INTERNATIONAL MARITIME ORGANIZATION

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Circular Letter No.4204/Add.7
3 April 2020

To: All IMO Member States
Intergovernmental organizations
Non-governmental organizations in consultative status

Subject: **Coronavirus (COVID-19) – Guidance concerning unforeseen delays in the delivery of ships**

1 The Secretary-General, having received communications from Member States regarding the difficulties faced by shipbuilders, equipment suppliers, shipowners, surveyors and service engineers in respect of the timely delivery of ships due to the COVID-19 pandemic, and taking into account that the current situation is due to unforeseen circumstances beyond the control of the shipbuilder and the owner, wishes to draw the attention of Member States and international organizations to the following unified interpretations approved by the Maritime Safety Committee:

.1 *Unified interpretation of the application of regulations governed by the building contract date, the keel laying date and the delivery date for the requirements of the SOLAS and MARPOL Conventions* (MSC-MEPC.5/Circ.8, approved on 1 July 2013), set out in annex 1; and

.2 *Unified interpretation of "unforeseen delay in the delivery of ships*" (MSC.1/Circ.1247, approved on 6 November 2007), set out in annex 2.

2 Reference is made, in particular, to paragraph 3.3 of MSC-MEPC.5/Circ.8, which states that:

".3 regardless of the building contract signing date or keel laying date, if a ship's delivery date occurs on or after the delivery date specified for a particular set of regulation amendments, then, that set of regulation amendments applies except in the case where the Administration has accepted that the delivery of the ships was delayed due to unforeseen circumstances beyond the control of the shipbuilder and the owner*. The delivery date means the completion date (day, month and year) of the survey on which the certificate is based (i.e. the initial survey before the ship is put into service and certificate issued for the first time) as entered on the relevant statutory certificates.

* Refer to Unified Interpretation of "Unforeseen delay in the delivery of ships" (MSC.1/Circ.1247 and MARPOL Annex I, Unified Interpretation 4)."

SUSTAINABLE SHIPPING FOR A SUSTAINABLE PLANET

3 Reference is also made, in particular, to MSC.1/Circ.1247, as footnoted in paragraph 3.3 of MSC-MEPC.5/Circ.8. While the provisions therein concern the application of SOLAS regulation II-1/3-2 (Corrosion prevention of seawater ballast tanks in oil tankers and bulk carriers), a very similar situation is now arising with regard to the application of SOLAS regulation II-1/3-10 (Goal-based ship construction standards for bulk carriers and oil tankers) which will become effective for ships delivered on or after 1 July 2020.

4 MSC.1/Circ.1247 sets out that a ship for which the building contract (or keel laying) occurred, and the scheduled delivery date of which is before the date specified in the regulation, but where the delivery has been subject to delay beyond the specific date due to unforeseen circumstances beyond the control of the builder and the owner, may be accepted by the Administration as a ship delivered before the date of delivery specified in the regulation. The treatment of such ships should be considered by the Administration on a case-by-case basis, bearing in mind the particular circumstances. It proceeds to stress the importance that ships accepted by the Administration under the provisions of the circular should also be accepted as such by port States and recommends practices for Administrations to follow when considering an application for such a ship.

5 Attention is further drawn to document MSC 102/7/5, submitted by China and IACS to MSC 102, which states inter alia that, with regard to the consequences of the pandemic, shipbuilders and their associated supply chains were significantly impacted which has led to difficulties in resuming normal production and different degrees of delay in the delivery of ships under construction; and that there would be a significant impact on ships originally scheduled to be delivered before 1 July 2020, which were not designed and constructed in accordance with the requirements of SOLAS regulation II-1/3-10. The document, contains in the annex a proposed unified interpretation of SOLAS regulation II-1/3-10 concerning the term "unforeseen delay in the delivery of ships", which is set out in annex 3 of this circular letter for easy reference, reflecting the practice of MSC.1/Circ.1247. Due to the postponement of MSC 102, the Maritime Safety Committee will not be in a position to decide on the proposed unified interpretation before 1 July 2020.

6 The Secretary-General would be grateful if steps could be taken to bring the information in this circular letter to the attention of the appropriate authorities. Member States are invited to consider the application of the two annexed unified interpretations to ships the delivery of which is now delayed beyond 1 July 2020.

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ANNEX 1

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MSC-MEPC.5/Circ.8
1 July 2013

UNIFIED INTERPRETATION OF THE APPLICATION OF REGULATIONS GOVERNED BY THE BUILDING CONTRACT DATE, THE KEEL LAYING DATE AND THE DELIVERY DATE FOR THE REQUIREMENTS OF THE SOLAS AND MARPOL CONVENTIONS

1 The Marine Environment Protection Committee, at its sixty-fifth session (13 to 17 May 2013), and the Maritime Safety Committee, at its ninety-second session (12 to 21 June 2013), approved the unified interpretation of the application of regulations governed by the building contract date, the keel laying date and the delivery date for the requirements of the SOLAS and MARPOL Conventions prepared by the Sub-Committee on Flag State Implementation, as set out in the annex, with a view to providing more specific guidance for application of the relevant requirements of the SOLAS and MARPOL Conventions.

2 Member Governments are invited to use the annexed interpretation when applying relevant provisions of the SOLAS and MARPOL Conventions and to bring it to the attention of all parties concerned.

3 This circular supersedes MSC-MEPC.5/Circ.4.

ANNEX

UNIFIED INTERPRETATION OF THE APPLICATION OF REGULATIONS GOVERNED BY THE BUILDING CONTRACT DATE, THE KEEL LAYING DATE AND THE DELIVERY DATE FOR THE REQUIREMENTS OF THE SOLAS AND THE MARPOL CONVENTIONS

1 Under certain provisions of the SOLAS and MARPOL Conventions, the application of regulations to a ship is governed by the dates:

.1 for which the building contract is placed on or after dd/mm/yyyy; or

.2 in the absence of a building contract, the keel of which is laid or which is at a similar stage of construction on or after dd/mm/yyyy; or

.3 the delivery of which is on or after dd/mm/yyyy.

2 For the application of such provisions, the date on which the building contract is placed for optional ships should be interpreted to be the date on which the original building contract to construct the series of ships is signed between the shipowner and the shipbuilder provided:

.1 the option for construction of the optional ship(s) is ultimately exercised within the period of one year after the date of the original building contract for the series of ships; and

.2 the optional ships are of the same design plans and constructed by the same shipbuilder as that for the series of ships.

3 The application of regulations governed as described in paragraph 1, above, is to be applied as follows:

.1 if a building contract signing date occurs on or after the contract date specified for a particular set of regulation amendments, then, that set of regulation amendments applies;

.2 only in the absence of a building contract does the keel laying date criteria apply, and if a ship's keel laying date occurs on or after the keel laying date specified for a particular set of regulation amendments, then, that set of regulation amendments applies; and

.3 regardless of the building contract signing date or keel laying date, if a ship's delivery date occurs on or after the delivery date specified for a particular set of regulation amendments, then, that set of regulation amendments applies except in the case where the Administration has accepted that the delivery of the ships was delayed due to unforeseen circumstances beyond the control of the shipbuilder and the owner[*]. The delivery date means the completion date (day, month and year) of the survey on which the certificate is based (i.e. the initial survey before the ship is put into service and certificate issued for the first time) as entered on the relevant statutory certificates.

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[*] Refer to Unified Interpretation of "Unforeseen delay in the delivery of ships" (MSC.1/Circ.1247 and MARPOL Annex I, Unified Interpretation 4).

ANNEX 2

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Ref.: T4/3.01

MSC.1/Circ.1247
6 November 2007

UNIFIED INTERPRETATION OF "UNFORESEEN DELAY IN DELIVERY OF SHIPS"

1 The Maritime Safety Committee, at its eighty-third session (3 to 12 October 2007), approved a unified interpretation of the term "unforeseen delay in the delivery of ships", as set out in the annex, with a view to harmonizing the interpretation of the provisions for the application scheme in SOLAS regulation II-1/3-2 (Corrosion prevention of seawater ballast tanks in oil tankers and bulk carriers), as amended by resolution MSC.216(82), with the unified interpretation to regulation 1.28 of Annex I to the MARPOL Convention.

2 Member Governments are invited to use the annexed interpretation when applying the relevant provisions of SOLAS regulation II-1/3-2, and to bring it to the attention of all parties concerned.

ANNEX

INTERPRETATION OF SOLAS REGULATION II-1/3-2 CONCERNING THE TERM "UNFORESEEN DELAY IN DELIVERY OF SHIPS"

1 For the purpose of defining the category of a ship under SOLAS regulation II-1/3-2, a ship for which the building contract (or keel laying) occurred, and scheduled delivery date was, before the dates specified in this regulation, but where the delivery has been subject to delay beyond the specific date due to unforeseen circumstances beyond the control of the builder and the owner, may be accepted by the Administration as a ship delivered before the date of delivery specified in this regulation. The treatment of such ships should be considered by the Administration on a case-by-case basis, bearing in mind the particular circumstances.

2 It is important that ships accepted by the Administration under the provisions of paragraph 1 above should also be accepted as such by port States. In order to ensure this, the following practice is recommended to Administrations when considering an application for such a ship:

.1 the Administration should thoroughly consider applications on a case-by-case basis, bearing in mind the particular circumstances. In doing so in the case of a ship built in a foreign country, the Administration may require a formal report from the authorities of the country in which the ship was built, stating that the delay was due to unforeseen circumstances beyond the control of the builder and the owner;

.2 when a ship is accepted by the Administration under the provisions of paragraph 1 above, the delivery date annotated on the Passenger Ship Safety Certificate, Cargo Ship Safety Construction Certificate or Cargo Ship Safety Certificate should be footnoted to indicate that the ship is accepted by the Administration under the unforeseen delay in delivery provisions of this interpretation; and

.3 the Administration should report to the Organization on the identity of the ship and the grounds on which the ship has been accepted under the unforeseen delay in delivery provisions of this interpretation.

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ANNEX 3

DRAFT INTERPRETATION OF SOLAS REGULATION II-1/3-10 CONCERNING THE TERM "UNFORESEEN DELAY IN DELIVERY OF SHIPS"
(MSC 102/7/5, annex)

1 For the purpose of defining the category of a ship under SOLAS regulation II-1/3-10, a ship for which the building contract (or keel laying) occurred, and scheduled delivery date was, before the dates specified in this regulation, but where the delivery has been subject to delay beyond the specific date due to unforeseen circumstances beyond the control of the builder and the owner, may be accepted by the Administration as a ship delivered before the date of delivery specified in this regulation. The treatment of such ships should be considered by the Administration on a case-by-case basis, bearing in mind the particular circumstances.

2 It is important that ships accepted by the Administration under the provisions of paragraph 1 above should also be accepted as such by port States. In order to ensure this, the following practice is recommended to Administrations when considering an application for such a ship:

.1 the Administration should thoroughly consider applications on a case-by-case basis, bearing in mind the particular circumstances. In doing so in the case of a ship built in a foreign country, the Administration may require a formal report from the authorities of the country in which the ship was built, stating that the delay was due to unforeseen circumstances beyond the control of the builder and the owner;

.2 when a ship is accepted by the Administration under the provisions of paragraph 1 above, the delivery date annotated on the Cargo Ship Safety Construction Certificate or Cargo Ship Safety Certificate should be footnoted to indicate that the ship is accepted by the Administration under the unforeseen delay in delivery provisions of this interpretation; and

.3 the Administration should report to the Organization on the identity of the ship and the grounds on which the ship has been accepted under the unforeseen delay in delivery provisions of this interpretation.