

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?

Answer

Hong Kong Marine Department (MD) is responsible for administering and enforcing maritime safety and marine pollution prevention and control in waters of Hong Kong by establishing local legislation to give effect to various international Conventions on safety and pollution prevention. Enforcement is via flag State and port State control.

Question 2:

When marine 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

For marine accidents:

- In accordance with Section 67(1) of the Shipping and Port Control Ordinance (Cap.313) all vessels in the waters of Hong Kong are required to report any known marine accident to MD as soon as possible and shall furnish in writing the full particulars of the accident within 24 hours.
- Under Section 59 of Cap.313, an authorized MD officer will carry out an investigation into the marine accident. He is empowered to stop and board any vessel in waters of Hong Kong, other than a warship, to obtain information / evidence for the purpose of the investigation.

For marine pollution incidents:

If the pollution (vessel or place) can be traced, MD would take oil samples from the suspected source and the polluted water area for laboratory test by the Government Chemist. If the samples were found identical by the Government Chemist, unless the discharge of the oil or mixture containing oil can be defended under Section 47 of Cap.313, MD would initiate legal action against the offender.

Question 3:

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

Answer

All charges under Cap.313 are criminal charges. In case that contravention of local regulations is detected during the accident and / or marine pollution incident, MD will carry out a separate investigation for prosecution.

Question 4:

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

Answer

Civil claim will be initiated against the offender for the cost incurred as a result of the accident, such as removal of wreckage, damage made to port facilities or clean up cost in case of a pollution incident.

Question 5:

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

Answer

- During the investigation process, should there be likelihood that a seafarer suspected to have committed a serious offence (with which imprisonment sentence might be warranted on a first conviction) may leave Hong Kong, assistance from the police may be sought to have the seafarer arrested and brought to court pending further investigation and/or trial.
- Even when a seafarer is being arrested, police bail ought to be granted unless the offence appears to be of a serious nature and/or the office in charge reasonably considers that the person ought to be detained (section 52(1) of the Police Force Ordinance Cap.232 refers).
- In case no police bail is granted, the seafarer is to be brought before a magistrate as soon as practicable, or is any event within 48 hours (section 52(1) of Cap.232 refers).
- Once the case is brought to court, the seafarer shall be admitted to bail with such conditions which are considered necessary to secure his attending court in future (section 9D of the Criminal Procedure Ordinance Cap.221 refers). Bail might be refused should there be substantial grounds for the court to believe that the seafarer would (a) fail to surrender to custody as the court may appoint; (b) commit an offence while on bail; or (c) interfere with a witness or pervert or obstruct the course of justice (section 9G of Cap.221 refers).

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

With reference to the answer to Question 5 above, depending on seriousness of the

offence(s), strength of evidence against the seafarer and/or bail terms/conditions ordered, a seafarer might be permitted to leave Hong Kong should the court satisfy that he will return to Hong Kong and surrender to custody as the court may appoint.

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

Should the court find it proper to grant bail (whether or not with permission to leave Hong Kong), one or more than one financial sureties might be required to secure the surrender to custody of the seafarer admitted to bail (section 9D(3)(b)(viii) of Cap.221 refers). As for the number of sureties and/or amount of surety involved, it all depends on seriousness of the case, strength of the evidence against the seafarer and/or existence of factors which support the seafarer's claim that he will report to court on the appointed day.

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

MD is responsible for administering and enforcing the Merchant Shipping (Seafarers) Ordinance, Cap.478 in Hong Kong and on Hong Kong ships. Under section 96 of Cap.478 the protection is restricted to the normal daily welfare of the seafarers and does not apply to seafarers under detention condition. This section applies to:

- a. Hong Kong seafarers and non-Hong Kong seafarers working on Hong Kong registered ships;
- b. Hong Kong seafarers working on non-Hong Kong registered ships; and
- c. non-Hong Kong seafarers working on non-Hong Kong registered ships while these ships are within Hong Kong waters.

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

Under Section 46 of Cap.313, the owner and the master of the vessel will be responsible for the discharge of oil or mixture containing oil into the waters of Hong Kong.

Normally, MD would seek indemnity from the vessel's P&I club.

Question 10:

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

Answer

No.

Question 11:

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

Answer

Regulations 35 and 36 of the Merchant Shipping (Prevention of Oil Pollution) Regulation, Cap.413A, give power to the Director of Marine to inspect, deny entry and detain the ship in question. If any ship fails to comply with any requirement of Cap.413A, the owner and the master of the ship in question are liable to a fine under regulation 37 of Cap.413A.

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

- Under Section 46 of Cap.313, the owner and the master of the vessel will be responsible for the discharge of oil or mixture containing oil into the waters of Hong Kong. Normally, MD would seek indemnity from the vessel's P&I club.
- However, MD does not have the jurisdiction to carry out any on-board investigations/inspections if the maritime accident outlined in question 9 occurred outside the waters of Hong Kong and if the vessel is not in the waters of Hong Kong.
- MD would provide the relevant information/evidence, available to us, to the flag State of that vessel and request them to carry out an investigation of such a case.

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 organization 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

Answer to (a): Please refer to the answers to questions 5 to 7 above.

Answer to (b): Everyone is equal before the law. A seafarer has the same rights enjoyed by the Hong Kong residents (e.g. right to bail).

Answer to (c): Should one be detained and brought to court, he should have been charged with a copy of the holding charge(s) served to him. Even if no plea is to be taken, the charge(s) would be read and explained to him in court. He would be informed and/or served with copies should there be additional and/or amended charges in due course. The detainee should also be informed of the reasons why the court has refused bail and that he has the right to apply for bail in the High Court.

Answer to (d): There is no fixed period of detention. However, the court will make enquiry as to the reasons and length of the adjournment/detention to ensure no one will be detained longer than necessary.

Answer to (e): Should bail be refused, the seafarers will be handed over to the Correctional Services Department ("CSD") for detention. However, for the first 3 clear days, the police may apply for the seafarers to be detained in police custody to facilitate procedures like Identity Parade to be conducted.

Answer to (f): Arrangements can be made with CSD/the police for the detainees to contact an/or see their legal representatives to seek advice.

Answer to (g):

- If in CSD custody, arrangement can be made for the persons mentioned to visit the detainee.
- If in police custody, the detainee has the right to seek advice from his legal representative. If the investigation will not be hindered, he may be allowed to contact and/or make phone calls to other persons like his family members.

Answer to (h) Everyone has the right of silence. The seafarers will be reminded of this right before they are to answer any question which may incriminate them.

Question 14:

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

Answer**Note:**

The relevant sections of the Hong Kong Laws mentioned in the answers above are available in the Bilingual Laws Information System of the Government of the Hong Kong Special Administrative Region of the People's Republic of China at <http://www.legislation.gov.hk/index.htm>.