

Answers to the Questionnaire

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?

(1) About maritime safety

According to the provisions of article 3 of Maritime Traffic Safety Law of the People's Republic of China (MTSL) and article 2 of Regulations of the People's Republic of China on the Investigation and Handling of Maritime Traffic Accidents (RIHMTA), the harbor superintendence agencies of the People's Republic of China have responsibility for administering and enforcing maritime safety and marine pollution prevention and control in the waters under the jurisdiction of China.

According to article 48 of MTSL and article 3, section 2 of RIHMTA, if the accidents happen within the waters of fishing harbors, the state fisheries administration and fishing harbor superintendence agencies shall have responsibility for administering and enforcing maritime safety and marine pollution prevention and control.

According to article 49 of MTSL and article 3, section 2 of RIHMTA, the internal administration of offshore military jurisdictional areas and military vessels and installations, the administration of surface and underwater operations carried out for military purposes, and the inspection and registration of public security vessels, the provision of their personnel and the issuing of their port entry and departure visas shall be separately prescribed by the relevant competent departments of the state in accordance with this law.

(2) About marine pollution prevention and control

According to article 5 of Marine Environment Protection Law of the People's Republic of China (MEPL), several administrative organizations have responsibility for administering and enforcing marine pollution prevention and control in the waters under the jurisdiction of China. They are the competent administrative department in charge of environment protection under the State Council, the competent state oceanic administrative department in charge of marine affairs, the competent state administrative department in charge of maritime affairs, the competent state administrative department in charge of fisheries, the environmental protection department of the Armed Forces and the coastal local People's Governments above the county level. These organizations have the listed responsibility in different places and situations.

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?

RIHMTA has made concrete and clear regulations on the process of accident investigation. These regulations can be listed as follows:

(1) It stipulates the objects of accident investigation.

According to the provisions of article 10 of RIHMTA, the harbor superintendence administration shall be responsible for the investigation of the maritime traffic accidents which happen in the waters of their respective harbor areas. The maritime traffic accidents which happen outside the waters of harbor areas shall be investigated by the harbor superintendence administration of the nearest harbor or that of the vessel's first port of arrival in the People's Republic of China. The harbor superintendence administration bureau of the People's Republic of China may designate a harbor superintendence administration to carry out the investigation, if the bureau deems it necessary. The article also stipulates that when the harbor superintendence administration concerned deems it necessary, he may

request relevant departments and social organizations to take part in the investigation of the accidents.

(2) It stipulates the principle of accident investigation.

According to the provisions of article 11 of RIHMTA, the harbor superintendence administration shall promptly carry out investigation upon receiving accident reports. Investigation shall be carried out in an objective and all-round manner and must not be restricted by the information provided by the parties involved in the accidents.

(3) It stipulates the method and the content of accident investigation.

According to the provisions of article 11 of RIHMTA, the harbor superintendence administration could forward the process by six different ways, including questioning the persons concerned; demanding written material and testimonial from the persons under investigation; demanding the parties involved to provide logbooks, engine room logs, wheel-bell records, radio operation logs, course records, charts, data of the vessel, functions of the navigation equipment and instruments and other necessary original papers and materials; examining certificates of the vessels, installations and the relevant equipment and certificate of the personnel and verifying seaworthiness of the vessels and technical conditions of the installations before the accident; examining the damage to the vessels, installations and goods and ascertaining casualties of personnel and surveying the scene of the accident and collecting relevant material evidence. During the investigation, the harbor superintendence administration may use recording, photographing and video equipment and may resort to other means of investigation permitted by law. According to the provisions of article 13 of RIHMTA, in order to meet the need of investigation, the harbor superintendence administration has right to order the vessel(s) involved to sail to the spot for investigation or not to leave the said spot.

(4) It stipulates the obligations of the persons being investigated.

According to the provisions of article 12 and article 13 of RIHMTA, they must subject themselves to the investigation, honestly state the relevant circumstances of the accident and provide authentic papers and materials. They also have the obligation to sail the ship to the spot chosen by the harbor superintendence administration or not to leave the said spot.

(5) It stipulates that the personnel of harbor superintendence administration shall produce their certificates to the persons being investigated in conducting investigations.

(6) It stipulates the right of concerning organizations and personnel toward consulting, making extracts of, duplicating and borrowing the findings concerning maritime traffic accidents papered by the harbor superintendence administration for the purpose of handling cases.

(7) It stipulates the legal liability of the persons being investigated when breaking the rules set by RIHMTA.

Article 29 describes the administrative liability and criminal liability of the persons being investigated.

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?

If the acts of the ship's personnel involved have been suspected as a crime, criminal charges should be generated in accordance with concerning laws. However, the maritime administrative organizations can not bring criminal charges against ship's personnel involved directly but transfer the case to Public Security organizations or concerning organizations in accordance with the provisions on the Transfer of Suspectable Criminal Cases by Administrative Organizations for Law Enforcement (TSCCAOLE). Then the organ having the jurisdiction of the case will bring criminal charges against those personnel.

The regulations on bringing criminal charges against ship's personnel during the

investigative process could be listed as follows: article 47 of MTSL; article 15, article 18, article 29 section 2 of RIHMTA.

Question 4:

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

In the investigative procedure, the maritime administrative organizations can not bring a criminal charge against the ship's personnel involved but transfer the case to public security organizations and concerning organizations according to the provisions on TSCCAOLE. Then the organ accepting the case has obligations to investigate the case.

Question 5:

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

According to Chinese legislation, if the act of ship's personnel has been suspected as a crime, the maritime administrative organizations will transfer the case to the concerning organizations. The personnel involved may be detained if it meets the need of the provisions of Criminal Procedure Law of the People's Republic of China (CPL). The legislation has not made any provisions on whether the maritime administrative organizations could detain the ship's personnel involved during the investigative procedure. The existing legislations only provides that the ships may be detained before the maritime administrative organizations finishing maritime investigation.

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?

(1) About seafarers' being required to be present for an investigation

According to the provisions of article 29 of RIHMTA, if the seafarers refuse to be investigated or unjustifiably obstructed and interfered with the investigation by the harbor superintendence administration, the harbor superintendence administration could take administrative penalties on the persons concerned. If their acts have constituted a crime, the judicial organizations shall investigate their criminal responsibility according to law. Furthermore, according to the provisions of article 5 and article 22 of Temporary Regulations on Investigation Process of Severe Accidents (TRIPSA), any part or person should not illegally interfere with the process of investigation. Any part or person should not interrupt and interfere with the regular work of the accidents investigating group.

From the above provisions, it can be reasonably estimated that the seafarers are not allowed to leave china if the acts could interfere with the subsequent investigative process or other processes.

(2) About seafarers' being asked to be present for a trial

If the seafarers' acts have been suspected as crimes, then they are not allowed to leave China from register to the court being held.

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?

China hasn't made specific regulations on this point.

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?

The maritime administrative organizations have legal obligations for the protection of rights and welfare of all seafarers, while these obligations are often embodied after the maritime accidents. There is a certain regulation called Regulations on Reporting and Handling Fatal Accidents of Workers and Employees in Enterprises (RRHFAWEE), which stipulates the obligations of the administrative organizations on protecting workers' and employees' rights when fatal accidents happen. Since the regulation is applicable to all the enterprises in China, it can be concluded that the maritime administrative organizations will bear such obligations if the accidents happen:

(1) According to the provisions of article 5, article 6 and article 7 of the above regulations, the maritime administrative organizations should accept the report concerning seafarers' fatal accidents from the person in charge of the enterprise. The organizations should immediately report the accidents to the higher authority step by step. Death accidents need to be reported to the maritime administrative organizations of Provinces, Autonomous Regions or Municipality directly under the central government. Heavy death accidents need to be reported to Ministry of Communications under the State Council.

(2) The maritime administrative organizations should set up the investigation team to investigate the death accidents and the heavy death accidents. The team has to identify the reason, process, casualties and economic loss of the accidents. It has to give some advice on how to deal with the accidents and some suggestions on precaution measures. It also has the obligation to write the accident investigation report. The maritime administrative organizations have the obligation to handle the advice and suggestions forwarded by the accident investigation team.

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?

Firstly, the obligations of the crew members won't vary just because the accident involves a foreign-flag vessel with a crew of different nationalities. According to the provisions of law on investigation procedure, the application won't be changeable with the nationality of the vessel and its crew. These regulations can be listed as follows: the provisions of article 2 of MEPL, the provisions of article 2 of MTSL and the provisions of article 3 of RIHMTA.

Secondly, the responsibilities of the crew members can be listed as follows:

(1) They must subject themselves to the investigation, honestly state the relevant circumstances of the accident and provide authentic papers and materials. We can find these responsibilities from such legislation: the provisions of article 19, section 2 of MEPL, the provisions of article 42 of MTSL and the provisions of article 12, section 1 of RIHMTA.

(2) They should sail the vessel to the spot for investigation or stay at the said spot without the permission of the organizations. The obligation comes from the provisions of article 13 of RIHMTA.

Question 10:

If the accident, as outlined in Question 10, 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?

No.

Question 11:

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

(1) Criminal procedure

The legal basis for starting a criminal procedure can be listed as follows: the provisions of article 15, article 133 and article 136 of criminal law of the People's Republic of China.

(2) Administrative punishment procedure

While the seafarers' acts have not constituted a crime and should be punished by administrative organizations, the administrative punishment procedure will be started. The legal foundations are as follows: the provisions of article 44 of MTSL and the provisions of article 17 of RIHMTA.

When giving administrative punishment to seafarers, the maritime administrative organizations should abide by the provisions of Law of the People's Republic of China on Administrative Penalty (LAP) and provisions of the People's Republic of China on Marine and Maritime Administrative Punishment (MMAP).

(3) Administrative sanction procedure

The administrative sanction procedure will be started if the organizations need to establish sanctions against seafarers. The legal basis is the provisions of article 18 of RIHMTA.

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?

(1) About the investigation procedure

There is no difference between the procedure of the accidents occurred in the Territorial Seas and the one of the accidents occurred outside the Territorial Seas.

If the maritime accidents happen in the Contiguous Zones, Exclusive Economic Zones and Continental Shelves and violate Chinese law, then the Chinese Government may exercise the right of hot pursuit according to the provisions of article 13 of Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone (LTSCZ) and the provisions of article 12, section 2 of Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf (LEEZCS).

MTSL and RIHMTA are applicable in the coastal waters of China, which contains the Territorial Seas and all other waters under the jurisdiction of China.

MEPL shall apply to the Internal Waters, Territorial Seas and the Contiguous Zones, Exclusive Economic Zones and Continental Shelves of China and all other sea areas under the jurisdiction of China. This law shall also apply to areas beyond the sea areas under the jurisdiction of China that cause pollution to the sea areas under the jurisdiction of china.

From the above legislation, we can conclude that if the maritime accident outlined in question 9 occurred outside the territorial seas, the investigation procedure won't be different.

(2) About criminal procedure

There is almost no difference toward the criminal procedure, neither. Article 16 of CPL stipulates that Provisions of this Law shall apply to foreigners who commit crimes for which criminal responsibility should be investigated. If foreigners with diplomatic privileges and immunities commit crimes for which criminal responsibility should be investigated, those cases shall be resolved through diplomatic channels. So only when the latter situation appears, the criminal procedure is different from the ordinary one.

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?

The legal foundations of the detention are: article 8 of LTSCZ, article 12 of LEEZCS, article 14, article 15, article 133 and article 136 of Criminal Law of the People's Republic of China (CL), article 47 of MTSL, article 15, article 18 and article 29, section 2 of RIHMTA, and article 24 of TRIPSA.

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?

According to the provisions of CPL, the accused/detained crew members have such rights:

(1) Right to life, Right to health and other Rights of Person can not be harmed during the detention period.

(2) Right of defense. It contains Right of Know, Right of self-defense, right of engaging a lawyer, and right of obtaining legal aid.

(3) Right of fair trial. Criminal procedure law of china has set up withdrawal, open trial regulations and other rules to ensure that criminal defendant could get a fair trial.

C: Will full reasons and/or charges be provided to those detained?

Yes.

D: What is the expected length of such detention?

It is depended on the time of the investigation needed by the maritime administration organizations of the People's Republic of China.

E: Where and how will the seafarers involved be detained?

According to the provisions of CPL, if the seafarers resist detention, the persons who carry out the detention have the right to take some compulsory means, including the use of weapons.

F: What access to legal advice and/or defence will such personnel have available to them?

According to the provisions of article 32, article 34 and article 39 of CPL, the detained seafarers can exercise the right to defense by himself/herself, entrust one or two persons as his/her defenders. Under certain circumstances, the people's court may designate a lawyer duty-bound to provide legal assistance to defend him/her. The accused may refuse to have his/her defender continue to defend him/her and may entrust his/her defense to another defender during a trial.

G: Will the vessel's representatives, agents, family members, labour organisation representatives, or lawyers be given immediate and full access to those detained?

According to the provisions of CPL, except for the situation of obstructing investigation of a crime or having no way to inform, the concerning organizations should inform the seafarers' company and family members of the reason and place of detention within 24 hours. The right of a criminal suspect to entrust defenders in public prosecution accrues on the day when the case is submitted for examination and prosecution. The accused in a private prosecution has the right to entrust defenders at any time.

H: Will the relevant seafarers have the legal right not to answer questions that may be considered self-incriminating, if so advised?

According to the provisions of law in china, the seafarers have obligations to honestly answer the questions during the investigation process. Therefore, they can not refuse to answer the questions during this period.

During the criminal procedure, the seafarers have not got Mute according to present law in China. However, article 46 of CPL makes a clear provision on the issue. In the decision of all

cases, stress shall be laid on evidence, investigation and study; credence shall not be readily given to oral statements. The accused can not be found guilty and sentenced to a criminal punishment if there is only his/her statement but no evidence; the accused may be found guilty and sentenced to a criminal punishment if evidence is sufficient and reliable, even without his/her statement. Therefore, not answering questions can not be considered self-incriminating. The seafarers can be convicted of a crime only when there are enough evidences to prove the results.

Question 14:

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