



Ref. T2-MSS/2.11.1

MSC.1/Circ.1191
30 May 2006

**FURTHER REMINDER OF THE OBLIGATION TO NOTIFY FLAG STATES
WHEN EXERCISING CONTROL AND COMPLIANCE MEASURES**

1 The Maritime Safety Committee (the Committee), at its eighty-first session (10 to 19 May 2006), noted that despite having issued MSC/Circ.1133 on Reminder of the obligation to notify flag States when exercising control and compliance measures, in a number of cases SOLAS Contracting Governments, when taking control measures or steps against ships pursuant to the provisions of SOLAS regulation XI-2/9 on Control and compliance measures, continued to fail to notify, as required by the aforesaid regulation, either the Administration or the Organization or both.

2 As a result, the Committee recognized, once more, the need for all parties concerned and the Organization to be informed when a SOLAS Contracting Government had taken control measures or steps against a ship, and approved the Further Reminder of the obligation to notify flag States when exercising control and compliance measures (the Further reminder), as set out at annex.

3 SOLAS Contracting Governments are invited to bring the attached Further reminder to the attention of those officers whom they have authorized or whom they may authorize to carry out control and compliance measures pursuant to the provisions of SOLAS regulation XI-2/9.

4 Companies are invited to make available on board the ships they operate copies of the present circular and to make them available to those officers conducting control and compliance measures pursuant to the provisions of SOLAS regulation XI-2/9 on board their ships for their information.

5 Member Governments, international organizations and non-governmental organizations with consultative status are also invited to bring to the attention of the Committee any instance where SOLAS Contracting Governments or duly authorized officers have failed to notify the relevant Administration that they have taken control measures or steps against a ship pursuant to the provisions of SOLAS regulation XI-2/9.

6 MSC/Circ.1133 on Reminder of the obligation to notify flag States when exercising control and compliance measures is revoked as from the date of issue of the present circular.

ANNEX

FURTHER REMINDER OF THE OBLIGATION TO NOTIFY FLAG STATES WHEN EXERCISING CONTROL AND COMPLIANCE MEASURES

BACKGROUND

1 The special measures to enhance maritime security contained in SOLAS chapter XI-2 and the ISPS Code specify and delineate, *inter alia*, the obligations of SOLAS Contracting Governments (Contracting Governments) as a flag, port and coastal States.

2 The enforcement of the provisions of either SOLAS chapter XI-2 or the ISPS Code confers specific responsibilities with respect to notification and involvement of the Administration (i.e. the State whose flag the ship is entitled to fly or the flag State) when control measures or steps are taken against one of its ships (SOLAS regulation XI-2/9.3.1).

3 In such cases the Contracting Government taking control measures or steps against a ship is also required to notify the Organization (SOLAS regulation XI-2/9.3.1).

4 Since the entry into force of the special measures to enhance maritime security on 1 July 2004, there have been a number of reported instances where those obligations have not been met.

DISCUSSION

5 The full and effective implementation of the provisions of SOLAS chapter XI-2 and of the ISPS Code requires the full and complete participation, co-operation and collaboration of all stakeholders. Each Contracting Government in its capacity as the Administration has, *inter alia*, the obligation to ensure that the requirements of SOLAS chapter XI-2 and the ISPS Code are implemented by the ships entitled to fly its flag; and that such ships maintain continuous compliance with their obligations under the aforesaid provisions. Administrations are also responsible for oversight of the recognized security organizations they have authorized to act on their behalf.

6 The Control and compliance measures stipulated in SOLAS regulation XI-2/9 have been designed to ensure, *inter alia*, a consistent approach to the application of the “enforcement” provisions of the SOLAS chapter XI-2 and of the ISPS Code. SOLAS regulation XI-2/9.3.1 creates a clear and unambiguous obligation on the part of any officer who is duly authorized by a Contracting Government to exercise control (the duly authorized officer), when imposing control measures or steps against a ship to forthwith inform in writing the Administration, specifying the control measures imposed or steps taken and the reasons thereof. Also the Contracting Government imposing the control measures or steps is required to notify the recognized security organization, which issued the certificate relating to the ship concerned, and the Organization when any such control measures have been imposed or steps taken. In this respect “forthwith” means without delay by the most expeditious means.

7 The purpose of the aforesaid provision is to include the Administration as a full partner in the implementation of SOLAS chapter XI-2 and of the ISPS Code and to enable the Administration to take any other corrective actions it might deem fit under the prevailing circumstances (see also paragraph 10 below). Additional amplification concerning the actions of duly authorized officer and interactions with the Administration may be found in paragraph 1.13 of the Interim Guidance on Control and compliance measures to enhance maritime security adopted by resolution MSC.159(78)¹ which states:

“When a Contracting Government imposes control measures on a ship, the Administration should, without delay, be contacted with sufficient information to enable the Administration to fully liaise with the Contracting Government (ISPS Code paragraph B/4.35).”

8 The purpose of requiring the Contracting Governments exercising control and compliance measures to notify the Administration concerned is not simply a formality. Notification permits the Administration:

- to provide, if necessary, to the Contracting Governments exercising control and compliance measures, security-related information about the ship and/or the shipboard personnel or in relation to any flag State security-related requirements;
- to initiate any additional corrective measures that it considers necessary with respect to the ship, the shipboard personnel, the Company and/or its fleet;
- to evaluate and assess the performance of the recognized security organizations acting on its behalf;
- to consider, based on authoritative information, the actions of the Contracting Government exercising control and compliance measures; and
- to communicate and liaise with the State to which the ship might be proceeding after its departure from the territory of the Contracting Government exercising control and compliance measures.

9 The Organization is expected, *inter alia*, to collate the notification on the control measures or steps taken by Contracting Governments in the course of Control and compliance measures and to make them available to the Maritime Safety Committee for its consideration and appropriate actions.

REMINDER

10 Contracting Governments and all duly authorized officers are reminded of the obligation of each and every Contracting Government when it takes control measures or steps against a ship to notify, as required by SOLAS regulation XI-2/9.3.1:

- the Administration; and
- the recognized security organization which has issued the International or the Interim International Ship Security Certificate of the ship, if appropriate; and
- the Organization.

¹ See annex 2 to MSC/Circ.1111.

11 This reminder should be read in association with SOLAS regulation XI-2/9, paragraphs B/4.29 to B/4.40 of the ISPS Code and resolution MSC.159(78) on Interim guidance on control and compliance measures to enhance maritime security.

WHERE TO FIND THE CONTACT DETAILS OF THE ADMINISTRATIONS

12 SOLAS regulation XI-2/13.1.4 requires Contracting Governments to communicate to the Organization and to make available for the information of Companies and ships the names and contact details of those who have been designated to be available at all times to receive and act upon any communications from Contracting Governments exercising control and compliance measures, referred to in SOLAS regulation XI-2/9.3.1.

13 The information communicated to the Organization pursuant to the provision of SOLAS regulation XI-2/13.1.4 are made available on the Maritime Security module of the IMO Global Integrated Shipping Information System (GISIS) which may be accessed through either the IMO website (URL <http://www.imo.org>) or directly through the URL <http://gisis.imo.org>.

TO WHOM THE NOTIFICATIONS SHOULD BE SENT

14 With respect to Administrations, the required notifications should be sent to those whose names and contact details each Contracting Government has posted on the Maritime Security module of GISIS.

15 With respect to the Organization, the required notifications should be sent to:

International Maritime Organization
Maritime Security Section
4 Albert Embankment
London SE1 7SR
United Kingdom
Facsimile number: +44 20 7587 3210
E-mail address: marsec@imo.org

Related provisions: SOLAS regulations XI-2/9 and XI-13, ISPS Code, paragraphs B/4.29 to B/4.40, resolution MSC.159(78), MSC/Circ.1097, 1111, 1113, 1130, 1132, 1157 and 1191.