International Safety Management Code

• “Human factor” is the most common “reason” and a contributing factor for accidents with ships

• Safety culture on-board and in the shipping company
The background

- Herald of Free Enterprise (1987)
- Scandinavian Star (1990)
- Estonia (1994)

- International Management Code for the Safe Operation of Ships and for Pollution Prevention (ISM Code) of 1993
  - First as Guidelines (non-binding)
  - Chapter IX of SOLAS as of 1994
  - As of 1995 binding
Safety management system

- must be established by the shipping company

1. step "Say what you do!" – Safety Management and procedures manuals, instructions, checklists etc
2. step “Do what you say you do!” – implement these instructions in practice
3. step “Show that you do what you say you do!”- ensure you have objective evidence of steps 1 and 2

The structure of the ISM Code

- **Preamble**
  "The purpose of this Code is to provide an international standard for the safe management and operation of ships and for pollution prevention"

- **Part A Implementation**
  - Objectives
  - Responsibilities and policies of shipping company, master
  - Designated persons
  - Preparedness
  - Internal audit
  - Documentation

- **Part B Certification and Verification**
  - Certification and periodical verification
  - Interim certification
  - Verification
  - Forms of certificates
• Safety Management System must (Art. 1.2.2):
  – “provide for safe practices in ship operation and a safe working environment”
  – “establish safeguards against all identified risks”
  – “continuously improve safety management skills of personnel ashore and aboard, including preparing for emergencies related to safety and environmental protection”

• ISM Code establishes *minimum* common requirements for SMS

• Up to the shipping company to implement
  – “shipping company” is broadly defined
Main duties under the ISM Code

• 1. The obligation to instruct properly the master and the crew
• 2. The obligation to keep and maintain records and reports
• 3. Designation of the responsible person on shore
• 4. Certification (Document of Compliance and Safety Management Certificate)
• 5. Verification, review and evaluation

Designated person (DP), Art. 4

• Direct access to the highest level of management

• How much information should be communicated to the senior management?
  – Only major/serious accidents? Also minor and ‘near-accidents’?
Master, Art. 5

• Master’s responsibility must be clearly defined

• Overriding authority and responsibility to make decisions with respect to safety and pollution prevention

• The master is responsible for periodical reviews of the company’s safety management system together with his crew in search of improvement

Crew and personnel, Art. 6

• Must be familiar with the ship and safety procedures

• Conversant

• Contact between master and the crew
• Plans for shipboard operations (Art. 7)
  – Procedures for preparation of plans and instructions, checklists etc.
  – Tasks to be defined and assigned to qualified personnel

Example of duty assignments on board

• Safety Officer 2nd (or 3rd) mate
• Safety Ombudsman - one from each department (crew representative)
• Hospital - Chief Officer
• Garbage Management - Chief Officer
• Ballast Water Management - Chief Officer
Example of duty assignments on board (cont’d)

- Pollution responsible officer - Chief Officer
- Ship Security Officer – Chief Officer
  - Fire fighting Squads - One junior officer on each team (team leader)
  - (smoke diving teams) (being no. 2 handling communications)
    » Chemical Locker: Daily control - 3rd or 4th Engineer (including Hazardous Substance Log)
    » Responsible - Chief Engineer

Emergency preparedness (Art. 8)

- The SMS should provide for measures ensuring that the Company’s organization can respond at any time to hazards, accidents and emergency situations involving its ships
Who supervises implementation?

• Review by the Company’s management (internal audit, Art 12)

• 12.2 “The Company should periodically evaluate the efficiency and, when needed, review the SMS in accordance with the procedures established by the Company”

• On the basis of shipboard reports from the Master/DP?

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Who supervises implementation?

• Flag State
  – Reg. 4 of Chapter IX of SOLAS; ISM Code para. 13; IMO Resolution A.788

• Classification societies ("recognized organization")
  – Reg. IX.1 of SOLAS – States may delegate powers of supervision
  – Renewal audit (5 years), periodical surveys (2.5 year)

• Port State control
  – Reg. IX/6.2 of SOLAS
Record-keeping (‘paperwork’)

• How long and detailed manuals should be to respond to ISM Code?

• 1.2.2 Safety management objectives:
  – Establish safeguards against all identified risks

• 7 Development of plans for shipboard operations
  – The Company must establish procedures for the preparations of plans and instructions for key shipboard operations concerning the safety of ship and the prevention of pollution. The various tasks involved should be defined and assigned to qualified personnel

Consequences of ISM Code violations

• Detention under Port State Control

• Civil liability

• Criminal/administrative liability

Scandinavian Institute of Maritime Law
Carriage of goods

• Inconformity with ISM Code may have implications on carrier liability
  – Is the vessel rendered “unseaworthy” whenever ISM Code is violated?

• Duty of the carrier to make the ship “seaworthy”
  – Hague-Visby Rules, III.1: “exercise due diligence to make the ship seaworthy”, “properly man, equip, and supply the ship”
  – HVR, IV.2: exception from liability for damage resulting from act of negligence in navigation or management of the ship
  – Rotterdam Rules

Prior to ISM Code: grounding in 1997 [just months before it became binding]:
    • Unseaworthiness/absence of due diligence (claim) v. Navigation error (defence)

• Eurasian Dream [2002]
Limitation of liability

- Brussels convention on limitation, 1957:
  - Limitation of liability not available in case of “actual fault and privity”

- 1976 Limitation convention:
  - Limitation of liability not available in case of loss resulting from a “personal act or omission” (Art. 4)

- ISM Code thus helps to define the standard of managerial conduct

Criminal liability

- E.g., Sec. 58 of the Norwegian Ship Safety Act (Skipssikkerhetsloven) on breach of duties with respect to SMS:
  - Any person who, on behalf of the shipping company, willfully or negligently substantially fails to establish, implement and develop a safety management system in accordance with section 7 and regulations issued pursuant to the provision shall be liable to fines or imprisonment for a term not exceeding two years.
• Can documents required by ISM Code be used against the shipping company?
  – Evidence in liability cases! Self-incrimination?

  – Some kind of ‘privileged’ status for these documents?

• Standard of care & negligence under Antipollution Act/Ship Safety Act

  – “Full City” 2011 Agder Lagmannsrett (Court of Appeal)