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MARINE CIRCULAR

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FOR: Ship Owners, Ship Managers, Ship Operators, Classification Societies, Ship Masters and the Shipping Community

INTERNATIONAL SAFETY MANAGEMENT (ISM CODE)

PURPOSE: This Notice serves to provide guidelines to owners, operators, and masters of Tuvalu ships concerning the requirements for compliance with the ISM Code. They also contain Tuvalu's policies and interpretations regarding application and implementation of the ISM Code.

These requirements are not intended to be exhaustive or to limit a Company from incorporating or requiring items in its Safety Management System (SMS) beyond those mentioned in these guidelines.

APPLICABILITY: The ISM Code is applicable to passenger ships (including high speed craft), cargo vessels of 500 gross tonnage and over (including cargo high speed craft), and self-propelled MODUs of 500 gross tonnage and over on international voyages.

REFERENCES:

- I. ISM Code [IMO Resolution A.741(18)]
- II. ISM Code 2000 Amendments [IMO Resolution MSC.104(73)]
- III. SOLAS 74 Chapter IX, Management for the Safe Operation of Ships
- IV. Revised IMO Guidelines on the Implementation of the ISM Code by Administrations [IMO Resolution A.913 (22)]
- V. Agreement and Guidelines Governing the Delegation of ISM Code Verification and Certification, July 1, 1996
- VI. IMO Assembly Resolution A.443 (XI)
- VII. IMO MSC/Circ.443

GUIDELINES:

1.0 Mandatory Compliance

The requirements of the ISM Code are mandatory under SOLAS Chapter IX.

1.1 Exceptions

1.1.1 SOLAS Chapter IX does not apply to:

- (a) government-operated ships used for non-commercial purposes;
- (b) cargo ships of less than 500 gross tonnage as measured by the Administration or the ITC 69, whichever is the lesser;
- (c) ships not propelled by mechanical means;
- (d) wooden craft of primitive origins;
- (e) private pleasure yachts not engaged in trade; and
- (f) fishing vessels.

1.1.2 FPSO will be exempt from ISM code compliance if:

- (a) it has had its propulsion systems removed or disabled, or
- (b) if the propulsion system is functional, the FPSO is on a fixed station for an extended period of time, and the propulsion equipment will only be used in case of emergency or to reposition or service the vessel under a single voyage exemption with no cargo on board.

1.1.3 Dynamically Positioned (DP) Units

- (a) A unit that is constructed and classed as a Self-Propelled MODU will be considered as a Non-Self-Propelled MODU for purpose of the ISM Code if the propulsion machinery is only utilized to maintain unit position, for short field moves, or to provide assistance while being towed to or from a site.
- (b) A short field move is the on location repositioning of a unit, up to 20 miles in distance or 8 hours in duration, under the cognizance of an STCW Convention licensed Master or Mate.
- (c) In order to receive this Non-Self-Propelled status, the unit operator must make written application to Tuvalu and confirm that the propulsion machinery will only be used in the modes noted above.

1.2 Compliance Monitoring

Compliance with the Code will be closely monitored and enforced by Tuvalu. Ships operated by Companies that fail to comply with the ISM Code will be considered in violation of SOLAS and may be prevented from trading.

1.3 Compliance Process

Companies should start the ISM Code compliance process at the earliest possible date prior to entering into active trading.

2.0 ISM Code Enforcement Authority

2.1 Responsibility

Tuvalu is responsible for effective enforcement of the provisions of the ISM Code. IMO Resolution A.739(18), "Guidelines for the Authorization of Recognized Organizations (RO) acting on behalf of the Administrations", allows Tuvalu to delegate to ROs the responsibility for verifying compliance with the ISM Code and for issuing Documents of Compliance (DOC) and Safety Management Certificates (SMC) on its behalf.

2.2 Delegation

Tuvalu has delegated the authority to verify compliance with the ISM Code and issue ISM Code documents on its behalf to certain Classification Societies. A list of the authorized ROs for the purposes of ISM Code verifications is included as Annex 1 to this Notice.

2.3 Administration Rights

Tuvalu retains the right to conduct audits, assessments and inspection activities independent of or in concert with those of an RO in order to verify proper implementation, application, and enforcement of the provisions of the ISM Code.

2.4 Separation of Functions

2.4.1 In those instances where an RO provides both consulting and auditing services for ISM Code Certifications, the RO shall ensure the independence of these two (2) functions. Auditors must be free from bias and influences, which could affect objectivity. There must be a demonstrable and proven separation between personnel providing consultancy and those providing the services to the same company.

2.4.2 An RO may provide ISM Code verification services to vessels for which the RO also provides ship statutory certification services, provided, the ship safety management audits and assessments are conducted separately, and in addition to, existing ship statutory certification and classification survey functions. The verification of compliance with mandatory rules and regulations, which is part of the ISM Code certification, neither duplicates nor substitutes for surveys for other certificates. The verification of compliance with the ISM Code does not relieve the Company, the Master or any other entity or person involved in the management or operation of the ship of their responsibilities.

3.0 National Requirements for an SMS by ISM Code Element

3.1 General

3.1.1 Every Company must develop, implement, and maintain an SMS in accordance with the requirements of the ISM Code. Failure to do so will be considered a violation of SOLAS Chapter IX, and the Company's ships shall be prevented from trading.

3.1.2 The following publications provide some guidelines:

- (a) "Guidelines on the Application of the ISM Code" produced by the International Chamber of Shipping.
- (b) "Procedural Requirements for ISM Code Certification" produced by the International Association of Classification Societies.
- (c) "Procedures for the Control of Operational Requirements related to the Safety of Vessels and Pollution Prevention" [IMO Resolution A.742(18)].
- (d) "Guidelines on the Implementation of the ISM Code by Administrations" [IMO Resolution A.913(22)], and the Annex to those Guidelines entitled, "Revised Standards on ISM Code Certification Arrangements."

3.1.3 The publications listed above describe items to be addressed by a Company's SMS and provide guidelines for managing and preparing for ISM Code audits. IMO publications can be obtained from IMO, Publications Section, 4 Albert Embankment, London SE1 7SR, United Kingdom.

3.1.4 Tuvalu's policies regarding safe management and operation of ships and protection of the environment should be incorporated into the Company and shipboard SMS.

3.2 Safety and Environmental Protection Policy

The safety and environmental protection policies required by the ISM Code must be signed by the Company's Chief Executive or other senior executive officer, and should be reviewed at regular intervals to ensure that they remain likely to achieve the objectives of the ISM Code.

3.3 Company Responsibilities and Authority

3.3.1 The term "Company" means the owner of the ship or any other organization or person such as the Manager, or the Bareboat Charterer, who has assumed the responsibility for operation of the ship from the Shipowner and who on assuming such responsibility has agreed in writing to take over all the duties and responsibilities imposed by the Code. The owner of each vessel must provide the Office of the Maritime Administrator, Marine Safety, with the name, address, telephone and facsimile numbers and e-mail address of the Company responsible for the operation of the vessel.

3.3.2 If the organization or person responsible for the operation of a ship is other than the owner, the owner must provide Tuvalu with the full name of such entity and submit details which establish that entity as the Company to the satisfaction of Tuvalu.

3.4 Designated Person(s)

In accordance with the ISM Code the Company must designate a person or persons who will be responsible for monitoring and verifying proper operation of the SMS within the Company and on each ship. The designated person(s) should have the independence and authority to report deficiencies observed to the highest level of management (i.e., the final decision maker regarding shoreside management and support and vessel operation and safety). The Company must provide Tuvalu with the full name of the designated person(s) and information to enable direct and immediate contact at all times between Tuvalu and the designated person(s) with regard to matters relating to maritime safety and protection of the marine environment. This information can be submitted to Tuvalu through the use of Application Form R2.

3.5 Master's Responsibility and Authority

- 3.5.1 The Tuvalu Merchant Shipping Act expressly prescribes to the specific Rights and Duties of the Master. Tuvalu also acknowledges the importance of IMO Resolution A.443(XI), "Decisions of the Shipmaster with regard to Maritime Safety and Marine Environment Protection." The SMS should incorporate the elements of A.443(XI).
- 3.5.2 Any system of operational control implemented by Company shore based management must allow for the Master's absolute authority and discretion to take whatever action he or she considers to be in the best interest of passengers, crew, cargo, the vessel and the marine environment.
- 3.5.3 The Company should provide the Master with documentation of the specific duties delegated to the officers under the Master's command.

3.6 Resources and Personnel

- 3.6.1 Company training, hiring, manning procedures, terms of employment, personnel record keeping and reporting procedures must be consistent with the requirements of STCW and Tuvalu Merchant Shipping Regulations to ensure the use of competent qualified personnel.
- 3.6.2 The Company SMS should ensure that joining crew members have proper Tuvalu seafarers' certification including licenses, special qualification certificates, seafarer's identification and record books and training as required by international conventions, the Tuvalu Merchant Shipping Act, the Tuvalu Merchant Shipping Regulations.
- 3.6.3 The shipboard SMS should include procedures for the transfer of command, documented hand-over notes, documented vessel and duties introductions, familiarization training in accordance with Section A-I/6 of the STCW Code for on-coming officers and crew, and on board documentation retention.

3.7 Development of Plans for Shipboard Operations

- 3.7.1 "Master's Port Arrival/Departure Safety Check List" should be included in the shipboard SMS incorporating pre-established Company policy guidelines for "Go, No Go" situations and reporting requirements for the Master's compliance.
- 3.7.2 The ship's operations documentation should include a statement that its contents do not remove the Master's authority to take such steps and issue any orders, whether or not they are in accordance with the contents of the documentation, which the Master considers to be necessary for the preservation of life, the safety and security of the vessel and the protection of the marine environment.
- 3.7.3 The ship's operations plans should incorporate for weekly emergency drills and training sessions.

3.8 Emergency Readiness

The Company SMS must provide that Statutory, Administration, or Company required emergency preparedness plans are developed, implemented, periodically reviewed and updated, and if necessary, re-approved by Tuvalu or a RO on its behalf.

3.9 Reports and Analysis of Nonconformities, Accidents and Hazardous Occurrences

3.9.1 The shipboard SMS procedures should include reporting near accidents, accidents and incidents and require the immediate notice and reporting of incidents to Tuvalu and establishes duties and responsibilities for the Company, ship officers and crew.

3.9.2 The Company SMS should include Rules for Marine Investigations and Hearing.

3.9.3 The Company SMS should incorporate accident prevention and appointment of a safety officer or committee.

3.9.4 The Company and shipboard SMS should contain procedures for immediately reporting port State detentions, oil spills and any incident, which may have the potential for an oil spill.

3.10 Maintenance of the Ship and Equipment

3.10.1 The maintenance system established by the Company and documented in its SMS should include systematic plans and actions designed to address all those items and systems covered by class and statutory survey and to ensure that the vessel's condition is satisfactorily maintained at all times.

3.10.2 The Company SMS should also provide for the recording of actions or measures taken to rectify deficiencies and nonconformities noted during surveys and annual safety inspections and the giving of notification to Tuvalu and the designated RO of the corrective actions taken.

3.11 Documentation

Documents should be easily identified, traceable, user friendly and not so voluminous as to hinder the effectiveness of the SMS. They should be readily available for review by the RO, Tuvalu and Port State Control authorities.

3.12 Company Verification, Review and Evaluation

The Company must conduct internal audits shoreside and on each ship at least annually to determine whether the various elements of the Company SMS have been fully implemented and are effective in achieving the stated objectives of the Code. The internal audits are in addition to the annual, intermediate, and renewal audits carried out by the RO.

4.0 Selection of a Recognized Organization

4.1 Delegation

The Government of Tuvalu has delegated to certain Classification Societies the authority to act as Recognized Organizations (ROs) for verifying compliance with the ISM Code and issuance of Code documents on its behalf. A list of the designated ROs for the purposes of ISM Code verifications may be found in Annex 1 at the end of this Circular.

4.2 Company Choice

4.2.1 Companies may choose any of the authorized ROs to conduct safety management audits of the Company and its ships. Choice of an RO is not restricted by the nationality of the ship's owner/operator, location of a Company's offices or by the Classification Society that classed the ships or issued the statutory certificates. Once chosen, however, the Company must abide by the terms of service set by the RO, provided, however, that they are not less than the minimum standards set by the ISM Code. The Company is responsible for arranging the safety management audits with an RO.

4.2.2 Although Tuvalu's criterion upon which an RO agrees to provide ISM Code verification services to a Company does not require that the RO has classed or will be classing the vessels owned or operated by the Company, an RO shall not be prohibited from establishing its own requirements for services in relation to classification, provided there are no negative effects upon compliance with the ISM Code.

4.3 Multi-Class Fleets

For a Company operating a fleet with vessels individually classed by ONE (1) or more recognized Classification Societies, a single RO may, if requested by the Company, act as sole assessor in performing the verification audit and certification of the SMS for the Company and all of its vessels. The RO does not have to be the Classification Society for any of the vessels in the fleet. ROs may establish their own service requirements, provided they do not negatively affect compliance with the ISM Code.

4.4 Multi-Flag Fleets

In order to facilitate the auditing and certification process, Companies operating multi-flag fleets should propose a plan of action and request agreements by all involved flag states regarding the joint acceptance of an RO audit prior to the commencement of the audits. The plan should clearly identify the entities involved, outline how the audit will be conducted, how each flag State's National requirements will be addressed, and who will be issuing the ISM Code documents.

5.0 Verification of Compliance and Issuance of ISM Code Documents

5.1 Application for Certification

5.1.1 After developing and implementing the SMS, the Company must contact an RO to arrange for an initial verification audit and certification of the Company and its vessels. The Company's application for certification to the RO, and the relevant information, must include the size and total number of each ship type covered by the SMS and any other documentation considered necessary. Ships carrying dry cargo in

bulk but which do not meet the SOLAS Chapter IX definition for a “Bulk Carrier” are to be typed as “Other Cargo Ships.”

- 5.1.2 Companies operating multi-flag fleets desiring Tuvalu acceptance of ISM Code audits conducted on behalf of another flag State must propose a plan of action regarding joint acceptance of the ISM Code audits by the involved flag states. The proposed plan should clearly identify the entities involved, outline how the audits will be conducted, and how each flag State’s National requirements will be addressed. The proposed plan should be submitted to all involved flag States requesting their agreement to the plan for joint acceptance of the audits in order to facilitate the auditing and certification process.

5.2 Initial verification

- 5.2.1 The initial verification for issuing a DOC to a Company consists of the following steps:

- (a) Document Review – The RO is to verify that the SMS and any relevant documentation comply with the requirements of the ISM Code, by reviewing the safety management manual. If this review reveals that the system is not adequate, the RO may delay auditing until the Company undertakes corrective action. Amendments made to the system documentation to correct deficiencies identified during this review may be verified remotely or during the subsequent initial audit described in (b) below.
- (b) Company initial audit - in order to verify the effective functioning of the SMS, including objective evidence that the Company’s SMS has been in operation for at least THREE (3) months, and at least THREE (3) months on board at least ONE (1) ship of each type operated by the Company. The objective evidence is to *inter alia*, include records from the internal audits performed by the Company, ashore and on board, examining and verifying the correctness of the statutory and classification records for at least one ship of each type operated by the Company.

- 5.2.2 The initial verification for issuing an SMC to a ship consists of the following steps:

- (a) verification that the Company DOC is valid and relevant to that type of ship, and that the other provisions of paragraph 7.3.3 are complied with. Only after on board confirmation of the existence of a valid DOC can the verification proceed; and
- (b) verification of the effective functioning of the SMS, including objective evidence that the SMS has been in operation for at least THREE (3) months on board the ship. The objective evidence should also include records from the internal audits performed by the Company.

- 5.2.3 If the Company already has a valid DOC issued by another RO, that DOC shall be accepted as evidence of compliance with the ISM Code, unless there is objective evidence indicating otherwise.

5.3 Annual and Intermediate Verification Audits

- 5.3.1 The Company is responsible for scheduling with the RO the annual and intermediate verifications. Failure to schedule and/or conduct annual or intermediate verifications will be considered a violation of SOLAS Chapter IX, and the DOC and/or SMCs may be suspended or revoked.
- 5.3.2 The RO may conduct additional audits on the Company and/or vessels if objective evidence justifying such audits is found during the annual audit of the Company SMS, the intermediate audit of a vessel or when directed by Tuvalu.

5.4 Renewal Audits

Renewal verification audits are to be performed before the validity of the DOC and the SMC expires. Renewal audits may be carried out from SIX (6) months before the expiry date of the DOC or the SMC and should be completed before the DOC or the SMC expires. Failure to schedule and/or conduct the renewal verification audit will be considered a violation of SOLAS Chapter IX, and the Company's ships may be prevented from trading.

6.0 Pre-Authorization Certificates

6.1 Definition

Pre-authorization certificates are those DOC and SMC certificates issued by a RO before it has been authorized by Tuvalu to perform the Services.

6.2 Conversion

Pre-authorization certificates may be converted to Tuvalu Certificates after the RO verifies compliance with all Tuvalu special instructions or additional National requirements.

7.0 Issue and Validity of Document of Compliance (DOC) and Safety Management Certificate (SMC)

7.1 Document of Compliance (DOC)

- 7.1.1 A DOC shall be issued to a Company following an initial verification of compliance with the requirements of the ISM Code.
- 7.1.2 The Company shall make available copies of the DOC to each office location covered by the SMS and each ship.
- 7.1.3 The period of validity of a DOC shall be FIVE (5) years, subject to annual periodical verification carried out within THREE (3) months before or after the anniversary date.
- 7.1.4 A DOC is valid for the types of ships on which the initial verification was based. The list of types of ship shall be indicated in the DOC. The scope of a DOC may be amended to cover an additional type of ship after the verification of the Company's capability to comply with the requirements of the ISM Code for that ship type.

7.2 Interim DOC

- 7.2.1 For a change of flag State or Company, special transitional arrangements are to be made in accordance with these requirements.
- 7.2.2 An Interim DOC may be issued to facilitate initial implementation of the ISM Code in cases where compliance with the ISM Code is a new requirement or where changes to the Company's organization or its operations have rendered the existing certification inappropriate, for example, where a Company is newly established or where new ship types are added to an existing DOC.
- 7.2.3 An Interim DOC, valid for no more than 12 months may be issued to a Company following a demonstration, at the Company's premises, that the Company has a documented SMS which addresses all elements of the ISM Code, and that plans exist for its implementation throughout the organization and its fleet within the period of validity of the Interim DOC. The progress of such implementation may be reviewed and verified at intervals during the validity of the Interim DOC.
- 7.2.4 If the Company operates a multi-flag fleet and already has a DOC issued by or on the behalf of another Flag State that is recognized by Tuvalu, the RO may issue an Interim DOC valid for a period of up to SIX (6) months subject to the RO reviewing and verifying to its satisfaction that the Company SMS is in compliance with the ISM Code within that period of validity. The Company will be issued a Tuvalu DOC upon satisfactory completion of the review and verification.

7.3 Safety Management Certificate (SMC)

- 7.3.1 An SMC shall be issued to a ship following an initial verification of compliance with the requirements of the ISM Code.
- 7.3.2 A copy of the SMC shall be available at the Company's head office.
- 7.3.3 The issue of an SMC is conditional upon:
- (a) the existence of a Full-Term DOC (not Interim), valid for that type of ship;
 - (b) the maintenance of compliance with the requirements of a Classification Society meeting the requirements of IMO Resolution A.739(18); and
 - (c) the maintenance of valid statutory certificates.
- 7.3.4 The period of validity of a SMC shall not exceed FIVE (5) years, subject to at least ONE (1) intermediate verification. In certain cases, particularly during the initial period of operation under the SMS, it may be necessary to increase the frequency of the intermediate verification. If only ONE (1) intermediate verification is carried out, it is to take place between the second and third anniversary date of the issuance of the SMC.

7.4 Interim SMC

7.4.1 Requirements for Issuance

Interim Tuvalu SMCs may be issued to new vessels on delivery, in the event where a Company assumes responsibility for the operation of a vessel or when a vessel changes flag subject to the following verifications by the RO:

- (a) the DOC, including Interim DOC, of the Company is relevant to the type of vessel;
- (b) the SMS established by the Company includes the essential elements of the ISM Code and has been assessed relevant to the vessel type during the audit for issuance of the relevant DOC;
- (c) the Master and relevant senior officers are familiar with the SMS and the planned arrangements for its implementation;
- (d) operational instructions, which the Company has identified as essential shall be provided to the Master prior to the vessel's first voyage under the Tuvalu flag;
- (e) there are plans for an audit of the vessel by the Company within THREE (3) months of the issuance of the Interim SMC; and
- (f) the relevant information on the SMS is given in a working language or languages understood by the crew of the vessel.

7.4.2 Multi-Flag Fleets

Each Tuvalu flag vessel in the multi-flag fleet may be issued an Interim SMC valid for a period of up to SIX (6) months to facilitate implementation of the SMS subject to the provisions of Sections 7.4.3 and 7.4.4 below. Each Tuvalu vessel in the multi-flag fleet will be audited by the RO to verify implementation and compliance with the SMS. Upon satisfactory completion of the audits, a Tuvalu Full Term SMC will be issued to each Tuvalu vessel in the multi-flag fleet.

7.4.3 Documented Vessel Types

A Company holding a valid Tuvalu DOC, which assumes management responsibility for a vessel type already documented in its fleet, may have a SIX (6) month Interim SMC issued to that ship subject to the ship being verified by the RO as to compliance with the provisions of Section 7.4.1 of these guidelines. The SMS must be fully implemented on board the vessel within that period. Extensions of time up to, but not exceeding, SIX (6) additional months may be granted by Tuvalu on a case-by-case basis.

7.4.4 Undocumented Vessel Types

A Company holding a valid Tuvalu DOC which assumes management responsibility for a vessel type new to its fleet, may have a SIX (6) month Interim SMC issued to that ship, provided the RO verifies that the Company's revised SMS is applicable to that vessel type and the ship is verified in compliance with the provision of Section 7.4.1 of these guidelines. The SMS must be fully implemented in the Company and on board the vessel within that period. Extensions of time up to, but not exceeding, SIX (6) additional months may be granted by Tuvalu on a case-by-case basis.

7.4.5 Bareboat Charter Registered Vessels

Bareboat Charter registered vessels shall be subject to the provisions of Section 7.4.3 or 7.4.4 of these guidelines as applicable upon entry into the registry.

8.0 Short-Term Certificates

8.1 Issue and Validity

8.1.1 A Short-Term certificate may be issued at the closing of an ISM Code audit to cover the period until a Full-Term certificate is issued.

8.1.2 The Short-Term DOC or SMC may be issued provided no major nonconformities remain and the RO auditor formally recommends certification of the Company or vessel.

8.1.3 The validity of the Short-Term DOC or SMC, as appropriate, is not to exceed FIVE (5) months from the date of the ISM Code audit.

8.2 Change of Flag Only

8.2.1 The RO is authorized to issue a Short-Term SMC to a vessel without an initial verification audit if the following conditions exist:

- (a) the Company chooses not to undergo a full initial verification audit leading to a new Full-Term 5-year SMC;
- (b) the Company remains the same and holds a valid Tuvalu DOC;
- (c) the vessel has a valid SMC, with no major nonconformities open or outstanding;
- (d) the RO remains the same for the vessel;
- (e) the crew is predominantly the same, or at the very least, is familiar with the SMS; and
- (f) a periodical SMS audit aboard the vessel has been satisfactorily completed within the last SIX (6) months or an annual shipboard internal audit has been reviewed with satisfaction by the RO at the most recent annual Company DOC audit made within that same period.

8.2.2 Each vessel shall be handled on a case-by-case basis with Tuvalu granting the RO authority to issue the Short-Term SMC.

8.2.3 If any of the conditions mentioned above have changed with the change of flag, then the vessel must be treated as a new vessel entering the Tuvalu registry.

8.3 Full-Term Certificates

- 8.3.1 Prior to the expiration of Short-Term Certificates, the RO shall issue Full-Term DOC or SMCs to the Company and vessels respectively.
- 8.3.2 The validity of the Full-Term DOC or SMCs, as appropriate, is to be FIVE (5) years from the date of the ISM Code audit.
- 8.3.3 A Full-Term SMC should be issued as soon as possible after the issuance of a Short-Term SMC where an audit has not been required for a change in flag only in accordance with Section 8.2 above, but only for the remaining term of the SMC being replaced.

9.0 Safety Management Auditing

Recognized Organizations shall conduct a systematic and independent examination to determine whether the SMS activities and related results of a Company comply with planned arrangements and whether these arrangements are implemented effectively and are suitable to achieve stated objectives.

9.1 Guidelines

The IACS “Procedural Requirements for ISM Code Certification,” as amended, shall form the basis for developing and implementing audit plans.

9.2 Audit Objectives

- (a) Audits shall be designed to achieve at least ONE (1) or more of the following purposes:
- (b) to determine whether a Company’s SMS elements conform to the ISM Code;
- (c) to determine the effectiveness of the implemented SMS toward meeting the safety and environmental objectives specified in Section 1.2 of the ISM Code;
- (d) to provide the Company with the opportunity to improve upon its SMS; and
- (e) to meet applicable National requirements.

9.3 Audit Activities

While acting in an ethical manner at all times and objectively remaining within the audit scope, an RO’s audit activities should consist of, among other things, the following:

- (a) complying with RO’s applicable written auditing procedures and other directives;
- (b) planning the audit and preparing working documents;
- (c) reviewing documentation on existing SMS activities to determine their adequacy;
- (d) collecting and analyzing objective evidence that is relevant and sufficient to permit conclusions to be reached regarding the Company SMS;

- (e) remaining alert to any indications of objective evidence that can influence the audit results and possibly require more extensive auditing;
- (f) clearly reporting to the Company audit results on a timely basis; and
- (g) reporting major nonconformities immediately to the Company and promptly to Tuvalu.

9.4 Objective Evidence

Objective evidence shall consist of quantitative or qualitative information, records or statements of fact pertaining to safety or to the existence and implementation of an SMS element, which is based on observation, measurement or test and which can be verified.

9.5 Document Review

- 9.5.1 As a basis for planning an audit, an RO shall review for adequacy the Company's recorded description of its methods for meeting the SMS requirements.
- 9.5.2 No further auditing shall be conducted if the review reveals that the SMS described in the documentation by the Company is not adequate to meet the requirements of the ISM Code until such time as all nonconformities are resolved to the satisfaction of the RO.

9.6 Audit Plans

- 9.6.1 An audit plan shall be prepared by the RO in consultation with the Company.
- 9.6.2 The RO shall design the audit plan to be flexible in order to permit changes in emphasis based on information gathered during the audit process and to permit effective use of the RO's resources. The plan is to be approved by the Company and communicated to those planning to be involved in the audit.
- 9.6.3 The audit plan shall include the following elements:
 - (a) the audit objectives and scope;
 - (b) identification of the individuals having significant direct responsibilities regarding the objectives and scope;
 - (c) identification of reference documents such as the applicable international codes and the Company's SMS;
 - (d) identification of audit team members;
 - (e) audit team assignments;
 - (f) the language of the audit;
 - (g) dates and places where audit is to be conducted;
 - (h) identification of the organizational units of the Company to be audited;

- (i) the expected time and duration for each major audit activity;
- (j) the schedule of meetings to be held with the Company; and
- (k) confidentiality requirements, if any.

9.6.4 Upon request, the audit plan shall be provided to Tuvalu for its review.

10.0 Nonconformities

10.1 Nonconformity

10.1.1 Nonconformities are those deviations from the requirements of the ISM Code and/or the documented SMS of a Company that pose a low level of risk to the vessel's safety, protection of the environment or integrity of the SMS. Nonconformities shall include observed situations where objective evidence indicates a minor nonfulfillment of a specified requirement that has been determined by the RO not to affect the ability of the management of the Company nor any of its vessels from achieving the objectives of the ISM Code.

10.1.2 Corrective action for nonconformities shall be completed within a time period agreed to between the RO and the Company, which shall not exceed THREE (3) months from the date of issuance of a nonconformity notice. The RO shall confirm that the Company and/or Vessel has determined and initiated appropriate corrective action to correct the nonconformities or to correct the root causes of the nonconformities.

10.1.3 The RO shall advise Tuvalu of corrective actions requiring more than THREE (3) months and obtain approval from Tuvalu for such extended time periods, as determined by the RO to be required.

10.2 Major Nonconformity

10.2.1 A major nonconformity shall mean an identifiable deviation, which poses a serious threat to personnel or vessel safety or serious risk to the environment and requiring immediate corrective action. In addition, major nonconformities shall include the lack of effective and systematic implementation of the requirements of the ISM Code. Examples of specific major nonconformities are:

- (a) Operational shortcomings that would render the ship substandard by IMO standards.
- (b) Ship hull/machinery damage, wastage or malfunction as a consequence of systemic faults in the SMS that would warrant a recommendation to withdraw a statutory certificate or suspension of the ship from class.
- (c) Absence of required qualified Officers and ratings as required by the Merchant Shipping Act, Tuvalu Minimum Safe Manning Certificate and the International Convention on Standards of Training, Certification and Watchkeeping, without a valid exemption from Tuvalu.
- (d) Discovery by the RO that there are outstanding requirements on the statutory safety certificates which, as yet, have not been dealt with within the time permitted as a result of systemic faults in the SMS.

- (e) Observation of an obvious safety or environmental violation during an audit, which has not been or is not being corrected or documented.
- (f) Observation of obvious violations of the applicable ILO Convention requirements that have not been documented as waived or exempted.
- (g) Objective evidence of flagrant violations of the Tuvalu Safety or Pollution Prevention Laws, Tuvalu Merchant Shipping Regulations and Marine Notices is found, observed or brought to the attention of the RO.
- (h) Discovery by the RO auditors that ship personnel or the Company management are not aware of or have not been instructed in the provisions of the ISM Code and the SMS as well as the importance of the DOC and SMCs.
- (i) The total absence of a required SMS element or a group of nonconformities within an element.

10.2.2 Any major nonconformities found by the RO in the course of an audit shall be reported in writing to the Company, the Master of the vessel involved and to Tuvalu. Neither the DOC nor the SMC will be issued during the initial audit until all major nonconformities are corrected.

10.2.3 The RO shall determine the nature and extent of major nonconformities found during intermediate, renewal or additional audits and recommend to Tuvalu with either not to issue the DOC or SMC, or the issuance of a time specific Interim DOC or SMC to allow for the completion of corrective action, or withdrawal of an existing DOC or SMC.

11.0 Certificate Withdrawal and Invalidation

11.1 Withdrawing Authority

Certificates may only be withdrawn by Tuvalu, or by a RO when it is authorized to do so after seeking approval from Tuvalu.

11.1.1 DOC Withdrawal

In this case the RO shall immediately notify the Company and, when acting on behalf of Tuvalu, notify Tuvalu. When the RO is authorized by Tuvalu to withdraw the DOC, the RO shall give a letter to the Company stating that the DOC is withdrawn from the date of signature of the letter, and request that the DOC be surrendered. A copy of the letter shall be immediately sent by the most expedient means to Tuvalu. The Company shall be required to immediately notify appropriate ships that the DOC is invalid.

11.1.2 SMC Withdrawal

When the RO is authorized by Tuvalu to withdraw the SMC, the RO shall immediately notify the Company, give a letter to the Master of the ship stating that the SMC is withdrawn from the date of signature of the letter, and request that the SMC be surrendered. A copy of the letter shall be immediately sent by the most expedient means to Tuvalu.

11.2 Reasons for Withdrawal

- 11.2.1 failure to conduct periodic or intermediate verification audits;
- 11.2.2 the Company's failure to fully implement its SMS;
- 11.2.3 the Company's failure to maintain its SMS in substantial compliance with the requirements of the ISM Code;
- 11.2.4 non-conformities that remain uncorrected beyond their due date; and
- 11.2.5 the recommendation of the RO based upon objective evidence of the existence of a major nonconformity or an ineffective SMS.

11.3 Invalidation of SMCs

Withdrawal of the Company DOC invalidates the SMCs of all related vessels. Should Tuvalu authorize the RO to withdraw the Company DOC, the SMCs of all related vessels shall also be withdrawn by the RO.

11.4 Issuance or Reinstatement of Certificates

Issuance or reinstatement of a DOC and/or SMCs, as the case may be, which have been withheld or withdrawn as the result of major nonconformities shall only occur after the RO confirms to Tuvalu that there has been closure to the satisfaction of the RO on all outstanding nonconformities as verified by additional audit.

12.0 Appeals

In the event a Company disagrees with a determination made by the RO, the Company, through its designated person, after exhausting the RO appeals procedures, may make a direct appeal to Tuvalu which will then make a final determination based upon both the substance of the appeal and the recommendations of the RO.

Please do not hesitate to contact the Tuvalu Ship Registry if more information or clarification is required on the above matter.

Thank you.

Yours sincerely,

Deputy Registrar
Tuvalu Ship Registry

ANNEX 1 – Recognized Organizations

List of Recognized Organizations authorized to verify compliance with the ISM Code and issue ISM Code Documents of Compliance and Safety Management Certificates on behalf of The Government of Tuvalu:

- 1) American Bureau of Shipping (ABS)
- 2) Bureau Veritas (BV)
- 3) China Classification Society (CCS)
- 4) Det Norske Veritas (DNV)
- 5) Germanischer Lloyd (GL)
- 6) Hellenic Register of Shipping (HRS)
- 7) International Ship Classification (ISClass)
- 8) Korean Register of Shipping (KRS)
- 9) Lloyd's Register (LR)
- 10) Nippon Kaiji Kyokai (NK)
- 11) Russian Maritime Register of Shipping (RS)