

BY-LAW ON THE INVESTIGATION OF MARINE CASUALTIES AND INCIDENTS

CHAPTER ONE

Purpose, Scope, Legal Base, Definitions and Abbreviations

Purpose

ARTICLE 1 – (1) The purpose of this regulation hereby is to determine the principles and procedures for the research and investigation of the marine casualties and incidents and the notifications in respect thereof and to designate the duties and powers.

Scope

ARTICLE 2 – (1) This Regulation contains the research and investigation of;

a) the marine casualties and incidents in which Turkish or foreign-flagged ships involved or that occurred within Turkish maritime jurisdiction and inland waters;

b) regardless of the geographical location where it occurred, the marine casualties and incidents in which Turkish flagged ships involved or that occurred onboard these ships,

c) the marine casualties and incidents in all maritime locations, except for those specified in the subparagraph (a), in which Turkey is a substantially interested State.

(2) The provisions of this Regulation shall not apply for;

a) the accidents that occur in the shipyards, craft manufacturing premises, boat yards and ship dismantling facilities in Turkey exclusively during the repair and maintenance of the ship,

b) the ships that are not mechanically driven, wooden ships of primitive build , private yachts, ships that do not transport passengers more than 12 people for commercial purposes, small fishing vessels less than 24 meters long that do not navigate internationally, sea vehicles that do not have the ship qualification, seized ships or that are not allowed to navigate, ships that are underway to dismantling facilities, military ships and state ships that were allocated to public services and not be used for commercial purposes.

(3) In case the military ships and state ships that are allocated to public services and not be used for commercial purposes involve in a marine casualty with the ships within the scope of the Regulation, the provisions of the Regulation may cover the military ships and state ships that are allocated to public services with the approval of the Ministry, these ships are affiliated to.

(4) Except for the military ships and ships that are allocated to public services, in case the watercrafts that are listed in the subparagraph (b) and remain out of the scope involved in a marine accident with the ships within the scope of the Regulation, the watercrafts that remain out of the scope are included in the scope of the Regulation.

Legal Base

ARTICLE 3 – (1) This Regulation has been drawn up depending on the articles 489/A and 508 of the Presidential Decree on the Presidential Organisation numbered 1 which was published on the Official Gazette numbered 30474 and dated 10/7/2018 and the International Convention on Load Lines dated 1966 (LL 66) to which Turkey is a party with the Council of Ministers' Decision, dated 18/5/1968 and numbered 6/10027, the International Convention for the Safety of Life at Sea (SOLAS-74), to which Turkey is a party with the Council of Ministers' Decision, dated 6/3/1980 and numbered 8/522, the International Convention for the Prevention of Pollution from Ships (MARPOL-73), to which Turkey is a party with the Council of Ministers' Decision, dated 3/5/1990 and numbered 90/442, the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), to which Turkey is a party with the Council of Ministers' Decision, dated 26/8/2003 and numbered 2003/6109 and IMO Casualty Investigation Code, numbered MSC.255(84).

Definitions and Abbreviations

ARTICLE 4 – (1) The terms used herein shall refer to the following meanings:

- a) MSRCC: Main Search and Rescue Coordination Center,
- b) Agency: an individual or an organization who acts for or on behalf of the ship owner, operator, charterer or master or cargo owner and protect their rights against third parties and organizations with the concluded contracts,
- c) AIS: Automatic Identification System,
- d) Minister: Minister of Transport and Infrastructure,
- e) Ministry: Ministry of Transport and Infrastructure,
- f) Fishing ship: Ships used to catch fish or other living sea resources in the sea,
- g) Chairman: Chairman of Transport Safety Investigation Center,
- h) Department: Department of Transport Safety Investigation Center,
- i) Flag State: State ship whose flag a ship is entitled to fly,
- j) Expert Witness: an individual who is appointed to be referred consulted to his knowledge and experience at a special field or in a technical matter that requires expertise in entire accident research and investigation or a certain part of it.
 - 1) Serious environmental pollution: level II pollutions, specified in the Governing Regulation of the Law Pertaining to Principles of Emergency Response and Compensation for Damages in Pollution of Marine Environment by Oil and Other Harmful Substances, which was published on the Official Gazette, 21/10/2006 dated and numbered 26326, and caused by a ship after a marine accident,
 - k) Serious marine accident: a marine accident that does not qualify as very serious marine accident and results in serious injury or substantial material damage to the extent of ship making a ship unseaworthy,
 - l) Serious injury: an injury which is sustained by a person, resulting in incapacitation where the person is unable to function normally for more than 72 hours, commencing within seven days from the date when the injury was suffered.
 - m) Very serious environmental pollution: level III pollutions, specified in the Governing Regulation of the Law Pertaining to Principles of Emergency Response and Compensation for Damages in Pollution of Marine Environment by Oil and Other Harmful Substances, which was published on the Official Gazette, 21/10/2006 dated and numbered 26326, and caused by a ship after a marine accident,
 - n) Very serious marine accident: a marine accident that involves one of the following incidents; a death, the total loss of the ship and severe damage to the environment.
 - o) Assessment Board: the board that concludes the reports related to the casualties or incidents that were investigated to increase transportation safety.
 - p) Marine casualty: an event, or a sequence of events, that has resulted in any of the following which has occurred directly in connection with the operations of a ship:
 - 1) death of, or serious injury to, a person,
 - 2) loss of a person from a ship,
 - 3) the sinking, loss, presumed loss of a ship or abandonment of a ship in connection with an accident,
 - 4) material damage to a ship,
 - 5) disabling of a ship,
 - 6) stranding of a ship,
 - 7) the collision of a ship with a coastal or offshore structure or with another ship or allision,
 - 8) severe damage to the environment, caused by the damage of a ship or ships,
 - 9) the allision of a ship to aquaculture premises that is established in Turkish territorial waters or inland waters,
 - q) Marine accident/incident notification form: the form included in the Annex herein and used for the notification of any marine accident/incident,
 - r) Marine incident: an event, or sequence of events, other than a marine accident, which has occurred directly in connection with the operations of a ship that endangered, or, if not

corrected, would endanger the safety of the ship, its occupants or any other person or the environment.

r) Ship: all kinds of cargo, passenger and fishing vessels, used for commercial purposes in cabotage and/or non-cabotage waters and ships of private purposes and structures,

r) Seafarer: a person who is employed or engaged or works as the master, officers, assistant officers, cadets, ratings and assisting service staff onboard a ship.

s) IMO: International Maritime Organization,

) Inland Waters: waters that remain behind the baseline where its territorial waters are bordered and natural and artificial lakes, dam lakes, fishponds and rivers,

t) Interested Party: an organization or individual who has significant interests, rights or legitimate expectations with respect to the outcome of a marine safety investigation.

u) Ship allocated to public services: a non-commercial ship of which main purpose is to provide public services, such as safety, security, control, health, education and research.

ü) Coastal State: A State in whose territory, including its territorial sea, a marine accident or marine incident occurs

v) Material Damage: damage, in relation to a marine accident, significantly affects the structural integrity, performance or operational characteristics of a ship or coastal structure and requires major repair or replacement of major components or parts or destruction of the coastal structure or ship,

y) Substantially interested State: in connection with the operations of a ship;

1) the flag State of a ship, involved in a marine accident or incident,

2) the coastal State associated with a marine accident or incident;

3) the State whose environment was severely or significantly damaged by a marine accident, including the environment of its maritime jurisdiction, inland waters and coasts,

4) the State whose coasts, coastal structures, artificial islands, platforms and facilities, which it has ownership, were damaged or in danger of being damaged due to a marine accident or incident,

5) the State whose nationals lost their lives or suffered serious injuries related to a marine accident or incident,

6) the State who has important information at its disposal that the marine safety investigating State(s) consider useful to the investigation,

7) the State who stays out of those contained in this sub-paragraph and claimed to be related to the accident for any other reason and this claim is accepted by the Center.

z) Preliminary Report: the report, written according to the factual information in relation to the accident and excludes the analysis part,

aa) SMS: the short message service sent to mobile phones,

bb) Recognised organization: the organization, authorized to operate on behalf of the flag state or IMO for classification, certification, conformity assessment and training, by the flag state or IMO

cc) Expert: the staff who performs transport safety investigation activities; being either the Center staff, or the staff appointed by the Ministry from its affiliated, related and associated organizations,

dd) VDR: Voyage Data Recorder,

ee) Cruise liner: the ships, operated for commercial purposes and transport more than 12 passengers.

CHAPTER TWO

Notification of the Casualty, Duties and Jurisdiction

Duty, authority and responsibility at the investigation of marine casualties and incidents

ARTICLE 5 – (1) The research and investigation of the marine casualties and incidents included herein shall be under the duty, authority and responsibility of the Center.

Qualifications, duties and authority of the experts deployed to investigate marine casualties

ARTICLE 6 – (1) It is essential that the experts, appointed in the Center services to serve in marine casualties and incidents, to be selected among the people who were graduated from higher education institutions and exercising at the undergraduate level related to maritime, and hold at least Unlimited Chief Officer or Unlimited Second Engineer and among Maritime Transportation and Management Engineers, Naval Architects and/or Marine Engineers, having at least three years of experience in the public or private sector.

(2) The experts, appointed by the Ministry to research and investigate marine casualties and incidents, perform the following tasks, including at border gates and customs bonded areas, as well as their duties and authorities, which are specified in the Regulation of the Department of Transport Safety Investigation Center;

- a) may get onboard the ship, involved in a marine accident and investigate onboard.
- b) may interview with the master, crew and with other concerned onboard ship.
- c) Within the scope of marine accident investigation activities, may investigate at the related port, company, pilotage station, ship traffic services station, harbour masters, maritime related units of the central organization of the Ministry, search and rescue centres and other institutions and organizations related to search and rescue activities and environmental emergency response centres and other institutions and organizations related to environmental pollution, may take copies of the information and documents related to the accident and incident.
- d) may acquire the records of VDR, AIS and Vessel Traffic Services and get them analysed.
- e) may ask for support in scientific and technical issues related to the research and investigation of marine casualties and incidents from the organizations, authorized by the Ministry and the universities, and may request testing, inspection, simulation or calculation to be done.

(3) The navigation/navigations of the ship/ships, subject to the accident investigation, may not be allowed to navigate temporarily in order to interview with the seafarers under accident investigation or to acquire information, documents and electronic records.

(4) The experts, under the investigation activities of the marine casualties, may directly carry out correspondences or meetings with other states and international institutions, exchange information and consultation.

(5) In accordance with scientific and technical approach changes, innovations and technological developments that took place in accident investigations; basic and refreshing training is provided to the experts abroad, appointed to research and investigate marine casualties and incidents, with the approval of the Ministry, when necessary.

Obligation to notify a marine casualty

ARTICLE 7 – (1) When a marine casualty occurs, the following individuals, institutions or organizations are obliged to notify the casualty as soon as is reasonably practicable:

- a) On the point of being jointly and severally responsible; the master of the ship, if the master is not able to notify, the chief officer substituting him, the ship owner, operator or its agency,
- b) Relevant harbour master for marine casualties that occurred within its responsibility zone.

(2) The notification with regard to the marine accident is sent to MSRCC by using the optimum means. MSRCC informs the Center of such notification by electronic mail or SMS.

(3) Those who are obliged to notify pursuant to the first subparagraph inform the Center by means of filling out the marine accident/incident notification form in Annex-1 over the website of the Center or by mail, e-mail or fax, following notification to MSRCC.

CHAPTER THREE

Investigation of Marine Casualties

Purpose of the accident investigation

ARTICLE 8 – (1) The purpose of the marine accident investigation under this Regulation is to make recommendations that would contribute the development of legislation and practices and the prevention of similar future casualties and incidents by means of reaching root causes/causal-contributing factors that lead to the occurrence of marine accidents.

(2) the marine accident investigation, conducted under this Regulation, neither has the nature of judicial or administrative investigation nor its purpose is to identify the crime and criminal or to apportion blame or liability.

Decision to investigate a marine casualty

ARTICLE 9 – (1) In case of very serious marine casualties, which occurred onboard Turkish flagged ships that internationally navigate within the Turkish territorial waters or in the international waters, the accident is investigated with the approval of the Chairman after receiving the notification.

(2) In the very serious marine casualties, which occurred onboard Turkish flagged ships that do not navigate internationally, a preliminary investigation is initiated after receiving the notification, as per the assessment to be carried out, the accident may be investigated with the approval of the Chairman.

(3) After receiving the notification;

a) Regardless of the location where it occurred, in the very serious marine casualties, which occurred onboard Turkish flagged ships or in cases which Turkish flagged ships are involved,

b) Regardless of its flag, in the very serious marine casualties, which occurred within the Turkish territorial waters,

a preliminary investigation is initiated with the approval of the Chairman. As a result of the initiated investigation, the accident may be investigated with the approval of the Chairman as per the assessment to be carried out following Article 11 of this regulation.

(4) After receiving the accident notification;

a) Regardless of the location where it occurred, in the serious marine casualties or incidents, in which Turkish flagged ships involved, b) Regardless of its flag, in the serious marine casualties or incidents, which occurred within the Turkish territorial waters,

a preliminary investigation may be initiated with the approval of the Chairman. As a result of the initiated investigation, the accident may be investigated with the approval of the Chairman as per the assessment to be carried out following Article 11 of this regulation.

Investigation of the marine casualty

ARTICLE 10 – (1) For the marine accident, decided to be investigated with the approval of the Chairman;

a) The Chairman deploys the experts. In case more than one expert has been deployed, one of them is assigned as the group leader.

b) In case special expertise is needed for the casualty investigation or in other cases where the Chairman deems it necessary, people, other than the experts, may be assigned.

(2) Experts who are appointed for the casualty investigation, conduct their casualty

research and investigation activities within the duties and authorities specified under the Article 6 of this Regulation and the Article 12 of the Regulation of Ministry of Transport and Infrastructure, Transport Safety Investigation Center.

Cooperation with other States

ARTICLE 11 – (1) All casualty research and investigation activities to be conducted in cooperation with other substantially interested States are carried out according to the provisions of international conventions to which Turkey is a party and IMO Casualty Investigation Code. Within this framework;

(a) In marine casualties, where Turkey possesses the capacity of substantially interested State as the Flag State, the authority to investigate the accident is the responsibility of the Center on behalf of the Flag State. However, as a result of the negotiation with other substantially interested State, the accident may be decided to be investigated jointly with other substantially interested State or only by other substantially interested State.

(b) In marine casualties, where Turkey possesses the capacity of substantially interested State as the Coastal State, the authority to investigate the accident is primarily the responsibility of the flag State. However, in case the flag State fails to initiate the investigation of the accident or any significant difference of opinion on the accident investigation report appears with the flag State, the accident may be decided to be investigated with the approval of the Chairman as per the assessment to be done.

(c) In other marine casualties, where Turkey possesses the capacity of substantially interested State, in case the flag State or coastal State fails to initiate the casualty investigation or any significant difference of opinion appears on the marine casualty investigation report with other substantially interested States(s), the marine casualty may be investigated with the approval of the Chairman as per the assessment to be done.

Confidentiality of evidence and records

ARTICLE 12 – (1) All information and documents, written and electronic records and draft reports obtained within the scope of accident investigation shall not be disclosed, shared with any person or authority, except for the judicial authorities and casualty investigation purposes.

CHAPTER FOUR Marine Safety Investigation Report

Draft marine safety investigation report

ARTICLE 13 – (1) The following sections are included in the draft marine safety investigation report that has been prepared by experts, appointed to investigate such accident, as a result of the marine accident investigation:

a) Summary: This is the section where the basic facts about the marine accident are pointed out. It clarifies the type, time, location of the accident and how it occurred, also whether there are any deaths or injuries, any damage to the ship, cargo, third parties and environment are explained.

b) Factual information: This is the section in which details related to the accident, information on the ship and its navigation, information on responses and search and rescue operations after the accident are contained.

c) Narrative/Sequence of events: This is the section where the events before, during and after the accident are explained chronologically elements related to the accident, such as human factor, material, equipment and environment are contained.

d) Analysis: This is the section where the findings related to the accident are analysed and commented. Factors that have an impact upon the accident, including accident-related events and environmental conditions, human errors and negligence, material defects, hazardous substances, ship operations, ship ergonomics, company management and matters related to maritime administration are contained in this section.

e) Conclusions: This is the section where the judgements, concluded on the deficiencies or incapacities in the factors that have an impact upon the occurrence of the accident and the factors that may prevent it from occurring or ensure the adverse effects of the accident to be minimized, are explained.

f) Recommendations: This is the section where the recommendations related to the fields, such as navigational safety, ship and cargo operations, design, inspection, legislation, management, occupational safety, training, coastal assistance and emergency response created by benefitting from the analysis and results, are included. Recommendations are delivered for institutions and organizations that have regulatory and enforcement status, such as maritime administration, ship owners, operators, port managements, recognised/authorized organizations, vessel traffic services, pilotage agencies, professional and international maritime organizations to prevent marine casualties. This section may also include temporary safety recommendations or measures during an accident investigation.

g) Annexes: This is the section where photographs, electronic navigational records and communication solutions, maps, certificates, related legislation and other information and documents are included in the reports if deemed necessary.

(2) In marine casualties where a preliminary investigation has been initiated, if the accident investigation will not be continued, a preliminary report is prepared according to the first findings on the accident and submitted to the Center.

Procedures to be exercised on the draft marine safety investigation report

ARTICLE 14 – (1) The draft marine safety investigation report shall be sent to the other substantially interested States by the optimum means for consultation.

(2) The entire draft report of the marine accident investigation or a certain part of it shall only be sent provided that other substantially interested States guarantee that such report, either entirely or partially, shall not be shared with the public.

(3) Other substantially interested States shall be granted 30 days or they may be mutually agreed on another time to deliver their opinions and recommendations on the draft report.

(4) The opinions of the other substantially interested States, which has been delivered within its time may be regarded in finalizing the marine accident investigation report.

Accident investigation report

ARTICLE 15 – (1) The draft marine safety investigation report shall be concluded by the Assessment Board pursuant to article 22 of the Regulation of the Ministry of Transport and Infrastructure, Transport Safety Investigation Center.

(2) The marine safety investigation report, which was concluded under article 22 of the Regulation of the Ministry of Transport and Infrastructure, Transport Safety Investigation Center, shall be

a) submitted to the Minister and Presidential Security and Foreign Policy Board.

b) shared with the public and the interested parties by being published on the Ministry's website.

c) sent to the other substantially interested States and international institutions and organizations by the optimum means with its necessary translations.

(3) The developments in implementing the recommendations in the marine accident investigation reports that were published and shared with interested parties shall be notified to the Department by the interested parties within a reasonable time.

(4) The recommendations in the marine accident investigation report shall be followed by the investigation group who prepared the report. Information and updates on the implementation status of each recommendation shall be recorded.

Re-investigation of a marine casualty

ARTICLE 16 – (1) In case new pieces of evidence that can change the assessment, results and recommendations in the report arises after the report was concluded, the Center

may decide the accident to be re-investigated.

(2) The new pieces of evidence mentioned in the first subparagraph may also be shared with other substantially interested States.

CHAPTER FIVE

Investigation Activities and Marine Incidents

Investigation activities regarding marine casualties

ARTICLE 17 – (1) The Chairman may request a research to be done about the marine casualties from experts and expert witnesses or other interested persons, institutions, organizations and universities, where he deems necessary.

(2) The research is done to gather information on the following issues;

a) Factors that cause marine casualties.

b) Factors that may minimize the adverse effects that emerge as a result of marine casualties and on human, environment and ship and onboard and offboard equipment and structures.

c) Deficiencies related to the notification of marine casualties.

(3) The research activity contains the following issues;

a) revealing the human, environment and material factors related to marine casualties and the impact of technical factors on accidents,

b) particular maritime activities, such as fishing, cargo transport, passenger transport, tourism, pilotage and towage, marine research and seabed activities,

c) a particular type of accident, such as fire, stranding, collision and structural damage,

d) activities, such as vessel traffic services, search and rescue services and environmental emergency response services,

e) activities, such as training and certification of seafarers, inspection and certification of ships,

f) construction, repair and maintenance of ships,

g) a particular type of ship, such as dry cargo, tanker, container, ro-ro, passenger ship, fishing vessel, yacht, sailing ship,

h) particular onboard equipment or rigging,

i) port activities, such as loading, unloading, stowage,

j) ship operations, such as berthing, departure, mooring,

k) the navigations of the ships in open seas, coasts, Turkish Straits, narrow waterways and inland waters,

l) other matters deemed as appropriate by the Chairman.

(4) The experts, appointed for such research activities that are mentioned in the third subparagraph;

a) may board the ships that they deem necessary, examine the equipment and observe regarding the practices,

b) may investigate the port facilities, relevant institutions and organizations that they deem necessary. They may get copies of the necessary information and documents related to the accident.

Application of the regulation to marine incidents

ARTICLE 18 – (1) The provisions of this Regulation with regard to the notification of marine casualties and research and investigation of marine casualties and issuance of their reports also apply for the notification of marine incidents and research and investigation of marine incidents and issuance of their reports.

CHAPTER SIX

Miscellaneous and Final Provisions

Legal Clauses

ARTICLE 19 – (1) Where there are no provisions herein with regard to the investigation of the marine casualties and incidents, the provisions of the Regulation of Ministry of Transport and Infrastructure, Transport Safety Investigation Center and related legislation provisions shall apply.

Revoked legislation

ARTICLE 20 – (1) The Regulation on Research and Investigation of Marine Casualties and Incidents dated 10/07/2014 and numbered 29056, published on the Official Gazette, was revoked.

Enforcement

ARTICLE 21 – (1) This Regulation shall enter into force on the date of publication.

Execution

ARTICLE 22 – (1) The provisions of this Regulation shall be executed by the Minister of Transport and Infrastructure.

Click here for **the Annex**.