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**SHIPPING**

# **\$AFE MANNING ON BOARD SHIPS?**

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WHO WE ARE





- Introduction
  - Background
  - Example cases
  - Current legal/ regulatory framework
  - Consequences of breach
  - Seaworthiness
  - Consequences of breach of seaworthiness requirements
  - Other considerations
  - Questions?
  - End
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# BACKGROUND

- Lots of recent research into fatigue (e.g. Project MARTHA by InterManager)
- Findings are often obvious: such as tiredness severely affects decision making ability, reaction time, ability to concentrate, etc.
- However, the effects are greater than we imagine!

*Most accidents occur between midnight and 4am: when seafarers are likely to be at the most tired, thus demonstrating strong link between fatigue and accidents.*





- International conventions have attempted to capture what is 'safe' when it comes to manning of ships.
- Avoidable accidents still occur due to manning shortcomings.
- Why does this happen?
  - Ships sail in contravention to the various regulations; or
  - The regulations are insufficient or inadequate for certain purposes.

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# WAR STORIES

**WHERE TIREDNESS WAS AT LEAST A CONTRIBUTING FACTOR**

- Sailing “all ahead full” outside normal traffic lanes at night
- Third Mate solely responsible for navigation watch (Master had alcohol in his system)
- This led to disaster with 10.8 million gallons of crude being spilt.

### **INVESTIGATION FOUND:**

- The Third Mate had been on duty for 35 hours with only a few naps.
- Many unanswered questions, but it was shown that a number of the crew suffered from fatigue.







- Chief Officer alone on watch
- Falls asleep and wakes only to the sound of the ship hitting rocks
- Vessel ran aground and sank off the UK

#### **UK Marine Accident Investigation Branch:**

*“Six-on six-off watches are tiring in any event, and the problem was compounded by the regular port visits, during which time the chief officer was still required to work, regardless of how this disrupted his watch pattern. He fell asleep as a result of very high levels of fatigue caused by the cumulative effect of this irregular working pattern.”*



- Vessel on voyage from DRC to Republic of Congo strikes Well Jacket
- c. USD 7million decommissioning cost

### **FOUND**

- Vessel in Class and not in breach of its Minimum Safe Manning Certificate.
- Captain on duty for about 18 hours at the point of accident. Possibly even asleep when accident occurred.



# LEGISLATION / REGULATIONS

WHAT IS THE LEGAL FRAMEWORK?



There is a number of international conventions / instruments dealing with manning of ships and safety of seafarers.

Here are some, amongst others:

- Maritime Labour Convention 2006 (as amended)
- SOLAS 1974 (as amended)
- ISM Code (as amended)
- Various nation regimes / regulations



## MARITIME LABOUR CONVENTION 2006 (MLC)

The MLC addresses some major problems seafarers face in the workplace.

Amongst others, these are the aims of the MLC:

- Simplify the vast range of regulations and sanctions that exist on a global level;
- Set minimum requirements for seafarers to work on vessels (e.g. WORK / REST HOURS);
- Set minimum standards for conditions of employment;
- Deal with requirements for accommodation, recreational facilities, food and catering;
- Provide health protection, medical care, welfare and social security protection; and
- Set to compliance and enforcement of the regulations.

# Maritime Labour Convention (MLC), 2006





## INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA 1974 (SOLAS)

- Charter V, Regulation 14.1 stipulates (emphasis added) that:

*“Contracting Governments undertake, each for its national ships, to maintain, or, if it is necessary, to adopt, measures for the purpose of ensuring that, from the point of view of safety of life at sea, all ships shall be sufficiently and efficiently manned.”*

- Chapter IX makes the ISM Code mandatory.



### ISM Code

Mandatory by virtue of Chapter IX of SOLAS.

Part A, Section 1.2.2 of the ISM Code requires:

*“Safety management objectives of the Company should, inter alia:*

- 1. provide for safe practices in ship operation and safe working environment;*
- 2. Assess all identified risks to its ships, personnel and the environment and establish appropriate safeguards; and*
- 3. Continuously improve safety management skills of personnel ashore and aboard ships, including preparing for emergencies related both to safety and environmental protection.”*

**VERY BROAD REACHING.**



## MLC

- Maritime Labour Certificate
- Declaration of Maritime Labour Compliance
- Issued under Article V and Title 5 of the MLC

## SOLAS

- Minimum Safe Manning Document (a.k.a. safe manning certificate)
- Required by Ch V, Reg 14.2 of SOLAS

## ISM Code

(enforced through Ch 9 of SOLAS)

- Document of Compliance (on shore and is issued to the operator the ship)
- Safety Management Certificate (on board)
- Both documents are required by Part B, Cl 13

# EVIDENCE OF COMPLIANCE WITH LEGISLATION



## MINIMUM SAFE MANNING DOCUMENT REPUBLIC OF SINGAPORE

Issued by the Maritime and Port Authority of Singapore in pursuance of  
Merchant Shipping (Safety Convention) Regulations and  
under the provision of Regulation V/14 of the  
INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA, 1974,  
as amended

Name of Ship	Port of Registry SINGAPORE	IMO Number
Call Sign	Official Number	Gross Tonnage
Type of Ship PETROLEUM/CHEMICAL TANKER	Main Propulsion Power (kW)	Periodically Unattended Machinery Space NO
**Trading Area UNLIMITED VOYAGE		

The ship named in this document is considered to be safely manned if, when it proceeds to sea, it carries not less than the number and grades/capacities of personnel specified<sup>1</sup> in the table(s) below :

Grade/Capacity	Certificate (STCW <sup>2</sup> Regulation)	Number of Persons
Master	II/2	1
Chief Mate	II/2	1
Deck Watch-keeper	II/1	1
Chief Engineer	III/2	1



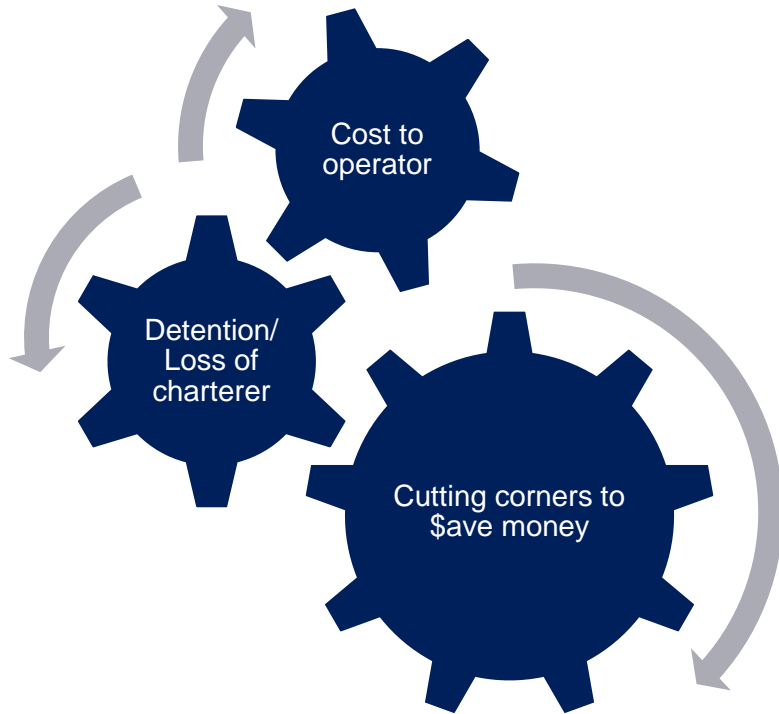
THE CERTIFICATES ARE 'PASSPORTS TO TRADE'

REQUIRED BY:

- the Flag State;
- PSC: very wide discretion as to whether requirements are satisfied and also what punitive measures to take.



## CURRENT LEGAL / REGULATORY FRAMEWORK CONSEQUENCES OF BREACH



- Detention (i.e. loss of hire, etc.)
- Black marks on PSC record
- Notes in MoU records, which, in turn, can lead to increased PSC checks
- Deficiencies will appear on SIRE / OCIMF and may result in difficulty finding charters (especially with oil majors, etc.)
- In a competitive market, bad PSC record, will generally lead to reduced charter rate or difficulties getting charters
- **And, of course, breaching these regulations will increase the risk of accidents!**



A study by Nautilus International revealed that almost half of Seafarers questioned reported working 85+ hour weeks (despite the regulations).

Prescriptive requirements encourage falsification of log books, etc.

N.B. Master has suspended the minimum rest requirements of the MLC in certain circumstances (for the safety of the ship or persons aboard, assisting another ship in distress, etc.)



The legislation, as it currently stands, is lacking. Here are some examples:

- the MLC refers only to 'rest' and not to 'sleep'. (On some ships, 'rest' is even referred to as 'not work'... even more ambiguous.)
- Requirements in safe manning certificates are as suggested by ship operator (subject to certain minimum requirements)

General problems with trying to legislate for these issues:

- when language too prescriptive, it leads to crew / operators searching for loopholes (e.g. falsification of log books)
- when language too vague, there is lack of harmony in application between countries / operators

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# IS THE LEGAL FRAMEWORK SUFFICIENT?

**IS COMPLIANCE WITH THE LEGISLATION / REGULATION ENOUGH TO PREVENT  
AVOIDABLE ACCIDENTS?**

## IS THE LEGISLATION ENOUGH? USS JOHN MCCAIN



- On 21 August 2017, USS “John McCain” collided with another vessel near Singapore.
- Widely reported that the incident occurred due to lack of training or fatigue of seafarers.
- If they *had* to comply with the relevant regulations, would they have been in compliance? Probably (they have hundreds of crew), but incident still occurred!

*N.B.: naval ships do not usually have to comply with international conventions designed for commercial shipping*



## IS THE LEGISLATION ENOUGH? SEAWORTHINESS

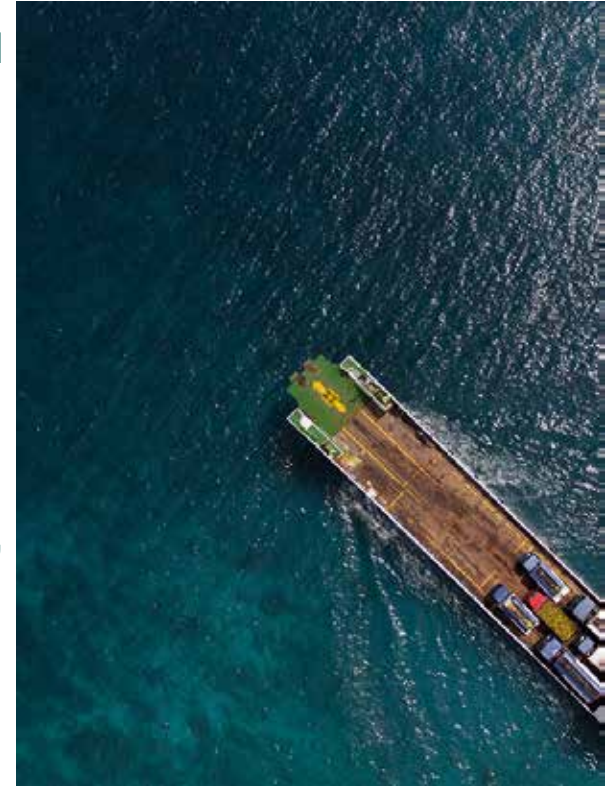
What is the relationship between ‘**UNSEAWORTHINESS**’ and crewing?

Case law confirms that the sufficiency and competence of crew is an element of seaworthiness, e.g.:

- Hong Kong Fir Shipping v Kawasaki Kisen Kaisha [1961]
- The Eurasian Dream [2002]

**WHAT IF PRESCRIPTIVE LEGISLATION COMPLIED WITH,  
BUT CREW ARE CLEARLY DEFICIENT, E.G. THROUGH  
FATIGUE?**

e.g. earlier example of “**NDS BENGUELA**”



Compliance with prescriptive requirements can only be *prima facie* evidence of a ship being sufficiently manned.

Rules cannot account for all real life situations at sea!

### IT IS NOW OFTEN ARGUED THAT:

- Tired seafarer = (temporarily) incapacitated/ incompetent seafarer?
- So long as seafarer is incompetent, it can be said that the crew are lacking in either sufficiency or competency.
- Therefore, ship is unseaworthy.





## IS THE LEGISLATION ENOUGH? CONSEQUENCES OF UNSEAWORTHINESS

### SOME EXAMPLES:

- **Insurance:** s 39 of MIA1906 implies a warranty of seaworthiness into marine hull policies.
- **Carriage of goods:** Hague-Visby Rules requires the carrier to exercise due diligence to provide a seaworthy ship.
- **Charterparty:** common law implies obligation to provide seaworthy ship, but express in most C/Ps (don't have to use word 'seaworthy') (e.g. Cl 6 of NYPE1993)





THANK YOU FOR LISTENING

ANY QUESTIONS?

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