

No.: 01/2020/TT-BGTVT

Hanoi, January 20, 2020

CIRCULAR

ON MARINE ACCIDENT REPORT AND INVESTIGATION

Pursuant to Vietnam Maritime Code No. 95/2015/QH13 dated November 25, 2015;

Pursuant to Code of international standards and recommendations for marine accident or incident investigation of the International Maritime Organization (IMO);

Pursuant to Decree No. 12/2017/ND-CP dated February 10, 2017 of the Government on defining the functions, tasks, powers and organizational structure of the Ministry of Transport;

At the request of Director of Department of Traffic Safety and Director of Vietnam Maritime Administration;

The Minister of Transport promulgates the Circular on marine accident report and investigation.

Chapter I

GENERAL PROVISIONS

Article 1. Governing scope

This Circular specifies marine accident report and investigation.

Article 2. Subject of application

1. This Circular is applied to agencies, organizations and individuals involved in marine accident report and investigation in the following cases:

- a) Marine accidents related to Vietnamese ships;
- b) Marine accidents related to foreign ships operating in: seaport waters, inland waters and territorial waters of Vietnam; Vietnam's exclusive economic zone in case such accidents are related to Vietnam ships and boats, offshore structures and equipment of Vietnam or cause environmental pollution.

2. The provisions of this Circular are also applied to investigate accidents occurring for public-duty ships and seaplanes in Vietnam's seaport waters; Inland waterway vessels bearing VR-SB grade, floating storage, mobile rigs in the seaport waters of Vietnam and on the territorial waters of Vietnam.

Article 3. Interpretation of terms

1. Marine accident means an event directly related to the operation of ships, causing one of the following consequences: death, missing or serious injury; causing ships to collide; serious damage to the ship's structure; causing the ship to be lost, sunk, gone ground, or unable to maneuver; damage marine infrastructure or cause serious environmental pollution.

Marine accidents do not include acts of intentionally causing damages to human, ships, marine infrastructure or the environment.

2. Maritime incident means an incident directly related to the operation of ships but

not a marine accident specified in Clause 1 of this Article that causes danger, if not remedied, causes unsafety for ships, human or the environment.

Article 4. Classification of marine accident levels

1. A particularly serious marine accident is a marine accident leading to one of the following consequences:

- a) Cause human death or missing;
- b) Cause ships to be sunk or lost;
- c) Spill into the environment at least 100 tons of oil or 50 tons of toxic chemicals or more;
- d) Delay traffic on the marine fairway in 48 hours or more.

2. Serious marine accident means a marine accident which does not fall into the cases specified in Clause 1 of this Article and causes one of the following damages:

- a) Cause ships to be on fire, exploded, gone ground for 24 hours or more, damage the structure of ships, thereby affecting their seagoing ability;
- b) Spill into the environment from 20 tons of oil to less than 100 tons of oil or from 10 tons of chemicals to less than 50 tons of toxic chemicals;
- c) Delay traffic on the marine fairway from 24 hours and under 48 hours.

3. Less serious marine accident means a marine incident or a marine accident occurring outside the cases specified in Clauses 1 and 2 of this Article.

Article 5. Responsibilities of master, shipowner, ship manager, ship operator and organizations and individuals involved in marine accidents

1. Master, ship owner, ship manager, ship operator, and organizations and individuals involved in marine accidents must report marine accidents to the maritime port authority or Vietnam Maritime Administration or the Ministry of Transport quickly and accurately as prescribed in this Circular.

2. Master of a ship involved in a marine accident must organize a prompt, prompt and effective rescue in accordance with the ship's safety conditions.

3. The master and crew members of a ship involved in a marine accident must be responsible for organizing the protection of the accident scene and cruise data recording device at the time of the marine accident and providing evidence related to marine accidents for the investigation agency.

4. Master, crew members of a ship and organizations and individuals involved in a marine accident must provide sufficient, truthful and prompt information to investigation agency and take full responsibility to the law of the provided information.

5. For marine accidents causing damage to crew members, master, shipowner or employer, apart from reporting obligations as specified in this Circular, must make marine labor accident declaration under the legal provisions.

Chapter II

MARINE ACCIDENT REPORT

Article 6. Marine accident report

1. Marine accident report includes urgent report, detailed report, and periodical report under the provisions of Appendices 1, 2 and 3 attached to this Circular.

2. Content of a marine accident report must be truthful, accurate and on schedule.

Article 7. Urgent report

1. An urgent report is made as follows:

a) In case a marine accident occurs within seaport waters and Vietnamese waters, the master or the person with highest responsibility on board must immediately send an emergency report to the nearest maritime port authority. In case these people are unable to make an urgent report, the shipowner or the shipping agent involved in the accident must report.

b) The nearest maritime port authority, upon receiving an emergency report or knowing about a marine accident, must immediately transfer such emergency report or such information to the following agencies and organizations: Maritime port authority is assigned to manage the area where the ship accident occurred; Vietnam Maritime Administration; Vietnam Maritime Safety Corporation, if an accident causes damages, deactivates marine aids or affects the maritime safety of ships; organizations and individuals that manage or exploit the works or equipment if the accident causes malfunctions or damages to these works or equipment; People's Committees of provinces and central cities, if an accident causes or is likely to cause environmental pollution or damage to aquatic resources.

2. In the case of a marine accident related to Vietnam ship upon operating in the waters of another country, master or person with highest responsibility on board or shipowner must make a report at the request of the coastal country where the ship had an accident and immediately send an emergency report to the Vietnam Maritime Administration. If the accident belongs particularly serious type, the master or person with highest responsibility on board or shipowner must report to the diplomatic representative agency of Vietnam in the coastal country where the accident occurred for supporting the settlement.

3. In case a marine accident involving a Vietnam ship while operating in international waters, the master or person with the highest responsibility on board or shipowner must immediately send an emergency report to the Vietnam Maritime Administration.

4. Urgent report can be delivered directly or sent using the appropriate communication methods.

5. For particularly serious marine accidents, after receiving the urgent report, the Vietnam Maritime Administration must immediately report to the Ministry of Transport.

6. Vietnam Maritime Administration must notify the Administration of the flag State for the marine accident occurring in the cases specified at Point b, Clause 1, Article 2 of this Circular.

Article 8. Detailed report

Following the Urgent Report, the master or the person with highest responsibility on board must submit a detailed report with the time limit specified below:

1. In case a marine accident occurs within seaport waters and inland waterway area of Vietnam, the detailed report must be sent to the maritime port authority assigned to manage in such waters within 24 hours from the time of the accident. In case the Detailed Report fails to be completed within 24 hours, an additional report must be made but no later than 48 hours after the accident occurs.

2. In case the marine accident occurs within the territorial waters and exclusive economic zone of Vietnam as prescribed at Point b, Clause 1, Article 2 of this

Circular, after the accident occurs, the ship comes to anchor in Vietnam seaport waters, the detailed report must be sent to the maritime port authority assigned to manage such waters within 24 hours from the date the ship is anchored at the designated position. In case after the accident occurs, the ship does not come to anchor in Vietnam seaport waters, the detailed report must be sent to the Vietnam Maritime Administration within 48 hours from the date the ship or crew members of the ship in distress arrive at the first port of call.

3. In case the marine accident involving a Vietnamese ship operating in international waters and waters of another country, after the accident occurs, the ship comes to anchor in Vietnamese seaport waters, a detailed report must be sent to the maritime port authority assigned to manage such waters within 24 hours from the date the ship is anchored at the designated location. In case, after the accident occurs, the ship does not anchor in the seaport waters of Vietnam, the detailed report must be sent to the Vietnam Maritime Administration within 48 hours from the date the ship arrives at the first port of call.

Article 9. Periodic report

1. Every six months and annually, the Maritime Port Authority must prepare a written report and send to the Vietnam Maritime Administration on marine accidents occurring in form specified in Appendix 3 to this Circular.

2. Every six months and annually, the Vietnam Maritime Administration must make a written report and send to the Ministry of Transport on marine accidents in form specified in Appendix 3 to this Circular.

3. Reporting deadline:

a) Deadline for sending six-month report: June 16 every year at the latest for the maritime port authority and no later than June 20 every year for Vietnam Maritime Administration. The report of the last 6 month of the year is replaced with an annual report;

b) Deadline for sending annual report: December 16 at the latest for the maritime port authority and December 20 at the latest for the Vietnam Maritime Administration.

Chapter III

MARINE ACCIDENT INVESTIGATION

Article 10. Purposes and requirements for marine accident investigation

1. Marine accident investigation means the determination of conditions, circumstances, causes or possibilities that may be the cause of a marine accident in order to take effective measures to prevent from and limit similar accidents.

2. Marine accident investigation does not determine the legal liability or obligations of the parties.

3. Marine accident must be investigated as regulated, in a prompt, comprehensive and objective manner.

Article 11. Cases of investigation of marine accidents

1. Serious and particularly serious marine accidents must be investigated.

2. Less serious marine accidents may be investigated or not investigated at the discretion of the Director of the Maritime Port Authority. In case of no investigation is conducted, the maritime port authority must report to the Vietnam Maritime Administration.

Article 12. Organization of marine accident investigation

1. Competence to investigate marine accidents

a) The Director of the Local Maritime Port Authority is responsible for conducting investigation of marine accidents occurring in the seaport waters under their management and other marine accidents assigned by the Director of the Vietnam Maritime Administration;

b) In case a marine accident occurs in seaport waters, or the ship involved in the accident continues its voyage to the designated anchorage position in another seaport waters, Director of Vietnam Maritime Administration decide to assign such marine accident investigation organization to the maritime port authority where the accident occurs or where the ship is anchored. When the ship arrives at the designated anchorage position within the seaport waters under its management, the Director of the maritime port authority must immediately appoint a competent and qualified staff on board to inspect the scene and collect evidences.

c) The Director of the Vietnam Maritime Administration must decide to assign the investigation organization for the marine accident occurring outside the seaport waters of Vietnam to an appropriate maritime port authority.

2. Upon receipt of information about a marine accident in the seaport waters under its management, the Director of the maritime port authority must, if permitted, send a competent and qualified staff to the scene of the marine accident and go on board to inspect the scene, review working positions and collect the necessary evidences for investigation. When carrying out these works, it is necessary to make minutes and have the witness and confirmation of authorized personnel on board and avoid affecting the safe operation of the ship. The person sent to the scene must be a member of the Marine Accident Investigation Team as prescribed in Clause 3 of this Article.

3. The Director of the Maritime Port Authority that organizes marine accident investigation must issue a decision on setting up Marine Accident Investigation Team.

4. During the investigation of a marine accident, if detecting any sign constituting a crime, the Director of the maritime port authority must notify the competent investigation agency and transfer dossiers, documents and evidences related to the marine accident at the request of the competent investigation agency. Before transfer, dossiers and documents must have certified copies or be photocopied for archiving for marine accident investigation; The transfer of dossiers, documents and evidences must be made in minutes.

5. For marine accidents which are investigated by other agencies under the competence, the investigation of marine accidents must still be conducted under the provisions of this Circular.

6. The Vietnam Maritime Administration must notify the maritime Administration of the flag State for the investigation of marine accidents with respect to foreign ships specified in Clause 1, Article 2 of this Circular.

7. The Director of the Maritime Port Authority may temporarily detain the ship in no more than 05 days to collect evidences for investigation. If an accident occurs within seaport waters, the temporary detention exceeding the above time limit must be decided by the Director of the Vietnam Maritime Administration on the basis of the request of the Director of the maritime port authority, the extension time for temporary detention is not more than 05 days. In case the accident occurs outside the seaport waters, the time limit for temporary detention of the ship must be considered and decided by the Minister of Transport on the basis of the request of the Vietnam

Maritime Administration.

Article 13. Agreement on marine accident investigation

In necessary cases, the Vietnam Maritime Administration must agree on marine accident investigation as follows:

1. With regard to marine accidents involving foreign ships, the Vietnam Maritime Administration must reach agreement with the maritime Administration of the flag State on marine accident investigation in accordance with the actual conditions, circumstances and location of a marine accident.
2. For marine accidents related to Vietnamese ships occurring overseas, the Vietnam Maritime Administration must reach agreement with the maritime administration of the coastal state on marine accident investigation in accordance with the actual conditions and circumstances and location of the marine accident.
3. In case of failure to reach an agreement with the maritime authority of the flag State or coastal state, an independent investigation must be conducted in accordance with this Circular.

Article 14. Marine accident investigation team and members of the marine accident investigation team

1. Marine accident investigation team

a) A marine accident investigation team must have a team leader to directly manage and at least 01 deputy team leader to assist the team leader, and 01 team member decided by the Director of the maritime port authority under the competence;

b) In necessary cases, the Director of the Vietnam Maritime Administration may add more members with appropriate expertise to join the marine accident investigation team. The Director of the Maritime Port Authority must, based on the direction of the Director of the Vietnam Maritime Administration, decide to establish a Marine Accident Investigation Team.

2. Members of a Marine Accident Investigation Team must satisfy the following conditions: master, chief engineer or engineer specialized in ship control, ship engine operation, ship engine operation, shipbuilding, ship electricity and auto electricity, maritime law or equivalent industries; have at least 05 years of practical experience in the profession and have passed professional training and retraining courses in marine accident investigation.

Article 15. Duties and powers of the Marine Accident Investigation Team

1. Make plan of investigation and formulate cost estimates for marine accident investigation under the provisions of this Circular and other relevant legal provisions. The investigation plan must be approved by the Director of the Maritime port authority. Report in writing on the investigation process and marine accident investigation result to the Director of the Maritime Port Authority that establishes the Marine Accident Investigation Team.

2. Notify in writing the master or the person with highest responsibility on board, shipowner and shipping agent of the performance of marine accident investigation. The notice content includes the following main information:

a) Investigated marine accident;

b) Starting time and place of the investigation;

c) Name and contact address of the marine accident investigation team;

- d) Rights and obligations of the parties to the marine accident investigation.
3. Use necessary equipment to serve the marine accident investigation.
4. Request all parties related to the marine accident to take measures to maintain the scene and protect relevant evidences at the request of the marine accident investigation.
5. Request those who are related to the marine accident to report in writing about the conditions, circumstances and developments of the marine accident and the subject involved in the marine accident. If it's necessary to interrogate these people, they must be notified in advance of the time and place of the interrogation.
6. Request the master and relevant responsible person to provide a copy of the ship's logs, nautical chart of the accident area and other necessary minutes and documents about the ship and equipment and facilities on board.
7. Request ship technique classification and supervision organization, shipowner, shipping agent, maritime information organization, maritime search and rescue coordination center, center for management of ship traffic surveillance, maritime safety assurance, maritime pilot and other relevant agencies, organizations and individuals providing necessary information for marine accident investigation.
8. Check and collect copies of ship's registration, insurance, other necessary documents and other types of seafarer's professional certificates for marine accident investigation.
9. Record audio, video, take photos, conduct survey, solicit expert assessment and perform other tasks if deeming it necessary for the marine accident investigation.
10. Sum up, verify, analyze, evaluate and propose conclusions about the cause of a marine accident. In necessary cases, propose the Director of the maritime port authority to decide to solicit comments from the ship classification and technical supervision organization or relevant professional agencies.
11. Make marine accident investigation report.
12. Store and preserve dossiers, documents and other exhibits related to marine accidents as regulated.
13. Translate Draft accident investigation report, accident investigation report for particularly serious marine accidents and marine accidents related to ships carrying foreign flag into English.
14. Organize re-investigation of marine accidents under the provisions of Article 20 of this Circular.

Article 16. Time limit for marine accident investigation

1. For marine accidents occurring within Vietnamese seaport waters, the investigation time limit must not exceed 60 days from the date the marine accidents occur; for marine accidents occurring outside the seaport waters, the investigation time limit must not exceed 60 days from the date of assignment of marine accident investigation.
2. In complicated cases, if the investigation of marine accidents fail t be completed within the time limit specified in Clause 1 of this Article, on the basis of the proposal of the Head of the Marine Accident Investigation Team, the Director of Authority Port Maritime must promptly report in writing to the Director of the Vietnam Maritime Administration for consideration and decision to extend the time limit for marine accident investigation.

Article 17: Order to conduct marine accident investigation

1. Establish a Marine Accident Investigation Team.
2. Plan marine accident investigation.
3. Make cost estimate for marine accident investigation.
4. Notify relevant parties of the conduct of an investigation.
5. Interview crew members and witnesses; synthesize the collected information. If deemed necessary, additional inspections and interviews can be conducted to clarify the questionable issues.
6. Based on the provisions of the maritime law, analyze the collected information, including the verification conclusion of specimens and traces related to marine accidents,
7. Prepare the Draft Report on marine accident investigation and send to relevant parties for direction in accordance with Article 18 of this Circular.
8. Announce marine accident investigation report.

Article 18. Draft marine accident investigation report

1. After preparing the Draft Report on marine accident investigation, the Investigation Team must send the draft to the ship owner, the ship's manager, the concerned ship operator, the Vietnam Inland Waterways Administration (if the accident is related to inland waterway vehicles) and Vietnam Maritime Administration to recommend to the Draft Report. After receiving the Draft Report on Marine Accident Investigation from the Investigation Team, the Vietnam Maritime Administration sends a draft report to the maritime port authority of the flag State for recommendation (for marine accidents in relation to foreign ships).
2. The maritime port authority of the flag State, the related shipowner, ship manager or ship operator must not disseminate, publish or permit access to the Draft Report or any part of the Draft Report without the consent of the Marine accident Investigation Team, the Director of the Maritime Port Authority or the Vietnam Maritime Administration.
3. At latest 30 days or within the time of agreement between the Investigation Team and relevant parties but no later than 30 days from the date of submission of the Draft Report, the Maritime Administration of the flag State, the related shipowner, ship manager and ship operators recommend to the Draft Report. If, exceeding the above time limit, the investigation team has not received any recommendation, the investigation team must proceed to submit the marine accident investigation report to the Director of the maritime port authority to sign and publish the marine accident investigation report.

Article 19: Marine accident investigation report

1. A marine accident investigation report includes the following main information:
 - a) Summary of basic elements of a marine accident, clearly stating the number of people that are dead, missing, injured or environmental pollution situation;
 - b) Information on nationality, shipowner, ship management and exploitation company as specified in the certificate of safety management and classification organization;
 - c) Main parameters of the ship, the ship's engine; information on working and rest time of crew members and works performed prior to the occurrence of the marine accident;
 - d) Detailed description of circumstance of the marine accident;
 - dd) Analysis, argument and proof of the factors leading to the cause of the marine

accident;

e) Proposal for application of measures to prevent from similar marine accidents.

2. Marine accident investigation team must send the marine accident investigation report to the maritime port authority of the flag State, concerned ship owner, ship manager, ship operator and the Vietnam Maritime Administration at the latest on the expiry date of the time limit for marine accident investigation. A copy of the Marine Accident Investigation Report may be issued to another individual or legal entity directly involved in the accident, upon written request.

3. The marine accident investigation team must send a set of photocopies of the dossier (if requested) and two copies of accident investigation report related to the investigation of particularly serious accident to the Vietnam Maritime Administration.

4. For serious and particularly serious marine accidents, the Vietnam Maritime Administration must send to the Ministry of Transport and the International Maritime Organization immediately after there is a conclusion of the marine accident investigation.

5. The report on marine accident investigation is publicized by the Vietnam Maritime Administration on the website of the Vietnam Maritime Administration.

Article 20. Marine accident re-investigation

In case there are provided or collected new evidences that fundamentally change the cause of the marine accident, the Director of the maritime port authority must decide to re-investigate the accident.

Article 21. Complaints and denunciations and settlement of complaints and denunciations

Complaints and denunciations (if any) related to the marine accident investigation will be resolved in accordance with the law on settlement of complaints and denunciations.

Article 22. Fund for marine accident investigation

Fund for marine accident investigation must comply with the provisions of law.

Article 23. Effect

This Circular takes effect from March 15, 2020. Annul Circular No. 34/2015/TT-BGTVT dated July 24, 2015 of the Minister of Transport on cargo accident report and investigation and Circular No. 39/2017/TT-BGTVT dated November 7, 2017 on amending and supplementing a number of articles of Circular No. 34/2015/TT-BGTVT dated July 24, 2015 of the Minister of Transport on marine accident report and investigation.

Article 24. Organization of implementation

1. The Vietnam Maritime Administration must organize the implementation of this Circular.

2. The Chief of Office of the Ministry, the Chief Inspector of the Ministry, Directors, Director of Vietnam Maritime Administration, Directors of Vietnam Inland Waterways Administration, Heads of concerned agencies, organizations and individuals are responsible for implementation of this Circular./.

Recipients:

- As per Article 24;
- Minister (to report)
- Government Office (to report);
- Ministries, ministerial agencies, Governmental agencies;
- People's Committees of provinces and cities directly under the central authority;
- Deputy Ministers of the Ministry of Transport;
- Department of Examination of Legal Normative Documents (Ministry of Justice);
- Official Gazette; E-Portal of the Government;
- E-Portal of the Ministry of Transport;
- Transport Newspapers;
- Archives: Filing, Traffic Safety (Hieu-20).

**FOR MINISTER
DEPUTY MINISTER**

Nguyen Van Cong

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Appendix
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