

March 28, 2005

CMI International Working Group on the Fair Treatment of Seafarers

**Replies of the Japanese Maritime Law Association
To the Questionnaire concerning Fair Treatment of
Seafarers**

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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 Ministry of Land, Infrastructure and Transport is the responsible body for implementation of the IMO Conventions, including promulgation of national laws and regulations. The Japan Coast Guard is the administrative entity responsible for enforcement of the maritime laws and regulations at sea.

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:

There are two types of accident investigation: the Japan Coast Guard conducts criminal investigations and the Marine Accident Inquiry Agency conducts investigations including those to determine causes of maritime accidents. The answers to the following questions are based on criminal investigations in Japan.

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:

Personnel involved in cases as listed below will be subject to criminal punishment under the provisions of the Penal Code.

1. To obstruct marine traffic by damaging or blocking a waterway or a bridge
2. To endanger the traffic of a vessel by damaging a lighthouse or buoy or by any other means

3. To capsize, sink or destroy a vessel in which a person is present
4. To endanger the traffic of a vessel or to capsize, sink or destroy a vessel through negligence

In addition to these cases described above, the crew involved in the discharge of oil from a ship in sea areas may be punished for violation of the provisions of the Law Relating to the Prevention of Marine Pollution and Maritime Disaster, depending on the incident.

Question 4:

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

Answer:

No procedure is utilized except as referenced in Question 2 above.

Question 5:

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

Answer:

Seafarers would be detained based on general criminal procedures, as no special procedures exist to detain seafarers. No person shall be apprehended except upon a warrant issued by a competent judicial officer which specifies the offense with which the person is charged, unless he is apprehended while the offense is being committed. The suspect may be arrested where there exists any reasonable cause to suspect an offense has been committed. No person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel; nor shall he be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel. The accused or the suspect may appoint a counsel at any time. The accused or the suspect in custody may, without any official being present, have an interview with, and deliver to/receive documents or articles from his/her counsel or a person who is going to be his/her counsel, upon the request of the person entitled to appoint a counsel.

(See also the answer to question 13.)

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:

Unless being detained or arrested, the crew involved in an accident may leave our State. If the accused is out on bail, he may leave our State. But bail may not be granted in such cases where there is reasonable ground to suspect the accused may destroy evidence.

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:

Bail money must be paid in the amount determined by the court in accordance with the Code of Criminal Procedure.

On ratification of the UNCLOS, the Government of Japan has introduced a bail bond system which is able to release offenders earlier to ensure smoother criminal procedures through provision of bail bonds, etc.

The amount of the bail bond is determined by the personnel in charge of enforcement, based on the standard determined by the Minister in charge.

The standard is based on consideration of the type of offense, potential punishment (i.e. fine), extent of offense, frequency of offenses, etc.

In addition, a bond or other appropriate financial security in writing is required.

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:

The Ministry of Land, Infrastructure and Transport has the responsibility for the protection of seafarers' labor rights, while other Ministries have responsibility for other relevant rights.

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:

All co-operation possible with the investigational authority, including submission of all evidence, statements and documents to determine the causes of the accident.

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?

Answer:

No. Except for procedures related to pollution damage claims under international instruments (i.e. CLC, FC and LLMC Convention), please refer to Question 11.

For your information, where the pollution incidents are caused by tankers due to the negligence of the crew members involved, such members shall not be subject to pollution damage claims under the provisions of section 4, article 3 of the Law on Liability for Oil Pollution Damage, which implements the CLC and FC Convention. Where the incidents are caused by ships other than tankers due to the negligence of the crew members involved, such members may be subject to pollution damage claims, but their civil liability as well as that of the ship owners may be limited pursuant to paragraph 1, Article 3 of the Law on Limitation of Liability for Maritime Claims, which implements the LLMC Convention.

Question 11:

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

Answer:

Following such an accident as described in question 10, if all possible measures to prevent the continuing discharge of oil were not taken, the crew may be punished by the Law Relating to the Prevention of Marine Pollution and Maritime Disaster. No criminal procedure under the Penal Code has been undertaken in the case of accidents which cause marine pollution only. However if due to negligence, the accident harms human lives or safety, it may be subject to criminal punishment.

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:

In principle, the criminal procedures mentioned in Question 11 will not be applied if the case occurred outside of territorial waters.

However, in case an accident occurs in the Japanese EEZ, the Law Relating to the Prevention of Marine Pollution and Maritime Disaster, which covers the requirements of the MARPOL Convention, is applied, based on article 3 of the Law on the Exclusive Economic Zone and the Continental Shelf.

In addition, in cases where the damage occurs in the EEZ and territories including the territorial waters of our State, the Law on Liability for Oil Pollution Damage, which implements the requirements of the CLC and FC Convention, will be applied, and the ship owner will be subject to pollution damage claims wherever the accident occurred.

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:

As referred in Question 5, the crew may be arrested under certain conditions. The answers to each question from a. to h. are shown as follows:

- a. Arrest or detention under The Code of Criminal Procedure
- b. The accused or the suspect in custody has the same legal rights as a Japanese accused or suspect.
- c. When the suspect is arrested upon a warrant of arrest, the warrant shall be shown to him.

When a judicial police officer has arrested a suspect upon a warrant of arrest or received a suspect who was arrested upon a warrant of arrest, he shall immediately inform the suspect of the essential facts of the crime and of his being entitled to select a defense counsel, then provide him an opportunity for explanation. When the suspect who was arrested has been transferred to a public prosecutor, the public prosecutor shall immediately inform him of the essential facts of crime and of his being entitled to select a defense counsel, then provide him an opportunity for explanation before requesting a judge to detain him.

- d. Arrest: 3 days
Detention: 10 days in principle. However if unavoidable circumstances exist, a judge may extend the period within the 10 days.
- e. The suspect will be detained at a facility operated by the Japan Coast Guard, etc. If a judge determines further detention is in order, the suspect will be transferred to a detention house operated by the Ministry of Justice, etc.
- f. The accused or the suspect may appoint a counsel at any time.
- g. The accused or the suspect in custody may, without any official being present, have an interview with or deliver to/ receive documents or articles from his/her counsel or a person who is going to be his/her counsel, upon the request of the person entitled to appoint a counsel.

The accused or the suspect may have an interview with, deliver to/receive documents or articles from the vessel's representatives, agents, family members, or labor organization representative. But when there is reasonable ground to suspect the accused or suspect may escape or destroy evidence, a court or judge may, upon request of a public prosecutor or ex-officio, forbid him to interview any other persons other than counsel, examine documents or other things he may deliver to or receive from such persons, forbid him to deliver or receive such items, or seize them.

- h. Article 38 of Constitution states, “No person shall be compelled to testify against himself.” In addition, Article 198 of Code of Criminal Procedure states, “In the case of questioning, the suspect shall, in advance, be notified that he is not required to make a statement against his will.”

Question 14:

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