed, the Administration may extend the period of validity of a certificate for the purpose of allowing the ship to complete its voyage to a port in which it can be surveyed, but not for a period longer than 3 months. The *Survey Guidelines under the Harmonized System of Survey and Certification (HSSC)* (resolution A.1140(31)) were developed to standardize the period of validity and the intervals between surveys for the main convention certificates.

3 Guidance with regard to the extension of medical certificates of seafarers (STCW 1978, regulation I/9 and MLC 2006, regulation 1.2); certificates in respect of training and qualifications of seafarers (STCW 1978 and MLC 2006, regulation 1.3); maritime labour certificates and inspections (MLC 2006, Title 5); and ship sanitation certificates (IHR 2005,

¹ In relation to the BWM Convention, it should be noted that ships constructed before 8 September 2017 are required to meet the D-2 standard not later than their IOPP renewal survey. Therefore, an extension of the IBWMC (International Ballast Water Management Certificate) cannot extend the compliance with the D-2 standard but an extension of the IOPP renewal survey would do so. A separate circular letter on this matter may be issued depending on developments regarding the pandemic.

articles 20 and 39 and annex 3) under the conditions of the COVID-19 pandemic has already been issued by IMO, ILO and WHO, respectively.²

4 The coronavirus (COVID-19) pandemic has caused disruptions to the provision of normal shipping services, including the conduct of surveys. For example, surveyors have been denied access to ports or are otherwise unable to board ships to carry out inspections. As a result, maritime authorities and the shipping industry are facing challenges in respect of the conduct of the required surveys.

5 The Secretary-General urges Governments to carefully consider the introduction of restrictions which would affect the conduct of statutory surveys, so that the survey and certification regime can continue to operate as normal, ships can comply with the relevant mandatory requirements and Parties can adhere to their obligations under treaties.

6 The Secretary-General is aware that, in circumstances where it has been impossible to conduct surveys for certification purposes, some flag States have introduced alternative arrangements, such as issuing short-term certificates or extending certificates beyond the statutory maximum.

7 It is the view of the Secretary-General that the extension of the validity of certificates beyond the statutory maximum should only be considered in extraordinary circumstances and if no other alternative, such as the issuance of a short-term certificate with an appropriate risk-based survey, exists. The issuance of short-term certificates or other measures should be limited to specific situations caused by the COVID-19 pandemic and relevant decisions should be made on a case-by-case basis. Flag States are encouraged to set a limit for such extraordinary certificates or other measures, which should be reviewed periodically, taking into account developments with regard to the pandemic. Certificates must be renewed under existing regulations as soon as possible.

8 Decisions concerning the issuance of short-term certificates or the extension of statutory certificates are the responsibility of flag States. IACS member classification societies, in their role as ROs acting on behalf of flag States, have developed the annexed *Guiding principles for the provision of technical and implementation advice to flag States when considering whether to permit statutory certificate extension beyond 3 months* for the provision of technical and implementation advice to flag States when considering whether to issue short-term certificates or permit certificate extensions beyond the 3 months allowed by the IMO treaty regime. The Guiding Principles represent a step-based approach to informed decision-making that respects the existing regulatory regime and can result in an objective documented assessment of evidence for the justification of the issuance of a short-term certificate or other measures.

9 Member Governments are invited to make use of the annexed Guiding Principles when considering the issuance of short-term certificates or other measures or when instructing their authorized ROs accordingly. Member Governments are also invited to bring the annexed Guiding Principles to the attention of all other parties concerned, in particular PSC officers and companies.

² Detailed information is contained in Circular Letters Nos.4204/Add.5/Rev.1 and 4204/Add.10 and sections 6, 7 and 8 of ILO's *Information note on maritime labour issues and coronavirus (COVID-19)* at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/briefingnote/wcms_741024.pdf

ANNEX

Guiding principles for the provision of technical and implementation advice to flag States when considering whether to permit statutory certificate extension beyond 3 months

INTRODUCTION

The ongoing COVID-19 pandemic and the protracted nature of measures to control the spread and impact of the virus has resulted in a disruption to the provision of normal shipping services that is expected to continue into the future. Although gradual relaxation of enforced "lock-down" measures are being implemented in many locations around the world, which have resulted in improvements to surveyors' and service personnel's access to ships, it is considered inevitable that provision for the extension, on a case-by-case basis, of statutory certificates beyond the 3 months provided for in the governing conventions may have to be made by flag States. While the responsibility for those decisions is that of the flag States, the provision of technical advice and guidance, including on practical implementation, to underpin that decision-making would be welcomed by industry. This document sets down the guiding principles which should accompany the development of such advice which, if agreed, could form the basis of a consistent approach from flag States.

The below guiding principles represent a step-based approach to an informed decision-making process which respects the existing regulatory regime, and which can result in an evidence-based assessment for the justification of the extension of a certificate.

Considering that the supporting "safety net" of port State control has been temporarily suspended to some degree by some PSC regimes, and flexibility regarding extensions has been given by some flag States for ships facing difficulties in maintaining the validity of certificates, the safety and environmental protection of shipping and compliance need to be assured to the maximum extent possible.

For the purpose of the approach outlined in these guiding principles, the legal aspects permitting departure from statutory requirements to remove the legal exposure of all involved parties are considered to have been resolved by the individual flag State applying these provisions.

The role of the flag State is paramount in this statutory process as it will be the flag State's responsibility to issue clear statutory instructions and decisions to owners and recognized organizations (ROs), even where this decision-making utilizes the technical appraisal/recommendation by RO.

Step 1: Have all options for completing the survey and renewing the certificates (using all available means permitted by the Administration) been exhausted?

The prevailing principle is to make sure that ships remain subject to the mandatory statutory and classification regime of surveys and certification as far as possible. The rationale for this approach is that as much as possible needs to be done to manage this timebound situation while maintaining the mandated approach to determining the level of safety and environmental protection of shipping. As an example of how this may be accomplished, if needed and on a case-by-case basis, the use of available exclusive surveyors of other classification societies with agreement of the flag State can be utilized.

It is critical to maintain the highest level of compliance with existing statutory and classification provisions where possible. At the same time, this step acknowledges that in demonstrated exceptional circumstances and/or force majeure* considerations, routine compliance with established statutory parameters in IMO conventions and classification rules may not be possible, and adequate solutions to assess the level of safety and environmental protection are required and risks are mitigated.

If the initial application of this step is unsuccessful, it will determine which ships will need to be subjected to alternative measures such as those addressed through the following steps.

Step 2: For each case of demonstrated exceptional circumstances and/or force majeure, examine the available information on the ship and its history as a means to considering alternative evidence on the condition of the ship in lieu of completing the survey and offering a recommendation to its flag State

Once it is determined, based on prescribed evidence (as indicated in step 1), that the ship is facing exceptional circumstances and/or force majeure, the relevant parameters offering a general impression of a state of the maintenance of the ship, such as class records and the performance of the ship's Company (as defined under ISM Code) will need to be evaluated. This includes the performance of the ship in relevant PSC regimes (e.g. Paris MOU, Tokyo MOU and USGC) and the performance of the Company, which needs to be made available.

The flag State will also need to ensure effective communication with the RO to allow for consultation between all parties, the provision of the ship-related evidence in its possession to include in assessment, and the timely implementation of the flag State's decisions.

If the history of the ship's performance in port State control MOUs, class status records, status of the ship in RO's fleet quality monitoring records and other relevant evidence, identify concerns which cannot be properly addressed with mitigating actions such as service and/or navigation restrictions, ROs should adopt a safety-first approach and not recommend to the flag State the extension of certificates or the extension of endorsement of certificates and the postponement of surveys. A level of consistency of that approach between ROs and between flags should be achieved. In such instances, this may result in the suspension of class, and the recommendation to the flag State to do the same with their statutory certificates.

Should the review of the ship's history not give rise to concerns, it would then pass to the stage of qualifying for consideration of means to recommend to the flag State to grant extension or endorsement/postponement beyond 3 months. Again, it is critical that these recommendations are made in full recognition of the need for the ship to demonstrate compliance with the intent of applicable regulations now and maintain compliance during the deferral period.

* Proof will need to be presented to demonstrate a case of "exceptional circumstances" and/or "force majeure".

Step 3: Consider how the requirements of the convention and classification rules can be shown to be met in the interim without changing the requirements themselves

IMO conventions have been developed based on the technically sound scrutiny of facts and measures to mitigate determined risks. In this respect they are based on the defined "intent" and have been subject to critical review by the recognized international community of scientists, practitioners, operators, classification society representatives and governmental officials. In the overwhelming majority of cases, they prescribe detailed measures as means of achieving that "intent". When determining possible ways of demonstrating the existence of the control of the safety and environmental protection of a ship which is subject to exceptional circumstances and/or force majeure, the flag State should assess the suggested risk mitigating measures, as proposed by the RO based on the owner's intended steps and course of action, prior to confirming that these measures provide a satisfactory degree of temporary assurance as the original prescribed "intent" of the measures in the IMO convention. The same applies to compliance with the Rules of a classification society, which have undergone strict development supervision, validation and approval with engagement of independent external bodies.

The conclusion from this step is to ensure that the body of evidence (derived by available means) and subsequent recommendation developed under step 2 is clearly aligned with the "intent" of statutory requirements and classification Rules, and means of achieving it at the time of consideration or over the deferral time period in a controlled way are stated.

Step 4: Use verification requirements which are based on accepted survey procedures (these are bespoke to each classification society/RO)

The above-mentioned body of evidence, presented in support of the "intent" of regulations and requirements, will need to be presented to the flag State for its review and subsequent determination of the decision to extend validity of certificates or endorsements. The mechanics of that process can rely on the available translation of the statutory requirements of the convention(s) into procedures that RO's surveyors use to satisfy themselves that the ship is in compliance with those conventions. It is considered that each RO's procedures, which are independently audited (by IMO Member States, EU EMSA, ACBs under IACS QSCS, etc.), properly reflect the regulations of delegated conventions, and that the detail of that further determination therefore be left to the respective ROs. Suffice to say, the review and technical consideration as recorded and presented to the flag State will constitute a body of evidence, together with a recommendation on how the control measures are to be applied to the operation of the ship for a specified duration, and until physical surveys can be resumed. It will be for the flag State to decide whether to use this recommendation when deciding to permit, or not as the case may be, the extended operation of the ship beyond statutory permitted 3 months. That body of evidence, collated against positions of procedures, as supplemented by data from the flag State, etc., should be made available in case it will be later required by external auditors.

Step 5: Consider alternative evidence for assessing compliance to account for:

a. Confidence (how accurate a representation of the actual condition is this?)

Checks and balances will need to be put in place to allow a qualified RO surveyor to recommend, and a qualified technical person in a flag State to determine, if the assembled and presented evidence is representative of the condition of the ship and in accordance with the intent of the conventions at the time of rendering that decision.

b. Durability (i.e. how long can this be considered a valid evidence before revalidation is required?)

Checks and balances will need to be put in place to allow a qualified RO surveyor to recommend, and qualified technical person in a flag State to determine, the conditions of validity of the presented evidence over the duration of the extension, and determine control measures which should be put in place to preserve the validity of that extension. In case it becomes not possible to maintain validity of evidence for the purpose of complete duration of the extension, the ship should undergo the full suite of surveys prescribed in IMO conventions and classification requirements, at the determined point in time.

Step 6: Concluding with an overall documented evidence on which the extension period and any service restrictions are based

The collection (it is considered that the evidence will be made available by the shipowner, the flag State, where available, and/or obtained from records of the RO and PSC) and documented assessment of the evidence by the RO and recommendation to the flag State, whose decision it will be to allow a ship to continue operation, will need to be performed against the agreed set of parameters reflecting the above considerations. That assessment, supplemented with the body of evidence, could point in the direction of recommending to a flag State the extension of operation of a ship beyond statutory 3 months, or the recommendation to take immediate measures to bring the ship into compliance as per provisions of IMO conventions and classification requirements.

Considering the exceptional circumstances and/or force majeure nature of the situation, the responsibility for and the liability arising from the decision should be taken by a flag State, notwithstanding the provisions in the current agreements between flag States and their ROs.
