

CMI International Working Group on the Fair Treatment of Seafarers

**Response of Republic of Korea Maritime Law
Association on 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?

Safety Management Bureau and Korea Coast Guard, two divisions of Ministry of Maritime Affairs & Fisheries)(140-2 Gye-Dong, Jongno-Gu, Seoul, 110-793, Korea, Tel 82-2-3674-6114 Fax 82-2-3674-6044) assume the responsibility.

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?

Korea Marine Police first investigates the accident for the criminal purpose. Simultaneously or later the Korea Marine Safety Tribunal undertakes investigation for the administrative purpose.

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?

Yes, criminal charge is applicable. First, investigation by marine police is carried out and then the person involved in the accident is indicted by the prosecutor.

Question 4:

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

N/A

Question 5:

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

Yes, seafarers can be detained by the marine police and prosecutor up to maximum 20days until he is officially indicted. The detention is only allowed by the permission (habeas corpus) from the judge with an emergency exception.

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?

It is usual manner that the accused is not allowed to go out Korea before his trial if he is indicted in the criminal proceeding (When he is indicted without imprisonment he may leave Korea with the permission of the judge). However, in civil proceeding or administrative proceeding he can leave Korea and return to Korea in order to take part in the subsequent proceeding. In this case, a ship's agent submits to the appropriate office a kind of confirmation letter for the foreign seafarers to return to Korea.

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?

No such system exists in Korea.

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?

Ministry of Maritime Affairs and Fisheries and Ministry of Labour.

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?

He will be officially accused 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?

In addition to the civil liability, the crew is subject to criminal charges even by his negligent action pursuant to Korean Marine Pollution Prevention Act. .

Question 11:

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

N/A

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?

In theory, Korean government will not exercise sovereign power over the accident occurred outside the territorial waters. However, it seems that if the result of the oil pollution damages occurs in Korean territory the negligent seafarer will be subject to criminal charge according to the Korean Marine Pollution Prevention Act.