

CMI International Working Group on the Fair Treatment of Seafarers

QUESTIONNAIRE

**REPLIED BY THE CHILEAN MARITIME LAW
ASSOCIATION**

PART I (Answers to these Questions are essential)

Question 1:

Who has responsibility for administering and enforcing maritime safety and marine pollution prevention and control in the waters under the jurisdiction of your State?

Answer: The Maritime Authority, through the General Direction of the Marine Territory and Merchant Shipping (Dirección General del Territorio Marítimo y de Marina Mercante).

Question 2:

When maritime accidents and/or marine pollution incidents occur within the waters under the jurisdiction of your State, what process of accident investigation is legally required?

Answer: An Official Investigation by the Maritime Authority normally carried out by the Maritime Governor in charge of the jurisdictional waters in which the accident and/or marine pollution has occurred, subject to the final supervision of the General Director of the Marine Territory.

Question 3:

Do your State's maritime accident and/or marine pollution investigative processes contemplate criminal charges against any ships' personnel involved and, if so what action may be involved?

Answer: No.

Question 4:

If there is no criminal process, what other investigative process is utilized?

Answer: The Official Investigation in charge of the Maritime Authority, as a result of which the Authority may apply fines on the shipowners and/or the ship's personnel involved.

Question 5:

Does your State's investigative process permit detention of seafarers and, if so, under what circumstances and with what safeguards?

Answer: No.

Question 6:

If seafarers are required to be present for an investigation, trial or other hearing will they be permitted to leave your State until such investigation, trial or other hearing takes place?

Answer: As soon as the accident occurs, the Maritime Authority will start the Investigation and seafarers will be required to declare before the Maritime Prosecutor in charge. After their declaration, they will be permitted to leave out State.

Question 7:

Does your State require a financial surety to ensure that seafarers return for any subsequent hearing and, if so, how is the amount of such a surety determined and what form is required?

Answer: No.

Question 8:

Is your State's maritime administration or other authority given legal responsibility for the protection, rights and welfare of all seafarers and, if so, how is this responsibility administered?

Answer: No.

PART II (Answers to these Questions would be most helpful)

Question 9:

If a maritime accident resulting in serious pollution occurs in waters under the jurisdiction of your State that involves a foreign-flag vessel with a crew of different nationalities, what is the expected role of vessel crew members held responsible in the subsequent investigative process?

Answer: There is no different status depending on the nationalities. Any crew member held responsible may be fined by the Maritime Authority irrespective of his nationality.

Question 10:

If the accident, as outlined in Question 9, is due to negligence but not wilful misconduct by responsible crew members, will your State proceed only with pollution damage claims under the accepted international civil liability and compensation system?

Answer: Yes.

Question 11:

If the answer to Question 10 is 'No', what other processes or procedures will be undertaken by your State?

Answer: Not applicable.

Question 12:

If the maritime accident outlined in Question 9 occurred outside your State's Territorial Seas, although damage occurs in areas under your State's jurisdiction, would the procedures involved be different?

Answer: No.

Question 13:

Regardless whether your State's investigative process utilizes the criminal justice system or any other system, will the relevant vessel crew members be detained?

If so:

- a. What is the legal reason for such detention?
- b. What rights will the accused/detained crew member have during the process, and do such rights differ from those available to citizens of your State?
- c. Will full reasons and/or charges be provided to those detained?
- d. What is the expected length of such detention?
- e. Where and how will the seafarers involved be detained?
- f. What access to legal advice and/or defence will such personnel have available to them?
- g. Will the vessel's representatives, agents, family members, labour organisation representatives, or lawyers be given immediate and full access to those detained?
- h. Will the relevant seafarers have the legal right not to answer questions that may be considered self-incriminating, if so advised?

Answer: No, the relevant vessel crew members cannot be detained, but whilst they have not declared in the Investigation, the Maritime Authority will not allow the ship to sail.

Question 14:

Does your Association have any other comments, suggestions or recommendations on this subject?

Answer: No further comments.

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