

RULES ON THE ACCREDITATION OF RECOGNIZED ORGANIZATIONS PERFORMING STATUTORY CERTIFICATION AND SERVICES FOR PHILIPPINE SHIPPING COMPANIES AND THEIR PHILIPPINE-REGISTERED SHIPS, ...

MARINA CIRCULAR NO. 2018-01, February 02, 2018

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Pursuant to Presidential Decree No. 474, Executive Order Nos. 125/125-A, Philippine Merchant Marine Rules and Regulations, 1997, as amended and the International Maritime Organization (IMO) Maritime Safety Circular (MSC) No. 349 (92) on Code for Recognized Organizations (RO Code), Marine Environment Protection Committee (MEPC).237 (65) and the International Labor Organization, the following rules are hereby adopted:

I. OBJECTIVES

This Circular aims to provide standards, rules and guidelines on the scope, terms, conditions, procedures and requirements for the accreditation of Organizations which will perform statutory certification and other related services to Philippine shipping companies and their Philippine-registered ships, on behalf of the Administration, following mandatory IMO and ILO instruments and national legislation and regulations.

II. COVERAGE

This Circular shall apply to:

1. Organizations as defined under relevant mandatory IMO instruments and national legislation that will perform statutory certification and services to all Philippine shipping companies and their Philippine-registered ships, of size and tonnage under IMO instruments and national legislation.
2. ROs that have been granted accreditation/recognition and have existing Memorandum of Agreements (MOA) with the Administration.

III. DEFINITION OF TERMS

As used in this Circular, the following terms are understood to mean:

1. Administration - refers to the Maritime Industry Authority (MARINA).
2. Authorization - refers to the delegation of authority to an RO to perform statutory certification and services on behalf of the Administration as detailed in the MOA to be executed between the Administration and RO.
3. Accreditation - the official recognition of the organization to perform statutory certification and services for Philippine-registered ships on behalf of the Administration after full compliance with the requirements of this Circular.

4. Certifying Bodies - refers to organization providing auditing and certification to ROs to assure that they meet the specific standards and requirements relating to their performances and services.
5. IMO instrument - refers to IMO Conventions, Protocols, Amendments, Recommendations, Code, Guidelines and Resolutions.
6. Memorandum of Agreement (MOA) - a written Agreement entered into between the Administration and an RO for the latter to perform statutory certification and other services, as may be agreed upon based on the elements included in an agreement as set out in appendix 3 of RO Code.
7. Oversight - refers to any activity carried out by the Administration to ensure that the service of the RO complies with IMO and national requirements for Philippine shipping companies and their Philippine-registered ships.
8. Recognized Organization (RO) - refers to an organization that has been assessed by the Administration and have complied with the RO Code and the provisions of this Circular and has entered into a MOA with the Administration.
9. RO CODE - refers to the Code adopted by the IMO through Resolutions MSC. 349(92) and MEPC. 237(65) that serves as the international standard and consolidated instrument containing minimum criteria against which organizations are assessed towards recognition and authorization as well as the guidelines for oversight by Flag States.
10. Statutory Certification and Services - refers to the issuance of statutory certificates and services provided for Philippine shipping companies and their Philippine-registered ships, under the authority of laws, rules and regulations of the Philippine Government through the Administration, consistent with mandatory IMO instruments and other related international agreements and national legislation, rules and regulations.

IV. GENERAL PROVISIONS

1. Only organizations which have existing Memorandum of Agreement (MOA) with the Administration may be authorized to perform statutory certification and services to Philippine shipping companies and their Philippine-registered ships in conformity with Regulation 1/6 of International Convention for the Safety of Life at Sea (SOLAS), 1974, as amended, Annex I Regulation 6, Annex II Regulation 8, Annex VI Regulation 5 of the International Convention for the Prevention of Pollution from Ships (MARPOL) and Article 13 of International Convention on Load Line (1966), Maritime Labor Convention and other applicable international conventions, codes and other analogous requirements.
2. The ROs may, upon signing of the MOA in accordance with this Circular, perform statutory certification and services to Philippine shipping companies and their Philippine-registered ships in accordance with applicable IMO instruments, the national legislation, rules and regulations.
3. The organization/entity must be duly registered and allowed to operate in the Philippines.
4. The ROs shall be assessed by the Administration following these set of procedures formulated herein to ensure compliance with the provisions of the RO Code, including its subsequent amendments, as may be deemed necessary.

V. SPECIFIC PROVISIONS

1. SCOPE OF AUTHORIZATION

1. The RO shall be authorized, through a Memorandum of Agreement (MOA), to carry out the statutory

certification and services, under mandatory IMO and ILO instruments and national legislations, rules and regulations, to Philippine shipping companies and their Philippine- registered ships, of applicable size and type, engaged or shall engage in international voyages including those in the domestic trade.

A copy of the template of the MOA is attached herein as Annex “A” as an integral part of this Circular.

2. The RO shall, based on the provisions of the RO Code and internationally recognized quality standards, provide the effective and continuous implementation of their quality management systems including their commitment to quality, safety, security and protection of the environment.

3. The statutory certificates issued by the ROs shall bear the official logo of the Administration or the official seal of the Philippines and which contains text that the certificates were issued under the Authority of the Republic of the Philippines.

4. The Administration may agree, on a case to case basis, to authorize the RO to perform statutory certification and services outside the scope of the existing MOA.

5. The RO shall be free to enter into contracts directly with clients. Such contracts may contain the RO’s normal contractual conditions for limiting its legal liability.

6. The RO shall perform statutory certification and services by the use of competent surveyors and auditors who are duly qualified, trained and authorized to perform all duties and activities incumbent upon their employer, within their level of work-responsibility.

7. The RO and its staff shall not engage in any activities that may cast doubt on their independence of judgment and integrity in relation to their statutory certification and services for Philippine shipping companies and their Philippine-registered ships.

8. The personnel of ROs shall be free from any undue influence, which might affect their judgment in performing statutory certification and services to Philippine shipping companies and their Philippine-registered ships. The RO shall establish procedures to prevent any person or organization external to the organization from influencing the results of the services carried out.

The implementation of these procedures shall be assessed by the Administration and included in its oversight function.

2. CERTIFICATION FOR CONVENTIONS NOT IN FORCE OR NOT RATIFIED BY THE PHILIPPINES

Where a ship is surveyed and found to be in compliance with a Convention that is either not in force has not been ratified by the Philippines, the RO may issue a Statement/Document of Compliance on behalf of the Administration in accordance with the MOA. The said document is subject to the same annual/intermediate audit as a Convention Certificate.

3. REMUNERATION

The statutory certification and services carried out by RO to Philippine- registered ships shall be directly charged to the shipping company.

The ROs shall charge reasonable fees for the statutory certification services.

4. USE OF SUBCONTRACTORS/SERVICE SUPPLIERS

Upon approval by the Administration, the ROs may use the exclusive surveyors of another Organization with which the former has a bilateral agreement. The use of non-exclusive surveyors may be allowed provided such surveyors and all services and functions performed by them are subject to the quality management system of

the concerned ROs and may be subject to the oversight function of the Administration.

The privileges by virtue of the authority delegated to the ROs will not in any way create a contractual relationship between the Administration and the exclusive and non-exclusive surveyors.

The RO may utilize its approved suppliers of support services to assist in, statutory surveys and certification, in accordance with IACS Unified Requirement Z17, or its amendments, or it passes the quality management systems acceptable to the RO.

VI. CONDITIONS FOR RECOGNITION

The ROs shall comply with the following general qualification, and documentary requirements:

1. General Qualifications

1. The organization to be recognized shall have adequate resources in terms of technical, managerial and research capabilities to conduct statutory certification in accordance with the minimum standards for ROs acting on behalf of the Administration, as set out in the RO Code, and as may be amplified by the procedures that may be promulgated by the Administration.
2. The organization to be recognized shall meet the standards set by the RO Code.
3. This Authority may consider the performance of the applicant as reported by the Port State Control Memorandum of Understanding regimes.
4. The RO shall be governed by the principles of ethical behavior, which shall be contained in its Code of Conduct and Ethical Standards;
5. The RO shall establish a branch Office in the Philippines established under the Philippine laws with a duly appointed local representative, in the case of a foreign-established organization.

VII. DOCUMENTARY REQUIREMENTS

The applicant-company shall submit the following documents in support of the application:

1. Letter of intent/application;
2. Copy of company registration/Articles of Incorporation and By-Laws issued/Memorandum and Articles of Partnership issued by the Securities and Exchange Commission;
3. Copy of Quality Assurance Certification issued by a certifying body acceptable to the Administration;
4. Directory of Officers, Auditors, Surveyors, or Officials of the RO showing their competence and qualifications;
5. Copy of the Code of Ethics and Ethical Standards by which the ROs' ethical behavior is governed with respect to assurance of adequate performance on services, confidentiality of information, and independence between the personnel providing consultancy services and those involved in the statutory certification and services; and
6. Track record or general information that will show the past achievements or, performance of an RO relating to statutory certification and services from other flag states.

VIII. PROCEDURAL REQUIREMENTS

1. The applicant shall file its application in writing with the Administration, together with the pre-approval documents, as required by this Circular.

2. As provided in Section XII, an accreditation fee shall be paid to the Administration.
3. The Administration shall conduct an initial audit of the applicant's certification procedures, after which, the Administration and the applicant will sign a MOA, valid for a period not exceeding five (5) years, subject to annual review by the Administration. The MOA may be renewed subject to the completion of a renewal audit. The applicant should submit their application six (6) months prior to its expiration.
4. The negotiation and signing of the MOA is designated to the MARINA Administrator.
5. Certificate of Accreditation shall be issued after signing of the MOA which shall be co-terminus with the validity of the MOA.
6. The Administration will submit a report on the approval of the recognition of the RO and the signing of the MOA for the information of the MARINA Board and IMO Global Integrated Shipping Information System (GISIS).

IX. OVERSIGHT FUNCTION OF THE ADMINISTRATION OVER ROs

The MARINA reserves the right to audit the ROs upon showing of clear grounds of violation of the MOA or at the instance of the Administration whenever it deems the audit warranted

X. REPORTING REQUIREMENT

1. The RO shall inform the Administration of the work carried out for Philippine shipping companies and their Philippine-registered ships and shall furnish a copy of the audit reports and certificates issued within thirty (30) days, after such survey/audit/inspection. An electronic submission of the documents may be provided to the Administration.
2. The RO or its attending surveyor shall immediately ensure that corrective action is carried but for every non conformities noted and shall, in due course, notify and provide any action or certificate to the Administration within fifteen (15) days after the ensuing inspection/survey in the following instances:
 - a. In cases where the condition of a ship or its equipment does not correspond substantially with the particulars of the relevant statutory certificate; or
 - b. The ship is not fit to proceed to sea without danger to the ship or persons onboard; or
 - c. The ship presents an unreasonable threat of harm to the marine environment; or
 - d. The ship is a threat on the security destination of ports or coastal states; or
 - e. There is a significant danger to seafarers' safety, health or security, and
 - f. Other similar or analogous incidents.

XI. VALIDITY OF CERTIFICATE

The Certificate of Accreditation shall be valid for a period not exceeding five (5) years subject to the provisions of Section VI and continued compliance with the provisions of this Circular as determined during annual audits and result of oversight activity. Continuous possession of valid and updated documents required under Section VII and Section IX on the Oversight Functions of the Administration over the ROs shall be strictly observed.

XII. FEES AND CHARGES

The fees and charges shall be as follows:

1. Accreditation fee - P100,000.00 + documentary stamp fee
2. Audit fee - P50,000.00/Audit

XIII. ADMINISTRATIVE SANCTIONS

1. The Administration shall issue Show Cause Order based on the following grounds:
 - .1 Failure to maintain the conditions for accreditation of ROs pursuant to this Circular and
 - .2 Violation of any rules/regulations and of any of the general and specific Terms and Conditions of Accreditation.
2. After due process, the following fines and penalties shall be imposed:
 - .1 First Offense - P250,000.00
 - .2 Second Offense - P500,000.00 + suspension of Certificate for six (6 months)
 - .3 Third Offense - P750,000.00 + cancellation of Certificate

XIV. REPEALING CLAUSE

Any provisions of MARINA Circulars, rules and regulations and issuances inconsistent herewith are hereby amended, repealed or modified accordingly.

XV. TRANSITORY PROVISION

Upon effectivity of this Circular, the MOAs of any ROs with the Administration shall remain in force within a one-year period, after which it shall cease to exist. The Administration, after notice shall require the ROs concerned to enter into a new MOA with MARINA.

XVI. REVOCATION, CANCELLATION OR SUSPENSION OF ACCREDITATION

The Administration may, after giving proper notice and hearing to the RO concerned, revoke, cancel or suspend the accreditation granted to the concerned ROs with regard to the statutory certification and services for violating any of the condition set forth in this Circular.

XVII. EFFECTIVITY CLAUSE

This MARINA Circular shall take effect fifteen (15) days following its publication once in a newspaper of general circulation in the Philippines.

BY AUTHORITY OF THE BOARD: (SGD)

FELIPE A. JUDAN
Undersecretary for Maritime
Department of Transportation

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