

Memorandum of Understanding

**For Investigation Services Provided by the UK's
Marine Accident Investigation Branch**

To

The Red Ensign Group Category 1 Registries of:

**Isle of Man
Cayman Islands
Bermuda
Gibraltar**

1. FRAMEWORK OF UNDERSTANDING

1.1 INTRODUCTION

The Casualty Investigation Code¹ (the Code) mandates that all Very Serious Marine Casualties involving ships within the scope of the 1974 Convention on the Safety of Life at Sea (SOLAS), as set out in Chapter 1 Part A of SOLAS, are investigated, and that the Flag State of a ship involved in a Very Serious Marine Casualty is responsible for ensuring that an investigation is conducted and completed in accordance with the Code.

Under the Code, the State that takes responsibility for conducting the investigation must also ensure that investigators carrying out the safety investigation are impartial and objective.

The Category 1 Red Ensign Group (REG) Marine Administrations do not have independent investigation bodies, and therefore have difficulty in ensuring that safety investigations are impartial and objective.

In order to discharge the obligations under the Code, this Memorandum of Understanding (MOU) has been reached by which the UK's Marine Accident Investigation Branch (MAIB) agrees, when investigations are not conducted and completed by other States, to do so for Very Serious Marine Casualties involving ships registered with the Category 1 REG Marine Administrations. These investigations will be carried out on behalf of the Category 1 REG Marine Administration, and so the procedure for investigations set out in the legislation in force in the REG Marine Administration's territory will apply. This MOU assumes that all parties' operations will be co-operative and in full compliance with the Code.

The parties to this MOU are the MAIB and, collectively, the Category 1 REG Marine Administrations of Bermuda, the Cayman Islands, the Isle of Man and Gibraltar.

1.2 SCOPE

MAIB inspectors will investigate Very Serious Marine Casualties involving ships registered with a Category 1 REG Marine Administration, where the ship falls within the scope of the Code.

The investigation of Marine Casualties which are not Very Serious Marine Casualties; Very Serious Marine Casualties which occur in the Category 1 REG Marine Administration's Territorial Sea but do not involve a ship registered with a Category 1 REG Marine Administration; and Marine Incidents, are outside the scope of this MOU.

¹ The International Maritime Organization's Code of the international standards and practices for a safety investigation into a marine casualty or marine incident, adopted under resolution MSC.255(84).

Requests to investigate Marine Casualties which fall outside the scope of this MOU will be considered on a case-by-case basis and, if accepted, additional payment may be required from the Category 1 REG Marine Administration making the request.

Flag State, Marine Casualty, Marine Incident, and Very Serious Marine Casualty, have the meanings given in the Code, as amended from time to time.

2. DURATION OF THE MOU

2.1 START DATE

This MOU will commence on 1 April 2020, for an initial period of 5 years and may be reviewed and renewed thereafter.

The MAIB will commence investigating Very Serious Marine Casualties on behalf of Category 1 REG Marine Administrations on 1 April 2020, in respect of Very Serious Marine Casualties that occur on or after this date.

The Category 1 REG Marine Administrations are responsible for the investigation of Very Serious Marine Casualties occurring between the date this MOU commences and 31 March 2020 (inclusive). MAIB may, if so requested, provide assistance for these investigations, but it may charge for doing so.

2.2 ENDING THE MOU

One or more parties may terminate this MOU by providing at least two years' notice.

If an individual Category 1 REG Marine Administration wishes to withdraw from this MOU, it must provide at least two years' written notice. The MOU will, after that date, continue in force in relation to the remaining Category 1 REG Marine Administrations.

3. PAYMENT

3.1 INITIAL INTERIM PAYMENT AND PAYMENT FOR THE FIRST FULL YEAR

The following charges are split equally between the Category 1 REG Marine Administrations.

An annual payment for the first full year (1 April 2020 to 31 March 2021) of £239,468, to be paid in full on or before 31 March 2020.

3.2 ONGOING ANNUAL PAYMENTS

Subsequent annual payments are to be paid in full on or before 31 March in each year, in advance of service for the succeeding period 1 April to 31 March. Annual payments will be calculated by reference to the UK 12-month consumer price index inflation rate for the month in which the calculation is made, and so small yearly increases can be expected that broadly align with inflation.

MAIB will notify the Category 1 REG Marine Administrations by the end of February in the year that the payment is due, of the amount to be paid.

3.3 SERVICE COVERED BY ANNUAL PAYMENTS

Annual payments made under 3.1 and 3.2 will cover the full cost of investigations within the scope of this MOU, as defined in 1.2 above. The full cost of investigations includes:

- The salaries of two qualified marine accident inspectors
- Internal analysis, processing and administrative support provided by other MAIB staff.
- Travel, subsistence and externally sourced inspection and examination costs up to a cumulative total of £15,000 per investigation. Should costs in excess of this total need to be incurred in respect of a particular investigation, this will be discussed between the MAIB Chief Inspector and the particular REG Category 1 Marine Administration to which the ship involved in the Very Serious Marine Casualty is registered, in advance of costs being incurred. This discussion will be with a view to the particular Category 1 REG Marine Administration making an additional payment to cover the costs which exceed the £15,000 limit.

The payments do not cover:

- Investigations that are out of Scope (see 1.2 above).
- Investigations carried out into Very Serious Marine Casualties occurring between the date this MOU commences and 31st March 2020 inclusive.

4. INVESTIGATION PROCESS AND PROCEDURES

4.1 AUTHORITY AND POWERS TO CONDUCT INVESTIGATIONS

To facilitate maximum flexibility and avoid any delay to the commencement of an investigation, all MAIB inspectors will be appointed, under the relevant statutory powers in force in each territory, as investigators for each of the Category 1 REG Marine Administrations. These appointments will be completed on or before 31 March 2020, and renewed as appropriate. The documents providing proof of initial appointments will be provided to MAIB on or before 31 March 2020. This will ensure that MAIB inspectors have the necessary powers to begin investigating as soon as a Very Serious Marine Casualty occurs.

The conduct of investigations for the individual Category 1 REG Marine Administrations

4.1.1 Isle of Man

In conducting investigations on behalf of the Isle of Man, MAIB inspectors shall have the powers conferred on inspectors by section 3 of the Isle of Man Merchant Shipping Act 1985.

Each investigation will be led by an MAIB inspector appointed under section 3 of the Isle of Man Merchant Shipping Act 1985.

Investigations shall be conducted in accordance with regulation 12 of the Isle of Man's Merchant Shipping (Accident Reporting and Investigation) Regulations 2001.

4.1.2 Cayman Islands

In conducting investigations on behalf of the Cayman Islands, MAIB inspectors shall have the powers conferred on inspectors by section 422 of the Cayman Islands Merchant Shipping Law 2016.

Each investigation will be led by an MAIB inspector appointed under section 430 of the Cayman Islands Merchant Shipping Law 2016.

Investigations shall be conducted in accordance with regulation 13 of the Cayman Islands Merchant Shipping (Marine Casualty Reporting and Investigation) Regulations 2018.

4.1.3 Bermuda

In conducting investigations on behalf of Bermuda, MAIB inspectors shall have the powers conferred on inspectors by section 220 of the Bermuda Merchant Shipping Act 2002.

Each investigation will be led by an MAIB inspector appointed under section 228 of the Bermuda Merchant Shipping Act 2002.

The investigation shall be conducted in accordance with regulation 11 of the Bermuda Merchant Shipping (Accident Reporting and Investigation) Regulations 2019.

4.1.4 Gibraltar

In conducting investigations on behalf of Gibraltar, MAIB inspectors shall have the powers conferred on inspectors by regulation 6 of the Gibraltar Merchant Shipping (Accident Reporting and Investigation) Regulations 2012.

Each investigation will be led by an MAIB inspector appointed under regulation 7 of the Gibraltar Merchant Shipping (Accident Reporting and Investigation) Regulations 2012.

Investigations shall be conducted in accordance with regulation 14 of the Gibraltar Merchant Shipping (Accident Reporting and Investigation) Regulations 2012.

4.2 NOTIFICATION AND COMMENCEMENT OF AN INVESTIGATION

The Category 1 REG Marine Administration to which the ship is registered shall notify MAIB of a potential Very Serious Marine Casualty falling within the scope of this MOU, and its decision that it should be investigated, as soon as possible.

On receipt of such a notification, MAIB inspectors will carry out a preliminary assessment to confirm that the accident is a Very Serious Marine Casualty within the scope of this MOU. If the MAIB Chief Inspector believes the marine casualty is not a Very Serious Marine Casualty he will raise this with the relevant Category 1 REG Marine Administration. If the MAIB Chief Inspector agrees that the accident is within the scope of this MOU he will notify the reporting Category 1 REG Marine Administration that he agrees to carry out the investigation on its behalf, and set out any assistance that might be required.

4.3 CONTACT DURING THE INVESTIGATION

During the course of the investigation, MAIB will provide periodic progress reports to the Category 1 REG Marine Administration. Beyond this, in order to maintain the MAIB's independence, further contact with the Category 1 REG Marine Administration will be limited to that necessary for the effective conduct of the investigation. This might include requests that the Marine Administration:

- re-affirm to stakeholders that the MAIB is investigating the Very Serious Marine Casualty, and is authorised to exercise the relevant statutory powers;
- provide details of any relevant legislation and guidance applicable to the casualty under investigation;
- provide survey, inspection and other records relevant to the casualty under investigation.

The Category 1 REG Marine Administration will respond promptly to any requests.

It is possible that MAIB inspectors will need to interview Category 1 REG Marine Administration staff in the course of the investigation.

Recommendations Meeting. The MAIB Chief Inspector may choose to meet with selected stakeholders, advisors and / or industry bodies to seek advice on the formulation of appropriate recommendations to be included in the report. If such a recommendations meeting is held, representatives of the Category 1 REG Marine Administration will normally be invited to attend.

Draft Report². The MAIB's Deputy Chief Inspector will provide in strict confidence a draft copy of the investigation report to any person who could be adversely affected by the report, or if that person is deceased, to that person who best seems to represent the interests of the deceased. The draft report will also be shared with the relevant Category 1 REG Marine Administration. Those served with the draft report will be given 30 days in which to submit comments. All comments submitted will be reviewed, the report amended as appropriate, and feedback provided.

² CIC Chapter 13 refers.

4.4 SAFETY BULLETINS

When, in the course of an investigation, the MAIB identifies a safety issue that requires immediate action, it will issue an appropriate Safety Bulletin. If the Safety Bulletin contains a targeted recommendation that urgent action be taken, the relevant marine administration will be consulted before the Safety Bulletin is published.

4.5 ADMINISTRATIVE PROCESSES

The MAIB will be responsible for adding the necessary details of investigations to the IMO's Global Integrated Shipping Information System (GISIS) on behalf of the Category 1 REG Marine Administration.

4.6 PUBLICATION PROCESS

Following review of any comments received during the consultation process, the precise timing of publication and content of investigation reports will be at the MAIB Chief Inspector's discretion.

The MAIB Chief Inspector will notify the UK's Secretary of State for Transport and the relevant Category 1 REG Marine Administration's equivalent authority of its intention to publish 48 hours in advance of the publication of an investigation report.

The MAIB's investigation report will be published by the MAIB. In certain circumstances, such as when an investigation might be lengthy or have significant industry or public interest, an interim report may be published.

4.7 ISSUE AND MONITORING OF SAFETY RECOMMENDATIONS

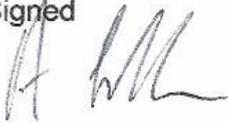
As a result of the findings of an investigation, the MAIB may recommend to the relevant Ministry responsible for marine matters that safety recommendations are made. The MAIB's suggested recommendations will be included in the published investigation report. It will be the responsibility of the relevant Ministry to arrange for the recommendations to be issued to recipients, and to monitor and report on their implementation in accordance with the pertinent national requirements.

4.8 DISCLOSURE AND PROTECTION OF EVIDENCE

The disclosure of records will be subject to the provisions of Regulation 13 of the Merchant Shipping (Accident Reporting and Investigation) Regulations 2012 (as amended).

Regulation 13 sets out which records are protected and the circumstances in which they may be disclosed. In line with regulation 13, the MAIB will not, for purposes other than a safety investigation, release any protected records without an order from the High Court in England, or the Court of Session in Scotland (see Annex).

5. AGREEMENT

<p>MARINE ACCIDENT INVESTIGATION BRANCH</p> <p>Signed</p>  <p>Andrew Moll Chief Inspector of Marine Accidents</p> <p>Date: 9/4/2020</p>	
<p>BERMUDA SHIPPING AND MARITIME AUTHORITY</p> <p>Signed</p>  <p>Francis C. Richardson Chief Executive Officer</p> <p>Date: 27/4/2020</p>	<p>Ministry of International Trade, Investment, Aviation and Maritime Affairs, for the CAYMAN ISLANDS SHIPPING REGISTRY</p> <p>Signed</p>  <p>Eric Bush Chief Officer</p> <p>Date: 22/5/2020</p>
<p>GIBRALTAR SHIP REGISTRY</p> <p>Signed</p>   <p>Alan Cubbin Marine Accident Investigation Compliance Officer</p> <p>Date: 28/4/2020</p>	<p>ISLE OF MAN SHIP REGISTRY</p> <p>Signed</p>  <p>Cameron Mitchell Director</p> <p>Date: 22/4/2020</p>

Annex

Regulation 13 Merchant Shipping (Accident Reporting and Investigation) Regulations 2012

13 – (1) Subject to the following paragraphs, the names, addresses or other details of anyone who has given evidence to an inspector must not be disclosed.

(2) Subject to paragraphs (4) and (7) the following documents or records whether held electronically, mechanically or otherwise must not be made available for the purposes other than a safety investigation, unless a Court orders otherwise –

- (a) subject to paragraph (3), all declarations or statements taken from persons by an inspector or supplied to an inspector in the course of an investigation, together with any notes or recordings of witness interviews;
- (b) medical or confidential information regarding persons involved in an accident;
- (c) any report made under regulation 6(4);
- (d) copies of the report other than the final report except as mentioned in regulation 14(4)(a), (5) or (12);
- (e) all correspondence received by the Chief Inspector from parties involved in a safety investigation;
- (f) evidence from voyage data recorders;
- (g) the notes made by an inspector or person appointed under regulation 11(2), whether written or held electronically along with any recordings or photographs;
- (h) all communications between persons having been involved in the operation of the ship or ships; and
- (i) Inspector's opinions expressed in the analysis of information.

(3) A person who has given a declaration or statement to an inspector in the course of a safety investigation may make available a copy of their statement or declaration to another person as they see fit.

(4) Any independent technical analysis commissioned by the Chief Inspector and opinions expressed in such analysis may be made publicly available if the Chief Inspector considers it appropriate to do so.

(5) Subject to paragraph (6), no order must be made under paragraph (2) unless the Court is satisfied, having regard to the views of the Chief Inspector, that the interests of justice in disclosure outweigh any prejudice, or likely prejudice, to-

- (a) the safety investigation into the accident to which the document or record relates;

(b) any future accident safety investigation undertaken in the United Kingdom;
or

(c) relations between the United Kingdom and any other State, or international organisation.

(6) The provisions of this regulation shall be without prejudice to any rule of law which authorises or requires the withholding of any document or record or part thereof on the ground that disclosure of it would be injurious to the public interest.

(7) Copies of the information obtained from a voyage data recorder or from other recording systems, pertinent to the accident, including voice recordings (other than any recordings mentioned in paragraph (2)(a)), video recordings and other electric or magnetic recordings and any transcripts made from such information or recordings, may be provided at the discretion of the Chief Inspector to the police or other official authorities.