



**STC B.V.**

# **Summary of statutory regulations**

## **For Chief Officers and Chief Engineers**

The content of this updated syllabus has been compounded from contribution of:

Ministry of Transport, Public Works and Water Management  
Directorate-General for Civil Aviation and Freight Transport (DGTL),  
Inspectorate Transport and Water Management  
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## INTRODUCTORY

### **The Aim**

Netherlands' legislation lays on the Master, the Chief Officer and the Chief Engineer many important responsibilities in regard to the ship, matters on board, the crew and the shipowner. It is therefore of great importance to gain an insight into the major Netherlands' Acts and Decrees in which these responsibilities have been laid down. ( [www.overheid.nl](http://www.overheid.nl) )

### **Execution**

As it is an impossible task to deal with all this in detail only outlines will be stated in this book.

The European Union General Recognition Act of Certificates for Higher Education permits the testing of knowledge by means of a proficiency test based on Netherlands' standards.

To ascertain that the Master, the Chief Officer and the Chief Engineer on board a ship flying the Netherlands' flag have sufficient knowledge of the appropriate Netherlands' legislation an oral test will be taken.

### **Questions regarding ships' management**

In case difficulties arise on board regarding the ship's management an appeal can be made at all times to expert assistance both in the Netherlands and abroad.

The addresses where to turn to are mentioned in this book.

### **Terrorism and Sabotage**

Article 92a of the Manning order merchant marine and sailing ships requires, among other things, knowledge of the measures to be taken regarding the security of the ship and skills to act in ports and at sea in security matters.

The annex containing an extract of the Guidance for shipowners, shipoperators and masters on the protection of Ships from terrorism and sabotage issued by the International Chamber of Shipping is to be found in this syllabus.

## ADDRESSES

Offices	Address/postal code	telephone	Telefax / E-Mail
<b>Netherlands:</b>			
Inspection Transport, Public Works and Watermanagement/Division Shipping ( <b>hereafter called            IVW/TEZ</b> )	Gebouw Prinsenpoort 's-Gravenweg 665 3065 AP Rotterdam	(031) 070-4564500	(031) 010-2022400

### **Netherlands Antilles**

Directorate of Shipping and Maritime Affairs Shipping Inspectorate	Seru Mahuma z/n Curaçao Netherlands Antilles	005999-8393700	005999-8689964  E-Mail: sina@gov.anan
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### **Abroad:**

Netherlands Consulates



## SUMMARY OF FORM OF GOVERNMENT

### **General**

The form of Government of the Kingdom of the Netherlands is a Constitutional Monarchy and a Parliamentary Democracy.

It is a Constitutional Monarchy because the monarch is bound to reign by the Constitution.

The form of Government is a Parliamentary Democracy because by means of electoral suffrage the electorate elects the legislative bodies (the Houses of Parliament, County Councils, Local Councils). These bodies control their executives.

The Government is at the head of the Administration and it is to govern in accordance with the Constitution.

### **THE CONSTITUTION (DE GRONDWET)**

#### **The King and the Ministers**

The Government is formed by the King and the Ministers.

The Prime Minister and the Secretaries of State are appointed to and discharged from office by the King.

The King bears no political responsibility.

#### **The States General.**

The Kingdom of the Netherlands has a two-Chamber system.

The Lower House (the Commons) consists of 150 members.

They are elected direct for a four-year term. All of them retire from office in a body and are immediately eligible for re-election.

The Upper House (the Lords) consists of 75 members.

They are elected by the County Councils for a four-year term. All of them retire from office in a body and are immediately eligible for re-election.

#### **The Legislature**

The Legislature consists of the Government and States General.

In most cases a Bill (Proposal for Law) is initiated by the Government on behalf of the King. At times it is initiated by a member of Parliament a so-called private member's Bill. The required explanatory memorandum is signed by the responsible Secretary of State.

The Lower House has the right of amendment. It may tender amendments and proposals. When a Bill has passed the Lower House it is forwarded to the Upper House. The Upper House can only pass or reject the complete Bill.

When the Upper House has passed the Bill it is returned for Royal assent after which it has to be published in the Official Gazette to become effective as law.

#### **The Executive**

The Executive consists of the Government.

Resulting from the Constitution the Executive includes among others:

- the promulgation of Orders in Council;
- to maintain exterior relations;
- the provision of military forces (Royal Navy, Royal Army and Royal Air Force);
- the Treasury;
- pardoning of punished persons;
- administrative controversy;
- to lay down the legal rights of civil servants.

An Order in Council is a ruling of a legislative nature in the form of a Royal Warrant. The law determines the major issues. An Order in Council elaborates the law concerned. So legislation can be kept up-to-date more easily as an Order in Council can be altered easier than an Act.

### **Judicature**

Justice is pronounced by judges who have been appointed for life by the Government. They are dismissed at their own request or when reaching a certain age. They can only be dismissed by the Supreme Court for certain facts mentioned in the Law.

Administration of justice for civilians in civil as well as in criminal cases is administered by:

- district courts,
- county courts,
- courts of justice
- the Supreme Court.

In criminal cases the State is represented by the Counsel for the Prosecution.

- In district courts they bear the title of counsel for the prosecution.
- In county courts they bear the title of public prosecutor.
- In the courts of justice and the Supreme Court they bear the title of Attorney-General.

In a criminal case the counsel for the prosecution puts the case before the court. He institutes criminal proceedings and executes punitive judgment after the verdict.

### **Provinces and Municipalities**

The Provincial administration consists of the Provincial Estates (County Council), the Deputy Estates (County Aldermen) and the Governor (Lord Lieutenant).

The Provincial Estates represent the whole population of a province. Their number is dependent on the number of inhabitants. They are elected for a term of four years. They elect the members of the Upper House.

The Provincial Estates appoint the members of the Deputy Estates from their own numbers.

The Queen's commissioner is appointed and dismissed by the Government.

### **The Municipality**

The administration of any municipality is executed by the Local Council and the Mayor (Burgomaster) and Aldermen.

According to the Constitution the Local Council representing the population is at the head of the municipality.

The number of its members is dependent on the number of inhabitants of the municipality. The members are elected for a term of four years and they resign in a body.

The Council elects Aldermen from their own numbers. The number of Aldermen (two to six) is dependent on the number of inhabitants.

The Burgomaster (Mayor) is appointed by the Government for a six years term but he may be re-appointed.

## SHIP'S CERTIFICATES OF REGISTRY ACT

### Definition

In this Act sea-going ships are all ships registered in the Register of Shipping, the Bare-boat Register as well as those ships not registered and according to their construction exclusively or mainly destined to float in sea.

Excepted from the rules of this act are:

- warships,
- ships owned by the Government or any public body meant for public service
- fishing ships.

### The aim

This Act entitles sea-going ships to fly the Netherlands' flag if provided with a ship's certificate of registry

### Exception

No ship's certificate of registry is required when it is employed for public service or when a ship newly-built in the Netherlands is running trials.

### Restriction

Ship's Certificates of Registry, provisional and extraordinary certificates excepted are issued only for ships recorded in the Register of Shipping.

### Contents of the Certificate

The Ship's Certificate of Registry states:

- the name of the ship and that of the office where it is registered;
- the tonnage at which it has been measured in accordance with the existing legal regulations;
- the description of the ship in accordance with the register record;
- the name of the natural person, the corporate body the shipowner or the company the ship belongs to.

### Contents of the Certificate for bareboat chartered ships

The Ship's Certificate of Registry for bareboat ships states:

- the name of the ship and that of the office abroad where the ownership of the ship is registered;
- the tonnage at which it has been measured in accordance with the existing legal regulations;
- the description of the ship in accordance with the register record;
- the name of the natural person, the corporate body, the shipowner or the company to whom the ship has been bareboat chartered;
- date of expiration of the certificate of registry.

### Issuing authority

The Ship's Certificate of Registry is issued on behalf of the King by the Secretary of Transport and Public Works in charge of the enforcement of this Act.

### Application

1. Applicant has to produce a copy of the recorded registry. This copy is to be accompanied by the certificate of tonnage. If this copy has been issued more than two days before production it should contain a statement by the Register Recorder. The statement should declare that since the time of issue of the copy the register has not been submitted to any alteration.

Application should be made by or on behalf of the person in whose name the ship is registered.

## 2. In case of bareboat charter

The applicant has to produce a recent copy of the registration in the bareboat register as well as the certificate of tonnage.

If the certificate of tonnage cannot be produced, a provisional certificate of registry can be issued for a given period not exceeding 6 months

### **Expiration**

Ship's Certificates of Registry expire:

- by the expiration of the term, when applicable, mentioned on the certificate of registry;
- when the ship loses its qualification as a Netherlands' ship;
- when the name or the tonnage of the ship has been changed or the ship has been reconstructed;
- when the ship has been broken up, has perished or is taken by pirates or enemies;
- when for six months after the last sailing no communication at all has been received from the ship.

### **Withdrawal**

A Ship's Certificate of Registry can be withdrawn by the Secretary of State entrusted with the enforcement of this Act. Withdrawal can take place:

- if the ship is used for privateering, piracy or slave-trade;
- if the ship is purposely used in such a way that danger arises that the State will be involved in war;
- if with the ship any particular regulation issued and published by the Government to maintain non-belligerence is trespassed on purpose.

An expired or withdrawn certificate shall be returned to the issuing authority.

### **The provisional Ship's Certificate of Registry**

When a ship is purchased or built abroad the Secretary of State entrusted with the enforcement of this Act may issue a provisional certificate. Its validity holds for the term mentioned in the provisional Ship's Certificate of Registry but not in excess of six months.

### **The extraordinary Ship's Certificate of Registry**

When a ship has been built, purchased or equipped in the Netherlands on foreign account an extraordinary Ship's Certificate can be issued in order that this ship may be sailed under the Netherlands' flag within a certain period direct to the country of destination.

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## **CODE OF COMMERCE VOLUME 2**

### **Netherlands' ship**

**Art. 311 CofC (2)** - A Netherlands' ship is a ship if it belongs to:

- Natural persons with the nationality of a member state of EU, EFTA, Switzerland or declared equal to EU-citizens on the basis of Community derived legislation, or
- Legal bodies subject to the laws of an EU-member state, one of the countries, islands or territories, indicated in article 299, paragraph 2-5 and 6 under c of the EU-Treaty or from another state party to the EFTA or Switzerland, or
- Legal bodies, other than those indicated therefore, subject to the laws of an EU-member state, one of the countries, islands or territories, indicated in article 299, paragraph 2-5 and 6 under c of the

- EU-Treaty or from another state party to the EFTA or Switzerland, or
- Natural persons or legal bodies other than these indicated herefore, who are entitled to the EU-rights on freedom of establishment based on an agreement between the EU and a third state.

**The following conditions must also be met :**

- the owner has its office or a branch according to the commercial Register Act in the Netherlands,
- one or more natural persons holding office in the Netherlands, who on behalf of the owner are responsible for the ship, master and other members of the crew including all other matters connected thereto and have been given the power of attorney to decide and act in all these matters.

When the shipowner has transferred his responsibility for the management of the ship to a legal body, and that legal body meets the requirements indicated herefore, the ship concerned is a Netherlands' ship.

**Nationality of ships**

**Art. 340 CofC (2)** - A Netherlands' ship is a ship that meets the conditions Netherlands' of art. 311 Code of Commerce or art. 5 of the Law concerning nationality of ships in bareboat charter.

**Concerning the master**

The master is in command of the ship and exercises authority over all those on board. The latter are to obey the commands given by the master in the interest of safety, or for maintaining order and discipline.

**Art. 341 CofC (2)**

"Those on board" comprises everybody on board but the master.

**Art. 343 CofC (2)** - The master shall carry out conscientiously the customary rules and regulations to ensure the seaworthiness and safety of the ship, the safety of those on board and of matters on board. He does not undertake the voyage unless the ship is suitable for doing so properly equipped and adequately manned.

**Art. 344 CofC (2)** - The master shall make use of a pilot anywhere where law, custom or prudence demands so.

**Art. 345 CofC (2)** - While sailing or in imminent danger the master shall not leave the ship unless his absence is strictly necessary or saving his own life compels him to do so.

**Art. 346 CofC (2)** - The master shall take care of the possessions on board of a deceased person and shall draw up a proper specification in the presence of two persons on board to be signed by him and the said persons.

**Art. 347 CofC (2)** - On board the master shall be in the possession of:

- the Ship's Certificate of Registry, the tonnage certificate, an extract from the ship's register, the manifest, the charter-party and the bills of lading or copies of these;
- the Netherlands' laws and regulations applicable during the voyage and all further necessary documents.

**Art. 348 CofC (2)** - The master shall ensure that a logbook be kept on board in which all matters of any importance occurring during the voyage are recorded. Moreover the master shall ensure that an

engine-room log be kept.

**Art. 349 CofC (2)** - On Netherlands' ships only logbooks numbered page by page are permitted. The logbooks are, when possible, be kept and signed daily by the master and the crewmember made responsible with keeping the logbook..

**Art. 350 CofC (2)** - The master, the shipowner and bareboat charterer shall grant interested parties inspection of these documents at their request and provide copies of the logs against payment of costs.

**Art. 351 CofC (2)** - When the master has deliberated with members of the crew advice given to him by them will be recorded in the logbook.

### **Ship's protest**

**Art. 353 CofC (2)** - After arrival at a port the master may have a ship's protest made up by a notary public concerning incidents during the voyage.

If a ship or matters on board have incurred damage or if any extraordinary incident has taken place the master shall have a preliminary protest drawn up within 48 hours after arrival to be followed by a full and definite protest within eight days (*Sundays and Bank holidays excluded - art.354 CofC (2)*).

The notary public shall issue copies to any one who so desires against payment of costs.

**Art. 355 CofC (2)** - Crewmembers to be designated by the master shall co-operate in drawing up the ship's protest.

**Art. 356 CofC (2)** - A judge pronounces judgment over the evidence in the ship's logbooks and the ship's protests.

**Art. 357 CofC (2)** - The master is entitled if necessary for the preservation of the ship and matters on board to jettison ship's appurtenances and goods on board as well as to make use of them.

**Art. 358 CoC (2)** -In case of emergency during the voyage, the master may confiscate or have consumed in the interest of all on board, foodstuffs in the possession of persons on board or forming part of the cargo. Compensation therefore has to be paid.

**Art. 358a CofC (2)** - The master shall render any assistance to persons who are endangered. In particularly having been engaged in a collision he shall render assistance to other ships involved and people on board without seriously endangering his own ship and those on board. Moreover he shall state to the ships engaged in the collision the name of his ship, his home-port and the ports of departure and destination.

**Art. 358b CofC (2)** - At the request of a consul or local authority the master of a Netherlands' ship bound for the Netherlands shall transport Netherlands' crew in need of help. The costs incurred are determined by and at the expense of the Treasury.

**Art. 364 CofC (2)** - Towards his sea-employer the master shall act in accordance with the stipulations under which he has been engaged as long as these are not in violation of his lawful obligations.

**Art. 370 CofC (2)** - The master is permitted to deviate from his course in order to save life.

**Art. 371a CofC (2)** - If during the voyage somebody should be discovered on board not in possession of a valid ticket and not prepared or in a position to pay the fare the master has the right to detail him for duties and to remove him from the ship on the first occasion that offers itself.

**Art. 372 CofC (2)** - Neither the master nor anyone of those on board shall transport goods in the ship at his own account unless permitted to do so by the shipowner.  
In case the ship is under charter the charterer has to give the permission to do so.

**Art. 376 CofC (2)** - The labour-agreement between the master and the sea-employer shall be entered in writing.

**Art. 382 CofC (2)** - Urgent reasons for the sea-employer to dismiss the master can be:

- when the master maltreats one of those on board, grossly offends, seriously threatens, leads astray or tries to incite them to activities in defiance of laws or decent behaviour;
- when the master refuses to comply with an order given in accordance with his labour-agreement;
- when his masters' certificate is suspended or definitely cancelled to serve on board in this capacity;
- when the master without knowledge of his sea-employer has taken contraband on board or allowed it there.

**NOTE: the Civil Code also acknowledges specific cases in which dismissal (on the spot) is a possibility.**

**Art. 383 CofC (2)** - Each of the parties is at all times entitled even before employment has taken effect on account of weighty reasons to apply to the district court judge to declare the labour-agreement annulled.

When abroad parties should apply to any diplomatic civil servant or salaried consul with the request to declare the labour-agreement annulled.

As weighty reasons are amongst others considered circumstances apparent to applicant after commencing duties on board or arisen afterwards due to which continuation of the voyage would expose the master or those on board to unforeseen serious danger of life.

**Art. 384 CofC (2)** - On termination of employment abroad the master is entitled to free transport to the Netherlands, inclusive of costs of sustenance and accommodation.

**Art. 386 CofC (2)** - The sea-employer is at all times entitled to cancel the master's command.

**Art. 388 CofC (2)** - After termination of the voyage the master shall hand over the ship's documents to the sea-employer against receipt.

### **Concerning the crew**

#### **General stipulations**

**Art. 393 CofC (2)** – Ship's officers are the crew to whom the enrolment form acknowledges the rank of officer. Ratings are all the remaining crew.

**Art. 394 CofC (2)** - In so far as the sea-employer has not specified the relation among the ship's

officers, among the ratings and between the ship's officers and the ratings the master decides in these matters.

**Art. 396 CofC (2)** - As crewmembers are denoted only persons who have contracted a labour-agreement with the sea-employer. The master represents the sea-employer in executing the labour-agreement with the crewmembers who are serving on board of the ship under his command.

**Art. 397 CofC (2)** - The stipulations in the Civil Code apply to the labour-agreement between the sea-employer and the crewmember in so far as this Code does not depart from the Civil Code. (*Meaning: the Code of Commerce takes precedence of the Civil Code.*)

**Art. 398 CofC (2)** - The labour-agreement between sea-employer and the crewmember shall be contracted in writing on penalty of nullity and shall be signed in person by the crewmember.

**Art. 399 CofC (2)** - The labour-agreement may be contracted for a certain period or for one or more voyages or for an indefinite period or until notice is given.

**Art. 402 CofC (2)** - A regulation laid down by the sea-employer concerning duties on board is binding for the crewmember provided a clearly legible copy in the Netherlands' language is posted in a day-accommodation at his disposal. The contents of this regulation are binding as long as they are not contrary to his signed labour-agreement.

**Art. 403 CofC (2)** - Null and void is any provision whereby the crewmember is limited in his freedom to work after termination of his employment.

**Art. 404 CofC (2)** - From the moment at which according to the labour-agreement the service on board is to commence the crewmember shall remain at the disposal of the sea-employer to be mustered on a ship mentioned in the agreement.

**Art. 405 CofC (2)** - The crewmember is supposed to be on duty on board a ship from the day mentioned in the enrolment form. No day being indicated it will be from the day the enrolment form was made up until and inclusive of the day on which he is relieved from his duties on board or stops them.

**Art. 406 CofC (2)** - Crewmember duties may not be carried out by those who do not have a labour-agreement with the sea-employer or those who are not mentioned in the enrolment form.

**Art. 407 CofC (2)** - The sea-employer provides for nutrition and accommodation for the crewmember on board as well as for a galley, spaces for meals and storage. For a ship in which the accommodation the galley, spaces for meals and the storage comply with the requirements, the Head of IVW/DS issues a Certificate of Accommodation. The master shall not leave port without a valid Certificate of Accommodation. The sea-employer shall in no case order the supply of food and beverage by way of public tender to the master or a crewmember.

**Art. 408 CofC (2)** - The crewmember is entitled to fair reimbursement for every day that nutrition due is not or not fully supplied.

**Art. 409 CofC (2)** - Abroad at the request of one third part of the crew an inquiry is made into the good quality and sufficient quantity of food and beverage. The inquiry is made by the Netherlands'



consular civil servant or in his absence by the competent authority.

The master shall exchange food and beverage unfit for consumption for items fit for consumption and procure what is necessary.

**Art. 410 CofC (2)** - Abroad complaints can be lodged with the same authority abroad by one third part of the crew about insufficient bedding or accommodation which have appeared after departure. The master shall provide in what is faulty. If he should neglect this he is supposed to have misbehaved against the crew.

**Art. 411 CofC (2)** - The crewmember is not allowed to carry on board spirits or weapons without the master's permission. Items found on board by the master in defiance of this stipulation may be confiscated and destroyed by him or sold for the benefit of an institution in behalf of sailors. The same applies to smuggled goods, contraband and narcotics.

**Art. 412 CofC (2)** - For consumption by the crew no spirits shall be on board in excess of the prescribed quantity (*see articles 44 and 45 of the Crew Decree*). Spirits found on board inconsistent with this stipulation will be confiscated.

**Art. 413 CofC (2)** - The labour-agreement shall state on penalty of nullity the amount of money to be paid in cash or indicate how the amount shall be defined.

### Summary of contents

**Arts. 415 up to 415i CofC (2)** - The essence of these stipulations is that the crewmember (including the master) who falls ill will enjoy full pay as long as he remains on board. Not being on board he will receive eighty percent of his pay over a period of at most fifty two weeks as long as he has not recovered. The crewmember also has the right on free medical care or compensation for expenses therefore made by him. He is entitled to free transport to a port in his home country or to the place where he entered into contract with his sea-employer. Free transport includes the costs of sustenance and accommodation. A crewmember who meets with an accident is also entitled to full pay as long as he remains on board. Not anymore being on board a similar regulation applies to a crewmember who meets an accident as is applicable to a crewmember who falls ill.

**Art. 416 CofC (2)** - If a crewmember deceases abroad and the undertaking takes place outside the home country the sea-employer is accountable for the expenses incurred. If the undertaking takes place in the home country the sea-employer is accountable for the expenses incurred in and connected with transport of the mortal remains to his home country. The expenses are restricted to maximum amounts prescribed by decree.

**Art. 417 CofC (2)** - During his stay on board the crewmember shall strictly obey the master's commands. If he is of the opinion that these commands are unlawful he may in the next port of call invoke the intervention of the IVW/DS or the consular civil servant.

**Art. 418 CofC (2)** - The master shall arrange a duty-roster for each crewmember in accordance with the law and with the stipulations in his labour-agreement.

**Art. 419 CofC (2)** - The crewmember shall carry out the duties ordered to be done by the master but is entitled to an allowance for overwork unless the master considers these duties necessary for the preservation of the ship, the lives of those on board or of matters on board. The master has a record kept of overwork. Every entry in the register will be co-signed by the

crewmember concerned. The ship's officer acting as chief of a department, the ship's surgeon and the radio officer are excluded from this stipulation.

**Art. 420 CofC (2)** - If a crewmember is ordered to carry out duties which deserve a higher reward he is entitled to the corresponding higher pay.

**Art. 421 CofC (2)** - Without the master's permission the crewmember may not leave the ship. Refusal shall be recorded in the logbook and at defaulter's request be confirmed in writing within twelve hour.

**Art. 422 CofC (2)** - The master has disciplinary authority over the crew. To maintain this he may take reasonably necessary measures.

**Art. 423 (CofC (2))** - The master may fine a crewmember to an amount of his fixed pay in cash over a period fixed in time not in excess of ten days in case of:

- leaving ship without his permission;
- not returning on board in time;
- refusal of duties;
- poor discharge of duties;
- improper behaviour towards a member of the crew or any other person on board;
- disturbance of the peace.

This fine shall never be in excess of one third of the pay over the complete voyage.

- Over a period of ten days no higher amount of accumulated fines may be imposed than the maximum amounts mentioned.
- Imposing a fine may be probationary. The destination of the fine must be stipulated in the labour-agreement.

**Art. 424 CofC (2)** - Before imposing a fine the master shall hear the crewmember concerned and the witnesses in the presence if possible of at least two crewmembers of equal or higher rank.

- The official report shall be signed by all present. In the event of refusal to sign this shall be recorded.
- A fine cannot be imposed earlier than twelve hours and not later than a week after the offence has taken place. Extraordinary circumstances can necessitate a deviation.
- Any fine shall at once be entered into a proper register recording the offence leading to the fining, the day of the offence and the day the fine has be inflicted.
- Any entry shall be signed by the master and the crewmembers mentioned. The crewmember may appeal against the fine to the district court judge within whose district the ship has entered or the enrolment form has been drawn up.

**Art. 425 CofC (2)** When the crewmember in the service of the sea-employer is serving on board or abroad his lawful wedded wife is entitled to a monthly payment to a maximum of two/third part of the crewmember's wages, in order to provide for her and her children.

**Art. 431 CofC (2)** - The service on board engaged or continued for a certain period terminates in the next port of call after this period has expired and if necessary notice has been given.

**Art. 432 CofC (2)** - The service on board engaged for the duration of the voyage terminates when the voyage or the voyages for which it was engaged has or have expired. However after a lapse of eighteen months a crewmember may have his service terminated by giving

notice in any port of call after this period.

When giving notice he shall observe a reasonable term necessary for his replacement in that port.

**Art. 433 CofC (2)** - When service on board is to terminate according to the agreement on return in a Netherlands' port mentioned by name, the sea-employer is authorized to have it terminated in a port from which the said port other than by air can be reached within twenty-four hours.

If this Netherlands' port should not be mentioned by name the sea-employer is authorized to terminate the labour agreement in a port abroad wherefrom Amsterdam or Rotterdam can be reached within twenty-four hours other than by air.

Besides the costs of transport a crewmember is entitled to his agreed pay over the period until the day after which he could reasonably have arrived at his destination.

**Art. 434 CofC (2)** - The service on board engaged for an unlimited period can be terminated in any port where the ship loads or discharges by each of the parties during the time the crewmember serves on board ship by giving notice within the term of notice.

Unless a longer term of notice has been agreed or has been laid down by law this term is twenty-four hours. The term of notice is confirmed in writing.

**Art. 435 CofC (2)** - During the voyage each of the parties (the crewmember or the sea-employer) can only for urgent reasons terminate the service at a point of time the ship will be in a port.

**Art. 436 CofC (2)** - Urgent reasons for a sea-employer to dismiss a crewmember are amongst others:

- when a crewmember maltreats the master or one of those on board, grossly offends or threatens them or incites them to committing activities in defiance of laws or decency;
- when without knowledge of his sea-employer or the master he has taken contraband on board or has these in his keeping.

**Art. 437 CofC (2)** - Urgent reasons for a crewmember to give notice are amongst others:

- when he receives orders at variance with his labour agreement or with duties imposed by law;
- when his ship is bound for a port in a country involved in a naval war or for a blockaded port unless his labour-agreement explicitly provides for this and has been concluded after the outbreak of the war or after the blockade has been proclaimed;
- when the ship is destined to carry contraband unless his labour-agreement explicitly provides for this and has been concluded after the outbreak of the war;
- when on board he is under threat of maltreatment by the master or by one of those on board.

**Art. 439 CofC (2)** - Each of the parties is even before service on board has commenced at all times for important reasons entitled to apply to the district court judge or when abroad to the consular civil servant with the request to declare the labour-agreement annulled for weighty reasons.

**NOTE: - The Civil Code also acknowledges specific cases in which dismissal (on the spot) is a possibility.**

As weighty reasons are considered amongst others:

- circumstances which have become apparent after commencing duties on board or have arisen afterwards due to which continuation of the voyage would expose him to unforeseen excessive danger of life;
- if the crewmember can attain a higher ranking position provided he sees to replacement to the satisfaction of and without extra expense for his sea-employer.

### **The muster-roll (enrolment form)**

**Art. 451 CofC (2)** - Before departure the master shall make up the muster-roll.

In the Netherlands the 'crew-list' has the function of muster-roll and is the list containing the names of the master and the crew and the capacity in which any crewmember serves on board.

After having been made up for the first time the muster-roll shall be made anew at least once every twelve months.

After having been made up the muster-roll shall be signed by or on behalf of the sea-employer, the master and the respective crewmembers. The master is to keep the up to date muster-roll on board and send a copy of each muster-roll that contains a change in the safe-manning crew to the shipowner.

Null and void are the conditions deviating from the labour-agreement concluded with a crewmember or conditions supplementing the labour-agreement. (*See as well articles 33 up to 35 Merchant Shipping Manning Act.*)

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## **MERCHANT SHIPPING MANNING ACT**

### **Definitions**

**Art. 1 MA** - In this Act and its provision the following shall be understood as:

- a. Our Minister:* Our Minister of Transport, Public Works and Water Management;
- b. Netherlands ship:* a ship that under Netherlands legislation has the right to fly the flag of the Netherlands;
- c. fishing ship:* a Netherlands ship that is intended or used for the catching of fish or other living resources of the sea;
- d. sailing ship:* a Netherlands ship that is intended and designed to be propelled mainly through use of sails;
- e. pleasure yacht:* a Netherlands ship that is never used for trade or professional purposes;
- f. sailing ship operations:* professional operations with sailing ships;
- g. master:* the person having command of a Netherlands ship;
- h. person on board:* all those on board;
- i. crew:* the master, the seamen and the other persons on board mentioned in the ship's articles;
- j. managing owner:* the natural or legal person who from an office in the Netherlands where the shipping company is established is in charge of the management of the ship as well as the persons who as members of a partnership are in charge of a fishing ship;
- k. competency:* the qualification to serve on a ship in one or more functions;
- l. appropriate certificate:* a document issued by the Inspector-General which proves the competency;
- m. manning plan:* a proposal from the managing owner containing in addition to the master the minimum number of crewmembers with their respective functions with which the managing owner wants to man the ship;
- n. manning certificate:* a certificate issued by the Inspector-General containing in addition to the master or skipper the minimum number of crewmembers and their functions on the ship concerned;
- o. professional requirements:* the requirements laid down in accordance with this act regarding the knowledge, understanding and skills for functions or work to which this act applies;
- p. medical certificate:* a certificate as referred to in article 40 MA.

**Art. 2 MA** - This act is applicable to Netherlands ships used at sea.  
This act is also applicable to Netherlands ships requiring or having been issued a certificate of seaworthiness in accordance with the Ships Act used in waters locally considered to be inland waters.

### **General rules**

**Art. 3 MA** - It is the duty of the managing owner to man a ship in accordance with this act and provide the master with all necessities to comply with this act.

(summary of the article)

**Art. 4 MA** - The managing owner shall man a ship in such manner that with the observance of rules and regulations an in all respects safe shipping can be conducted.

The master shall take care that the crew will be equal to their duties at all times.

### **Manning certificate and manning plan**

**Art. 5 MA** - A ship shall be provided with a valid safe manning certificate issued by the Inspector-General.

As a minimum the ship shall be manned in accordance with the safe manning certificate.

**Art. 6 MA** - This certificate is issued in twofold for a period of no more than five years.

The master shall take care that one sample is displayed on a clearly visible place.

**Art. 8 MA** - The Inspector-General before deciding on the issue of a safe manning certificate may consult the master concerned.

**Art. 9 MA** - In case a ship has more than one arrangement of manning all these arrangements shall be clearly distinguished in the safe manning certificate.

**Art. 10 MA** - The master shall record in the logbook according to which arrangement of manning the ship is manned and facts and circumstances contrary to it.

**Art. 12 MA** - The master not being able to make up properly the crew members task will request the managing owner to provide him within a specified time with the wanted means. An oral request shall be confirmed in writing as soon as possible. In case the ship's manager does not or not timely honor the master's request the master shall inform in writing the Inspector-General.

**Art. 13 MA** - The Inspector-General shall withdraw a safe manning certificate:

- when issued on the base of incomplete or incorrect data

or

- when the ship is used contrary to that mentioned in the document and this use requires an other arrangement of manning.

**Art. 16 MA** - The Inspector-General can exempt an assigned ship for a certain period not exceeding six months to deviate from the safe manning certificate.

**NOTE: details about this regulation are laid down in article 3 of the Manning Order.**

### **Competencies, requirements of knowledge and experience**

**Art. 18 MA** – Anyone performing a duty on board shall be in the possession of a valid certificate of competency.

**NOTE: a list of competencies that can be recorded in the certificate of competency is written down in this article.**

**Art. 24 MA** - The Inspector-General shall revoke a certificate of competency if:

- an investigation proves that holder of the certificate is not anymore up to standard;
- the holder after medical examination appears not to be fit to perform his function on board.

A certificate of competency can be revoked if:

- the certificate has been issued on the basis of incorrect data;
- false or falsified documents have been produced.

The Inspector-General can for safety reasons temporarily prohibit the holder of a valid certificate of competency to perform his function or execute duties.

This prohibition shall not exceed a period of 24 hours.

The Inspector-General shall revoke a certificate of competency issued on the basis of foreign certificates in case the competent foreign authority has suspended or revoked the national certificates concerned.

**Art. 25 MA** - The Inspector-General can exempt a member of the crew of the obligation to be in the possession of a valid certificate of competency .

This exemption is given only so far it concerns a particular ship and for a period of no more than six months.

An exemption is also granted to a holder of a certificate of competency for small ships if due to the reconstruction of a small ship it is no more a small ship.

The exemption is granted to the holder:

- for the duration he is attending training for a proper certificate. The duration is limited to two years at a maximum and
- the holder has served two years on board of this ship or identical ship in a period of five years previous to the request for exemption.

**NOTE: elaboration of this article is to be found in article 3 of the Manning Order.**

**Exemptions concerning master and chief engineer are granted only under very special circumstances.**

### **The Master**

**Art. 27 MA** - The master shall take charge of the maintenance of public order on board and shall exercise his authority over all those on board.

The master is not allowed to charge a member of the crew with duties requiring specific competencies if in accordance with his valid certificate of competency he does not possess the required competencies.

Those on board are to obey the orders of the master given in the interest of safety or of maintaining order (public order included).

**Art. 28 MA** - The master exercises his authority as soon as he is on board and has taken on or taken over the command. He keeps his command as long as he has not transferred it or the managing owner has not relieved him of the command.

**Art. 29 MA** - Netherlands' citizens, citizens of one of the Countries forming part of the EU, Iceland, Liechtenstein, Norway and Switzerland can be appointed master of a Netherlands ship. Citizens of a limited number of other countries can be appointed likewise, but only if they are in the possession of a declaration of no objection, issued by the committee of maritime social partners.

**Art. 31 MA** - In the absence or default of the master the first mate or first maritime officer shall act as master.

If no first mate or first maritime officer is available a person appointed by the managing owner shall act as master.

**Art. 32 MA** – Managing owner shall take care that master's position in the company shall not be prejudiced in giving his opinion with respect to articles 4 and 8 MA.

The master may present a request to the district court requiring the managing owner to comply with this article.

## **Enrolling and medical examination**

### **Enrolling**

**Art. 33 MA** - On board a muster-roll or enrolment form (Crewlist IMO Fall Form 5) shall be drawn up and amended by the master.

The enrolment form shall at least contain the functions in accordance with the safe manning certificate and the names of the crew (including the master).

The enrolment form shall have a period of validity of no more than twelve months.

The master shall send the newly drawn up or amended enrolment form to the managing owner within a week or after arrival in the next port.

**Art. 34 MA** - By Order of Council exemption can be granted for certain categories of ships from the obligation to draw up an enrolment form.

The Inspector-General has a similar authority with respect to a particular ship and for a fixed period. Restrictions and requirements can be connected with the exemption.

**Art. 35 MA** - The data to be recorded in the muster-roll will be derived from a valid or provisional seaman's book.

**Art. 36 MA** - By Order in Council rules will be set with respect to:

- the seaman's book itself and the issue of it;
- the data to be entered;
- the data that can be entered by others than the master.

**Art. 37 MA** - The period of validity of a seaman's book is ten years after the date of issue. A provisional seaman's book has a period of validity of three months after the date of issue.

**Art. 38 MA** - The master shall record in the seaman's book:

- the day of enrolment;
- the day of signing off;
- the capacity in which was served;
- the name and call sign of the ship.

No mention shall be recorded of wages and behaviour.

**Art. 39 MA** - The crew member being of the opinion the master has recorded or failed to record information contrary to article 38 MA can lodge a complaint with the Inspector-General.

The complaint has to be lodged:

- within four weeks after the day of paying off in a Netherlands' seaport or
- within six months after the day of signing off outside the Netherlands.

### **Medical examination of the crew**

**Art. 40 MA** - Each crew member shall be in the possession of (a) Netherlands medical certificate(s) of fitness concerning the physical fitness, and when applicable eyesight and/or hearing.

**Art. 40a MA** - A medical certificate of fitness issued by a medical doctor or medical specialist appointed thereto by another EU-memberstate, Iceland, Liechtenstein, Norway or Switzerland proving that a crewmember has been declared medically fit, is considered equal to the Netherlands certificate.

**Art. 41 MA** - The medical certificate(s) of fitness shall be presented when enrolling.

**Art. 42 MA** - This article deals with the procedures to follow in case:

- the medical certificate has been refused;
- the person examined and declared fit for duty thinks himself unfit.

**Art. 44 MA** - Regulations regarding:

- the medical examination;
- the medical re-examination;
- the appointment of doctors;
- the withdrawal of the appointments;
- the period of validity of the certificates is two years, or for the period indicated in the certificate. The Inspector-General may grant an exemption for a certain period of time to meet the applicable medical standards.

**Art. 45 MA** - In urgent circumstances the Inspector-General may give exemption from the obligation to be in the possession of one or more certificates of medical fitness.

**Art. 46 MA** - In the event the muster-roll needs to be drawn up or added outside the Netherlands local custom regarding the certificates of medical fitness will be applied.

**Art. 47 MA** - In the event of cases mentioned in the articles 45 and 46 MA a medical examination by an authorized doctor or medical expert shall be carried out upon first opportunity.

**Art. 48 MA** - This article mentions the possibility that:

- a certificate of medical fitness can be required for special categories of personnel;
- on certain ships crewmembers can be exempted from parts of the medical examination.

### **Supervision and Investigation**

**Art. 49 MA** - The officials of the IVW/DS are charged with the supervision on the compliance with this act. Other officials and persons can be appointed with the supervision by appointment of the Minister of Transport, Public Works and Water Management.

**Art. 50 MA** - The above mentioned officials and persons in exercising their authority are permitted to enter any place on board ships living quarters included.

**Art. 51 MA** - The official or person is authorized to inspect matters and ships within the limits of his function.

In the event of a just suspicion about actions contrary to the obligations of this act he is authorized to demand from the master to heave to or to take his ship to an assigned safe mooring or anchorage.



**Art. 52 MA** - The official of the IVW/DS has the authority to detain a ship prior to departure to sea if:

- the safe manning certificate is lacking or invalid;
- the crew is not in compliance with the minimal requirements indicated in the safe manning certificate;
- other use is made or will be made of the ship than the safe manning certificate permits.

He is also authorized to detain a ship in case access to the surveyor to the ship is refused or no cooperation is given.

The detention will be lifted as soon as the reason for it has been removed.

**Art. 53 MA** - The surveyor shall inform the Inspector-General immediately of the detention and the reason for it.

The officer of the national tax office authorized Custom-house officer will be informed also of a detention or the lifting of it.

The Custom-house officer shall not release the ship as long as he has not been notified of the lifting of the detention.

**Art. 55 MA** - Authorized to investigate about actions punishable under this act are those mentioned in article 141 of the Code of Criminal Procedure and the officials of the Shipping Inspectorate.

### **Prohibitions**

This chapter mentions in the articles 56 up to and including 60 MA some obligations of this act failing to comply with are offences in accordance with the Economic Offences Act.

### **Remaining regulations**

This chapter regulates in the articles 61 up to 70 MA among others:

- appeal against decisions of the Inspector-General or an official of this institute;
- tariffs for the issue of different certificates, services rendered;
- a Central Register of Crew Data;
- a Public Register of manning certificates;
- State examinations for acquiring certain certificates of competency

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## **MANNING ORDER MERCHANT MARINE AND SAILING SHIPS (ZEEVAART BEMANNINGSSBESLUIT)**

The Manning Order Merchant Marine and Sailing Ships is an elaboration of the Merchant Shipping Manning Act.

It contains eight chapters dealing with:

- definitions of terms used (chapter 1);
- rules for granting exemptions (chapter 2);
- regulations regarding appropriate certificates (chapter 3);
- professional requirements (chapter 4);
- regulations regarding the muster-roll and the seaman's book (chapter 5);
- regulations regarding the medical fitness of seafarers (chapter 6);
- special regulations for crewmembers on board merchant ships (chapter 7);
- transitional and final regulations (chapter 8).

**A compilation of the contents of some articles worth knowing is given herewith.**

**Art. 3 MO** - gives the requirements for granting exemptions from the safe manning certificate (*see articles 16 and 25 of the Merchant Shipping Manning Act*).

**Art. 4 MO** - Contains the specification of the different appropriate certificates of competency . Differences depending among others on size (tonnage), propulsion power, sailing area and purpose of ships.

**Art. 6 MO** - This article states that experience and time of service at sea shall be expressed in years and the minimum position where in it can be obtained.

**Art. 7 MO** - A certificate of competency for officers has a validity of five years from the date of issuance.

**Art. 8 MO** - This article mentions the requirements for the issue of an appropriate certificate of competency.

The requirements are among others:

- the document proving the required level of knowledge shall not be older than four years;
- in case of renewal: a stage of one year of service in the period of five years prior to the request for renewal;
- in case of expiration of the validity of the appropriate certificate and lacking of the one year service as mentioned up here a recognized course has to be followed or at least three months has been served in a relevant function.

A lost certificate can be replaced by a duplicate.

The duplicate will have a date of expiration similar to that of the lost one.

If the applicant of a duplicate is entitled to renewal of the certificate the requirements for renewal are applicable (see above).

The costs for the issue of an appropriate certificate or duplicate have to be paid when applying for the document.

**Art. 9 MO** - This article deals with certificates and diplomas issued by authorities outside the European Union or European Economic Area (*Iceland, Norway, Liechtenstein*) and Switzerland).

### **General rules regarding diplomas and experience**

**Arts. 11,12 and 13 MO** - These articles are a specification of functions and the relevant required diplomas.

### **Diplomas, experience and competencies**

**Arts. 14 up to 28 MO** - These articles concern additional requirements before being allowed to serve in the mentioned functions.

The requirements have to do with diplomas, age and time served in these mentioned functions.

### **Additional requirements for service on board of ships**

**Arts. 29 up to 33 MO** - These articles deal with special requirements regarding knowledge, capabilities, time served with respect to (oil) tankers, passenger ships and roll on-roll off ships.

### **Additional requirements for service on board of ships with a special type of propulsion**

**Arts. 34 up to 36 MO** - These articles deal with the special requirements concerning masters, mates and engineers serving on board steam ships, high speed crafts and sailing ships.

**Appropriate certificates for personnel or former personnel of the Royal Netherlands Navy**  
**Arts. 37 up to 48 MO** - These articles deal with the above mentioned subject.

### **Qualifications**

**Arts. 57 up to 70 MO** - These articles indicate the requirements that have to be met in order to be issued a specific certificate of competency for the different trades (merchant trade, dredging and sailing trade).

**Arts. 81 up to 92 MO** - These articles deal with safety and health care.  
Different types of ships, different ways of propulsion, different equipment or special functions require different additional knowledge/qualifications. These requirements are listed in these articles.

### **Terrorism and Sabotage**

**Art. 92a MO** - In order to be issued the Certificate Legislation and Public Authority, the applicant has to meet certain requirements approved by the Minister of Transport. These requirements shall include at least:

- a. knowledge and interpretation of Netherlands legislation in the field of maritime transport by sea;
- b. knowledge of the regulations and manuals concerning the execution of public authority on Board including skilfulness in the execution of it., and
- c. knowledge of the measures (that have to be) taken in order to secure the ship and skills regarding the way of acting in ports and at sea in the field of security measures.

### **Further regulations regarding the enrolment form and the seamen's book**

**Art. 93 MO** - The model of the enrolment form is laid down by the Minister of Transport, Public Works and Water Management (Crewlist IMO Fall Form 5).

The enrolment form shall contain above the functions in accordance with the safe manning certificate and the names of the crew as mentioned in article 33 MO:

- place and day of signing on and signing off;
- date of birth;
- the number of the seaman's book;
- name and call sign of the ship.

The minister can decree that other data shall be recorded in the enrolment form.

**Art. 94 MO** - The enrolment form shall be drawn up before departure for sea for the first time. There after the enrolment form shall be drawn up at intervals of not more than twelve months. Each change in ship's complement shall be recorded in the enrolment form. The master has to forward the enrolment form drawn up for the first time or the amendments of it to the managing owner within a week or from the next port. The managing owner has to register the date of receipt of the enrolment form or the amendments to it.

**Art. 95 MO** - The enrolment forms and amendments have to be kept at the managing owner's office in the Netherlands readily available to the Inspector-General.

**Art. 96 MO** - The enrolment form after being replaced or being expired has to be kept in file by the managing owner for three years after the date of replacement or expiration.

### **The seaman's book**

**Art. 97 MO** - The Inspector-General issues the seaman's book. A request is only taken into consideration if an applicant can prove to belong to one of the following categories:

- being or will be in the possession of a labour agreement;
- following a training for a profession requiring a certificate of competency;
- if the applicant belongs to another category designated by the Minister;
- if the applicant according to the Inspector-General needs one on behalf of his profession.

**Art. 98 MO** - On the request the following documents should be produced:

- a valid passport or certificate of nationality or a copy authenticated by the registrar;
  - two recent passport photographs;
  - an authenticated document containing personal data not older than six months as required.
- The document has to be applied for at the municipality where applicant is registered. In case applicant resides abroad documents customary in his country of origin suffice. The request is considered only after the cost has been paid.

**Art. 99 MO** - Before issuing a seaman's book the Inspector-General records in any case:

- name and surname;
- place and date of birth;
- nationality;
- place and date of issue;
- date of expiration.

Furthermore the seaman's book should contain applicant's photograph and signature. Without signature it is invalid.

**Art. 100 MO** - This article gives information how to handle in case of loss, of renewal or of expiration of the seaman's book.

**Art. 101 MO** - A provisional seaman's book can be issued:

- if applicant is not in the position to make timely an application in the Netherlands. In this case the master will deal with the issue of a provisional seaman's book;
- on request of an applicant who can prove his activities require no more than three months;
- if to the belief of the Inspector-General it is not certain applicant will conclude a labour agreement.

**Art. 102 MO** - The categories of article 97 MO, the documents of article 98 MO and data of article 99 MO are equally applicable to the issue of a substitute or provisional seaman's book.

**Art. 103 MO** - The Minister may authorize other persons beside the Inspector-General and the master to make notes or alterations in a seaman's book. Notes or alterations made by unauthorized persons are invalid. The unauthorized person having done so shall pay the cost of replacement of the seaman's book concerned.

### **Further regulations regarding the medical fitness of seafarers**

**Art. 104 MO** - All crewmembers on board of Netherlands' ships have to be in the possession of a valid certificate of medical fitness for seafarers.

Crewmembers that can be appointed look out or charged with navigational watch or engineering watch must also meet the requirements concerning eyesight and hearing ability.

**Art. 105 MO** - This article states among others the right of a person to a re-examination.

**Art.107 MO** - A certificate of medical fitness will be valid for a period of 2 years from the date of issuance. However on medical grounds, the physician may issue such a certificate for a period shorter than 2 years or issue a certificate for a limited area of sailing.

**Art. 108 MO** - A physician can declare an examined person temporarily or permanently unfit for service on board. These indications are defined consecutively:

- temporarily unfit if can be expected that the person will remain unfit for a period not exceeding three years:
- permanently unfit if can be expected that the person will remain unfit for a period exceeding three years.:

**Art. 113 MO** - Medical certificates based on other standards than those required by this Order can be recognized by the Medical Advisor of the Shipping Inspectorate.  
These certificates should not be older than two years from date of issue.

**Art. 112 MO** - The costs of medical examinations or re-examination will be borne by the managing owner or in the absence of a managing owner by the one who gave the order.

### **Special regulations for crewmembers of merchant ships**

**Art. 116 MO** - This article mentions the requirement of certificates for those crewmembers that perform special duties with respect to safety on board and prevention of pollution of the sea.

Some appropriate certificates already include these requirements.

The remaining crewmembers should have been instructed prior to taking on their duties about such things as the meaning of different symbols used on board, what to do when there is a fire alarm, man over board, how to handle watertight doors and hatches.

**Art. 117 MO** - This article mentions the master's responsibility for having a certified lifeboat crew before setting sail.

Master, mates and maritime officers are supposed to be qualified as lifeboat crew.

In case fast-rescue boats are carried on board at least two men a boat should be qualified to handle these boats.

**Art. 118 MO** - This article mentions the obligation that the master and he who has been charged with the administration and use of the medical equipment should be in the possession of a maritime health care certificate-0 (unlimited).

They have to attend a refresher course at least once every five years.

Knowledge-documents regarding certain personnel named in the article are considered to be in the possession of the maritime health care qualification - B (limited)

**Art. 119 MO** - This article indicates under which circumstances a physician should be carried on board.

**Art. 120 MO** - This article deals with requirements regarding the ship's cook.

**Art. 121 MO** - This article indicates when a general operator certificate is required.

**Art. 122 MO** - Managing owner should ensure an effective communication between:

- crewmembers regarding safety matters;
- ship- and shore-authorities.

On board of a passenger ship a working language should be laid down and registered in the ship's logbook.

On board passenger ships crewmembers assigned to assist passengers in an emergency should have adequate communicative capabilities and be clearly recognizable.

On board of tankers crewmembers should be able to communicate with each other in one or more working languages.

**Art. 123 MO** - The managing owner shall submit to the Inspector-General in three fold a statement in which he shall accurately describe how he has acted upon the obligations of article 122 MO.

The statement has a period of validity of five years except for passenger ships.

For passenger ships applies a validity of one year.

The managing owner has to provide the master with one of two copies registered and authenticated by the Inspector-General.

The master shall display this copy of the statement in a place accessible to everybody.

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## **CIVIL CODE VOLUME 7**

### **Labour-agreement**

#### **General stipulations**

**Art. 610 CivC (7)** - The labour-agreement is the agreement whereby one party, the employee, commits himself to another party, the employer, to perform labour for a certain period against payment.

**NOTE: the Code of Commerce provides rules concerning a labour agreement for service at sea (arts. 396 up to 450d CofC (2) ).**

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## **CIVIL CODE VOLUME 8**

### **Exploitation**

#### **General stipulations**

**Art. 360 CivC (8)** - The shipowner is with the bareboat charterer severally liable for a legal act binding to the bareboat charterer serving directly to make the ship ready for service or to keep her in service.

Under legal act receiving a statement is included.

**Art. 361 CivC (8)** - By "Exploitation-agreements" are understood: the freighting of the ship and the agreements to ship goods or people in the ship.

#### **Liability outside agreement to the other party**

**Art. 362 CivC (8)** - If in an exploitation-agreement one party is sued by the other party for damage developed during operation outside the agreement it is no further liable to the other party than it would be on the strength of the concluded exploitation-agreement.

### **Liability outside agreement to another party**

**Art. 363 CivC (8)** - If in an exploitation-agreement one party is sued for damages developed during operation of the ship outside the agreement by another party its liability is as follows. The sued party is no further liable to the claimant than it would be as if it were the other party in the exploitation-agreement which has been entered into by the claimant. However the exploitation-agreement should form part of the chain of exploitation-agreements between the sued party and the claimant.

### **Third-party liability**

**Art. 364 CivC (8)** - If a shipowner, a charterer or a carrier is sued outside agreement for death or bodily injury or for damages by some one who is no party in an exploitation-agreement the owner is no further liable to the claimant than he would be by the exploitation-agreement.

### **Limitation of liability**

**Art. 366 CivC (8)** - The total amounts to be recovered from a third party and his subordinates in an exploitation-agreement shall not be in excess of the total amount due to them on account of the agreement referred to by them unless intent or recklessness bordering on intent is called in question.

### **Some special agreements**

#### **Bareboat charter**

**Art. 530 CivC (8)** - Under the agreement (bareboat charter) the one party (the bareboat carrier) commits himself to place a ship exclusively for service at sea at the disposal of the other party (the bareboat charterer). The bareboat carrier will not retain any control over it. The exploitation is in the hands of the bareboat charterer and takes place at his expense.

### **Agreement concerning goods traffic by sea**

#### **(Definition)**

**Art. 370 CivC (8)** - The agreement concerning goods traffic in according to this title is the agreement concerning goods traffic whether or not in time- or voyage-charter whereby the one party (the carrier) commits himself to the other party (the consignor) to ship goods on board ship exclusively by sea.

#### **Direct impact of Bill of Lading Convention**

**Art. 371 CivC (8)** - By amended convention in this article is understood the Convention dated August 25th 1924 to establish some uniform rules concerning the bill of lading. The articles 1 to 9 inclusive of the amended Convention apply to any bill of lading relevant to transport of goods between ports in two different states if:

- the bill of lading has been issued in a contracting nation or
- transport takes place from a port in a contracting nation or
- the agreement contained in the bill of lading or apparent from it rules that to this agreement are applicable the provisions of the amended Convention or of any legislation.

Similarly if it enforces these provisions of the convention or has adopted them in another form or wording. This irrespective of the nationality of the ship, the carrier, the consignor, the consignee or any other person involved.

### **Time-charter or Voyage-charter**

**Art. 373 CivC (8)** - Time-charter or voyage-charter in terms of this section is the agreement of goods-traffic whereby the carrier commits himself to ship cargo on board a ship. For this purpose differently from the bareboat charter he puts the ship completely or partly at the disposal of the charterer. Whether or not on a basis of time (time-charter or voyage-charter) is irrelevant.

### **Contract of carriage under Bill of Lading**

**Art. 377 CivC (8)** - In this title by contract of carriage under bill of lading is understood the contract of carriage laid down in a bill of lading or any similar document constituting a title for carriage of goods by sea. Likewise is understood by it the contract of carriage laid down in a bill of lading or similar documents as earlier mentioned issued on account of a charter party. From the moment at which this bill of lading or similar document determines the relation between the carrier and the bearer of the bill of lading it becomes equal to a contract of carriage under bill of lading.

### **Time-charter; masters' mandate**

**Art. 380 CivC (8)** - In case of time-charter the carrier is obliged to order the master to act upon the orders of the charterer within the limits laid down by the agreement.

The carrier is answerable for the master to comply with the orders given.

The charterer guarantees that the ship can safely reach the places or locations to which he orders it to sail for loading, discharging or otherwise and can safely gain access, berth and depart.

The charterer is responsible for the consequences resulting from executing his orders. He only is not responsible if the master carrying out these orders acts unreasonably. (Note: "unreasonable" meaning here "unseamanlike".)

The charterer is committed to and may derive rights from a legal act which the master performs. By "legal act" accepting a statement is included.

### **Obligations of carrier**

**Art. 381 CivC (8)** - Under a contract of carriage under bill of lading the carrier is obliged to exercise proper care before and on commencement of the voyage for:

- making the ship seaworthy;
- properly manning, equipping and supplying the ship;
- adapting and conditioning holds, cold stores, refrigerator spaces and all the other parts of the ship where in goods are loaded for storage, transport and preservation.

Under a contract of carriage under bill of lading the carrier is obliged to load goods properly and carefully, to process, stow, to ship, to preserve, to take care of them and discharge them.

### **Coercive right**

**Art. 382 CivC (8)** - Null and void is any stipulation in a contract of carriage under bill of lading by which the carrier or the ship is relieved from liability for loss or damage to goods resulting from negligence or from being at fault.

Notwithstanding the above such a stipulation is valid provided it concerns:

- a permitted condition regarding general average;
- live-stock;
- goods factually carried on deck provided these have been listed in the bill of lading as deck cargo.

### **Non-availability of goods; termination**

**Art. 392 CivC (8)** - Before goods have been put at the disposal of the carrier the consignor is entitled to cancel the agreement.

If on expiration of the term within which goods must have been put at the disposal of the carrier



prolonged by time on demurrage through whatever cause no goods at all are at the disposal of the carrier he is entitled to terminate the agreement. In this case no notice of default is required. If on expiration of the term as mentioned above through whatever cause the goods agreed are at the disposal of the carrier only partly he is entitled to terminate the agreement or to accept the voyage. No notice of default is required.

Notice of termination takes place by wire, telex or any other express message the acknowledgement of which is clearly demonstrable. The agreement terminates at the moment of receipt but not before the discharge of goods.

Consignor is obliged to pay the carrier damages suffered as a result of termination or of accepting the voyage.

This article does not apply in case of time-charter.

### **Voyage-charter: partial cargo**

**Art. 393 CivC (8)** - In case of voyage-charter the carrier is obliged to accept the voyage at the charterers request with part of the goods agreed upon against security for what he is owed by the charterer. The charterer is obliged to pay the carrier damages incurred.

The carrier is entitled to accept other goods instead of those lacking. He is not obliged to settle the freight received for the carriage of these goods with the charterer except in case he has cashed or claimed compensation from the charterer for damages incurred.

### **Contract of Carriage in priority to Bill of Lading**

**Art. 410 CivC (8)** - If a contract of carriage has been concluded and moreover a bill of lading has been issued the legal relation between carrier and consignor is controlled by the stipulations in the contract of carriage and not by those in the bill of lading.

In this case a bill of lading only serves as a receipt of matters by the carrier.

### **Voyage-charter: instruction by charterer**

**Art. 419 CivC (8)** - In the case of voyage-charter the charterer shall timely indicate the place of loading and discharge.

For this purpose he shall indicate a customary place available at once or within a reasonable time where the ship can safely berth, load or discharge and where from the ship can depart safely.

### **Indication of port of loading or port of discharge**

**Art. 420 CivC (8)** - In case of a voyage-charter where the charterer is authorized to specify the port of loading or the port of discharge article 419 CivC (8) is of analogous application.

### **Loading and stowage obligation**

**Art. 421 CivC (8)** - Except in case of chartering the carrier shall load and stow the goods on board.

### **Loading-time; demurrage days; demurrage**

**Art. 422 CivC (8)** - In so far as the carrier is obliged to load he is bound to do so in the agreed loading-time.

In so far as the consignor is bound to load or stow he is to guarantee that this will take place in the loading-time agreed.

If no loading-time has been agreed loading should take place as fast as is locally customary or reasonable for a ship as the relevant ship in the port in question.

If the contract of carriage states demurrage but not demurrage-time this time is assessed at eight successive days.

If at the berth another number of days is reasonable or customary this number of days shall be applied.

The legal provisions regarding penalty stipulations are not applicable to penalties regarding demurrage.

Debtors of demurrage and of possible indemnification in case the consignor is bound to load and stow are severally liable for payment.

### **Delivery of goods before arrival**

**Art. 440 CivC (8)** - The consignor is qualified to require of the carrier delivery of the goods received for transport before arrival at the place of destination. In case for this purpose a bill of lading has been issued it implies all the in the bill of lading mentioned goods collectively. This right of the consignor applies exclusively as well to the bearer of a bill of lading as meant in article 441 Civil Code volume 8.

The delivery of these goods will take place so far as the carrier can reasonably comply with it. The consignor or the bearer of a bill of lading have to indemnify the carrier and the parties interested in the remaining cargo.

The consignor or the bearer of a bill of lading is obliged to contribute to a general average. The circumstance that led to the act resulting in a general average should have occurred in advance of the delivery.

He can not exercise this right when by premature delivery the voyage would be delayed.

Goods delivered in accordance with the first paragraph above are considered as goods delivered at their destination.

The stipulations in this section (*The Agreement concerning goods traffic by sea*) with regard to the delivery of goods as well as the articles 490 and 491 Civil Code volume 8 are applicable.

### **Right bearer of Bill of lading; relation to carrier**

**Art. 441 CivC (8)** - Exclusively the legal and regular bearer if a bill of lading has been issued has the right to demand delivery of goods in accordance with carrier's obligations from the carrier under the bill of lading,

Towards the bearer of the bill of lading, who was not the consignor the carrier under bill of lading is committed to the stipulations in this bill of lading and may appeal to them.

Towards any bearer of the bill of lading he may enforce the clearly recognizable rights to payment apparent from the bill of lading.

Towards the bearer of the bill of lading who is as well the consignor the carrier can moreover rely on the stipulations in the contract of carriage and on his personal relation to the consignor.

### **Carrier under Bill of lading**

**Art. 461 CivC (8)** - Carrier under bill of lading is the person who signed the bill of lading or for whom somebody else signed it. He whose form was used for the bill of lading is as well considered as carrier under bill of lading.

### **Freight**

**Art. 484 CivC (8)** - Freight is due after delivery of goods by the carrier on the place of destination or on another spot at the request of those mentioned in article 440 Civil Code volume 8.

If the freight has been fixed according to weight or volume of goods it is calculated according to these data on delivery.

Freight that has been fixed at one lump sum for all goods on destination even when only part of these goods has been delivered is due as a whole.

Subject to the last paragraph of this article freight is due for goods that have been sold during the voyage because their damaged condition did not reasonably permit further transport.

However the freight is due at the most to the amount of their yield.

Freight to be paid in advance or which has been paid is and remains - except in case of time-charter

- completely due even when goods are not delivered at their destination.  
Goods delivered in worthless condition are considered as not having been delivered.  
Goods that have not been delivered or have been delivered in worthless condition are nevertheless considered as goods delivered.  
This is the case in so far as non-delivery or delivery in a worthless condition results from the nature or a fault in the goods.  
Likewise if it involves an act or neglect on the part of a rightful claimant to either the consignor of the goods or consignee of the goods.

#### **Allocation of running costs**

**Art. 487 CivC (8)** - In time charter fuel for the engines, boiler water, harbour dues and similar charges and expenses for completed voyages and for carrying goods are chargeable to the charterer. The remaining running costs are chargeable to the carrier.  
The carrier is entitled and obliged to accept from the charterer the fuel remaining on board on termination of the charter at the price prevalent at the time and on the spot of the ship's delivery.

#### **Costs during the voyage**

**Art. 488 CivC (8)** - Without prejudice to the stipulations regarding general average and without prejudice to the stipulations regarding custody (articles 198 up to 203 Civil Code volume 6) the consignor, the consignee and if a bill of lading has been issued bearer thereof are severally bound to repair the damage to the carrier. It concerns the damage incurred because the carrier dealt as man of affairs with the management of the interests of a claimant to goods received for transport. The damage incurred also can be the result of the fact that the master or skipper has fulfilled his obligations.

#### **Power of Retention (Lien) carrier**

**Art. 489 CivC (8)** - The carrier is entitled to refuse delivery of goods under his control to any one who in another quality than the contract of carriage is entitled to delivery of those goods.  
If the goods have been seized and from the prosecution of this seizure an obligation to delivery to the seizer ensues the carrier has to deliver.  
The carrier can exercise the power of retention on goods under his control on account of the contract of carriage the amount due or will be due to him by the consignee for the transport of those goods as well as for the contribution in general average.  
This power of retention becomes ineffective as soon as the non-disputed amount has been paid to the carrier and adequate security has been granted for the payment of the disputed amounts or those which could not yet be fixed.  
The power adjudged in this article to the carrier is not due to him against a third party if at the time of receiving goods for transport he had reason to doubt the authority of the consignor towards this third party to put the matter at his disposal for transport.

#### **Storage on not receiving etc.**

**Art. 490 CivC (8)** - The carrier is entitled to store with a third party the goods of the person who is entitled to the delivery.  
The carrier has this right if the said person:  
- does not turn up;  
- refuses to receive the shipped goods;  
- does not receive the shipped goods with the required speed.  
This right applies as well to goods seized.  
Storage of goods also is allowed in case the carrier has sound reasons to assume the bearer of a bill of lading acting as consignee is not entitled to delivery.

Storage takes place in a store or river-barge at the expense and risk of the rightful claimant. At carrier's request the judge can decide that he keeps the goods under his own control or takes other measures.

The carrier if he deems it necessary can keep the goods on board.

The custodian and the consignee are mutually committed as if the concluded agreement regarding storing had been concluded between them. The custodian however is not entitled to delivery. After permission in writing from the depositor he is allowed to deliver.

### **Sale of stored goods**

**Art. 491 CivC (8)** - In case of application of article 490 Civil Code (volume 8) the carrier, the custodian or he who on behalf of the carrier is entitled to delivery may at his request be authorized by the judge to sell goods completely or in part in a manner to be decided by the judge.

### **Agreement of conveyance of passengers by sea**

#### **Definition**

**Art. 500 CivC (8)** - The agreement of conveyance of passengers in the terms of this article is the agreement of conveyance of passengers whether or not in time-charter or voyage-charter whereby the one party (the carrier) commits himself to the other party to transport exclusively by sea on board ship one or more persons (passengers) with or without their luggage.

The agreement of conveyance of passengers on board a hovercraft and the agreement of conveyance of passengers as defined in article 100 Civil Code volume 8 (*concerns inland transport*) is not an agreement of conveyance of passengers in the terms of this section

Conveyance by sea and inland waterways on board one and the same ship sailing both waters is considered as conveyance by sea.

#### **Period of conveyance**

**Art. 501 CivC (8)** - Regarding passengers or their cabin-luggage conveyance by sea comprises:

- the period that the passenger or his cabin-luggage stays on board ship;
- the time of embarkation or disembarkation;
- the time that the passenger or his luggage is carried from ship to shore or vice versa.

#### **Liability in case of death or injury**

**Art. 504 CivC (8)** - The carrier is liable for damage caused by death or injury of the passenger. An incident leading to this should have occurred during conveyance. This incident must have been caused by a condition which a careful carrier could have avoided. Similarly the death or injury should have been caused under a condition the consequences of which the carrier could have prevented.

#### **Culpability of passenger**

**Art. 513 CivC (8)** - The carrier's liability can be wholly or partly lifted. He therefore has to prove that blame or negligence on the part of the passenger has caused damage or contributed to this.

#### **Delay damage in case of time-table sailings**

**Art. 515 CivC (8)** - The carrier who other than by way of chartering committed himself to conveyance by time-table is not liable for damages caused by delay by whatever cause this manifested itself before, during or after conveyance.

#### **Nautical errors and attempt at rescue**

**Art. 517 CivC (8)** - Without prejudice to articles 504 and 505 Civil Code volume 8 the carrier is

not liable for damage caused by an act, carelessness or neglect by the master or the skipper, another member of the crew, the pilot or the subordinates of the carrier committed in navigating the ship. Without prejudice to articles 504 and 505 Civil Code volume 8 no deviation from the course in order to rescue or in an attempt to save human life or goods and no reasonable deviation from the course is considered as a violation of any transport agreement. The carrier is not liable for any loss or any damage incurred by this.

**NOTE: articles 504 and 505 CivC (8) concern respectively damage sustained by passengers and damage of cabin-luggage.**

### **Coercive Right**

**Art. 520 CivC (8)** - Null and void is any stipulation made before an incident occurred to the passenger or before the loss of luggage or damage to luggage in which pursuant to article 504 Civil Code volume 8 the liability of or burden of proof on the carrier is reduced in another way than provided in this section.

### **Ticket or luggage-receipt**

**Art. 528 CivC (8)** - If a ticket, a luggage-receipt or any similar document is issued for transport the carrier is obliged to state clearly his name and domicile in this.  
Null and void is any stipulation deviating there of.

## **Accidents**

### **Collision**

#### **Definition**

**Art. 540 CivC (8)** - Collision is the contact between ships.

### **Damage without collision**

**Art. 541 CivC (8)** - With prejudice to the Oil Tanker Liability Act - not mentioned in this module - in this section stipulations concerning collisions also apply if damage has been caused by a sea-going ship without a collision having taken place.

### **Liability**

**Art. 542 CivC (8)** - If a sea-going ship has caused damage through a collision or if damage has been caused by a ship to a sea-going ship, those on board or matters on board liability for this damage is settled in this section.

### **One ship at fault**

**Art. 544 CivC (8)** - If one ship is at fault for a collision the owner of the ship that was at fault is obliged to make up for damages.

### **Two or more ships at fault**

**Art. 545 CivC (8)** - If two or more ships together are at fault for causing a collision their owners are not severally liable for damage caused to accessory ships and to matters on board these ships and severally for all remaining damages.

### **Liability ratio**

If liability is not several the owners of the ships that jointly are at fault for causing the collision are liable to the injured parties in relation to the seriousness of the fault of their ships. However if circumstances entail that this ratio cannot be established or if it is apparent that these ships are

equally at fault liability is equally divided.

### **Third Party Liability and Recourse**

If liability is several each of the liable owners shall undertake to pay to the creditor the amount settled by the second paragraph in this article. With prejudice to article 364 Civil Code volume 8 (*concerns death or injury outside agreement*) he who has paid more than his share has with regard to the surplus the right of recovery from his co-debtors who have paid less than their share.

### **No legal presumption of guilt**

**Art. 546 CivC (8)** - There are no legal presumptions of guilt in relation to liability for a collision. The ship that contacts an object not being a ship if necessary properly lighted, being a permanent object or on the right spot secured object is liable for damage. There is no liability if it is apparent that the contact was not caused by the fault of the ship.

### **Culpability of pilot**

**Art. 547 CivC (8)** - The liability by virtue of this section is not lifted in case a pilot is to blame for the collision even if pilotage is mandatory.

### **Assistance**

There is a general obligation to render assistance to ships in distress, other matters and persons (*see article 9 of the Ships Act under f*).

### **No assistance in case of prohibition**

**Art. 557 CivC (8)** - Assistance to endangered ships, to matters on board or to drifting, washed ashore or foundered matters coming from a ship shall not be rendered against an express and reasonable prohibition from the owner or the master of the ship.

No assistance may be rendered to other endangered matters against an express and reasonable prohibition by the rightful claimant of the matter.

A prohibition to render assistance may be issued at all times.

### **Direction of assistance**

**Art. 558 CivC (8)** - Rendering assistance to a ship, to matters on board or to drifting, washed ashore or foundered matters coming from a ship is under the direction of the master. When the master is absent or does not act the rightful claimant of the ship or the matter directs the assistance. When grounding or being washed ashore and neither the master nor the rightful claimant acts the wreck master is in charge.

If immediate measures are necessary the stipulations in this article do not apply. As soon as the master or the rightful claimant or the wreck master has taken on the direction the stipulations of this article are in force again.

### **Return of the master to abandoned ship**

**Art. 559 CivC (8)** - When a ship has been abandoned by the crew and has been taken over by assistants or the wreck master it is always at the discretion of the master to return to his ship and to resume command. In this case assistants or the wreck master shall immediately transfer command to the master.

### **Remuneration for assistance in case of satisfactory results**

**ART. 561 CivC (8)** - Successful assistance entitles to remuneration.  
No remuneration for assistance rendered without success.

Assistance rendered successfully entitles to remuneration even if the person entitled to remuneration or the person entitled to claim the settlement of the remuneration is one and the same person as the one owing the remuneration for assistance.

#### **Fixing the amount of remuneration for assistance**

**Art. 563 CivC (8)** - The amount of the remuneration for assistance is fixed by agreement between parties. In the absence of an agreement it will be adjudged. The amount due shall in no case exceed the value of the salvaged goods.

Interests and recoverable judicial costs are not included.

#### **Claimants to remuneration for assistance**

**Art. 566 CivC (8)** - Entitled to remuneration for assistance are those persons or groups of persons who have rendered assistance.

#### **No remuneration for assistance in case of prohibition**

**Art. 568 CivC (8)** - Those who rendered assistance notwithstanding an express and reasonable prohibition as meant in article 557 Civil Code Volume 8 are not entitled to any remuneration for assistance.

#### **Remuneration for assistance for those on board**

Those on board can only be entitled to remuneration for assistance to the ship, to matters on board or to matters coming from the ship or from the ship emanating drifting matters, foundered matters or matters washed ashore when they have rendered services which they are reasonably not assumed to perform.

#### **Ill behaviour of assistants**

If the assistants by their fault have necessitated or obstructed assistance or are guilty of theft or concealment or other fraudulent practices the judge can lower or deny partly or completely remuneration.

#### **Division of remuneration for assistance**

**Art. 570 CivC (8)** - In case of disagreement regarding the division of the remuneration for assistance among those entitled to it this will be settled by adjudgement on demand of one of the parties.

#### **Possessory lien of those entitled to remuneration for assistance**

**Art. 571 CivC (8)** - He who is entitled to claim the settlement of remuneration for assistance - without prejudice to article 559 Civil Code Volume 8 (*return of the master to an abandoned ship*) - against anyone demanding its delivery has a possessory lien on the ships or matters to which assistance has been rendered. He has a possessory lien as well on the ships where on board assistance has been rendered to matters for which remuneration for assistance is owed.

The possessory lien expires as soon as the non-disputed amount between parties has been paid and sufficient security has been given for the payment of the amounts in dispute or the height of which could not yet be fixed.

## Accidents

### General average

#### Definition

**Art. 610 CivC (8)** - There is an act of general average when - and only when - any extraordinary sacrifice or expenditure is made on purpose and reasonably in the interest of joint safety with the purpose to safeguard the goods involved in a joint enterprise with a sea-going ship how or by whom this danger may have arisen.

#### Immediate result

**ART. 611 CivC (8)** - Only those losses, damages or expenses resulting immediately from an act of general average are admitted as general average.

#### Debtor general average contribution

**Art. 612 CivC (8)** - The person who suffered general average is refunded for it by the ship owner, the party interested in case of freight due or passenger fare due, the consignee of the cargo and the owners of the remaining matters on board. Letters, other postal items or postal parcels, luggage and private belongings not being luggage of those on board are excepted.

Contrary to the paragraph above a motor vehicle or a boat carried on board by the carrier in connection with an agreement of passenger conveyance does contribute to the general average.

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## CODE OF COMMERCE VOLUME 2

### Concerning damages

#### New for old

**Art. 713 CofC (2)** - In case of damage to an insured ship incurred by a shipping-disaster the insurer bears only two thirds of the costs for damage repairs irrespective if these have been carried out or not. Compensation will be in proportion of the insured to the uninsured part. One third remains for the account of the insured party because of presupposed improvement from old to new.

**Art. 716 CofC (2)** - If the insured party proves that repairs have not resulted in improvement of or increase in the value of the ship the deduction of the one third part does not take place. Being that the case the insurer is obliged to compensate the whole amount of repairs in proportion of the insured to the uninsured part.

#### Legal loss

**Art. 717 CofC (2)** - If repairs were to amount to over three quarters of the value of the ship with regard to the insurer the ship must be considered condemned.

In this case the insurer is obliged to pay the insured party the insured amount in so far as no abandonment has taken place with rebate of the damaged ship or wreck.



## CIVIL CODE VOLUME 8

### Limitation of liability with regard to maritime claims

**Art. 750 CivC (8)** - The shipowner and the person rendering assistance can by providing one or more funds as meant in article 642c Code of Civil Procedure limit their liability for the claims mentioned in article 752 Civil Code Volume 8.

By shipowner are also understood: the charterer, any hirer or any other user of a ship including the person being charged with the operation of the ship;

By a person rendering assistance is understood anyone exercising activities immediately connected with assistance;

By ship is understood a sea-going ship:

- a ship under construction is also considered to be a ship from the moment launching commences;
- a hovercraft is not considered to be a ship;
- a platform constructed for exploration or exploitation of mineral resources of the seabed or its subsoil and which is floatable is not considered to be a ship during the time it rests on the seabed.

**Art. 752 CivC (8)** - With prejudice to the articles 753 Civil Code volume 8 (*restrictions on claims*) and 754 Civil Code volume 8 (*restrictions on liability*) the qualification to limit liability holds good for the actions referred to below:

- actions on account of death or injury or on account of loss of or damage to matters;
- actions on account of damage resulting through delay in transport by sea of cargo, passengers or their luggage;- actions on account of other damage resulting from infringement of any proprietary right not based on agreement and arisen in direct connection with the exploitation of the ship or with rendering assistance;
- actions on account of refloating, removing, destroying or rendering harmless of a sea-going ship or river-barge that has sunk, been shipwrecked, run ashore or abandoned inclusive of everything that is or was on board such a ship;
- actions on account of removing, destroying or rendering harmless the goods on board the ship;
- actions from a person on account of measures taken to prevent or decrease damage, for which damage the person liable could limit his liability based on this title. As well as actions for claims to further damage incurred by such measures. All this however is with the exception of such actions from the liable person himself.

**Art. 753 CivC (8)** - This title is not applicable to:

- actions on account of rendering assistance or contributions to general average;
- actions on account of damage caused by oil-pollution as meant in the International Convention concluded on November 29th 1969 regarding legal liability for damage by oil pollution.
- claims on account of any international convention or any law ruling or prohibiting limitation of liability for nuclear damage;
- claims against the shipowner of a nuclear ship on account of nuclear damage;
- claims on account of labour-agreement against the shipowner or the person rendering assistance brought by his subordinates or their assignees in so far as these actions concern activities relevant to the ship or to rendering assistance.

**Art. 754 CivC (8)** - No one is entitled to limit his liability if it has been proved that damage is the result of his own act or neglect done either on purpose to cause damage or with the knowledge that damage was likely to ensue.

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## **SHIPS ACT**

The Act of the first of July 1909 contains regulations for the prevention of shipping disasters, for the establishment of an investigation regarding shipping disasters occurred and about measures of discipline with regard to masters, mates and engineers.

This act has seven chapters containing the following subjects:

- chapter I -Introductory stipulations;
- chapter II -Prevention of shipping disasters;
- chapter III -Court of Inquiry and Committees of Investigation in the Netherlands Antilles and in Aruba;
- chapter IIIA -Safety Committees;
- chapter IV -Investigation of shipping disasters;
- chapter V -Disciplinary measures;
- chapter VI -Obligations and penal regulations;
- chapter VII -Final definitions.

### **The aim of the Ships Act**

The aim of the Ships Act is to foster the safety of ships and of those on board.

This aim is pursued by:

- investigation of shipping disasters by the Court of Inquiry as prescribed in the articles 27 SA to 29 SA inclusive (*concerning The Investigation*);
- requirements and rules concerning the equipment of the ship, making prescribed certificates mandatory;
- sufficient qualified personnel on board;
- supervision by the IVW/DS by periodical inspections;
- supervision by the ship's officers by daily, weekly or monthly inspections.

### **Prevention of shipping disasters**

#### **Certificates**

**Art. 3 SA** - No voyage shall be undertaken without the required and valid certificates.

**Art. 3a SA** - A certificate will be issued only if the ship and the management of the ship on board and ashore meet the requirements set by Order in Council.

**NOTE: certificates are extensively described in the Ships Decree articles 3 to 31 inclusive.**

#### **Obligations of the master before commencing a voyage**

**Art. 4 SA** - The master is obliged before commencing a voyage to see to it that:

- a. the ship is completely seaworthy and all the appropriate internal and external openings have been adequately closed;
- b. the necessary lifesaving appliances and safety equipment as well as medicines and wound-dressing requirements and a relevant manual of medical instruction are on board in view of the

- service in which the ship is used, the nature and duration of the intended voyage, the number of persons on board and the necessary instructions for the efficient use of the lifesaving appliances have been posted;
- c. the necessary charts, sailing directions, pilots and navigation instruments are on board, have been properly kept up to date, maintained, checked and adjusted in good time;
  - d. all the means necessary to comply with the regulations for preventing collisions at sea are on board and in good order, the navigation lights can be positioned in compliance with these requirements and in general the equipment of the ship complies with the requirements of seaworthiness and safety;
  - e. the bilge pump arrangement is in order and of sufficient capacity;
  - f. the electrical arrangements comply with regulations;
  - g. the radio-installations are in proper working order;
  - h. the loading, stowage and ballasting of the ship are in compliance with seaworthiness and safety requirements;
  - i. the ship is loaded in such a way that freeboard is not lesser than the load line permits as apparent from the issued certificates;
  - k. the ship is properly manned by competent crew, physically capable for duties assigned, all this with regard to the safety of the ship;
  - l. the prescribed stability data are on board;
  - m. regulations relating to war or threat of war have been observed;
  - n. regulations relating to the transport of cargo have been observed
  - o. if the ship is a passenger ship no more passengers have been embarked than is permitted apparent from the issued certificates, the muster-roll has been announced, the prescribed roll calls have been held and the necessary instructions have been posted regarding the stations where life-saving appliances are stored or located, how these stations can be reached and how the life-saving appliances are to be used.

### **Obligations of the master during a voyage**

**Art. 9 SA** - The master is obliged during the voyage to:

- a. give or have helm orders given in the direct sense;
- b. maintain during the voyage everything belonging to the equipment of the ship in good and proper order and ready for immediate use, keep both the internal and external openings closed in so far as prescribed, hold the prescribed roll calls and drills and to comply for the rest with all specified requirements and regulations in pursuance of articles 3a and 4 Ships Act;
- c. have the defects as far as possible repaired if during the voyage defects become apparent to the ship, the engines or the equipment;
- d. measure the draught of the ship each time after loading cargo and fuel and ensure that freeboard does not become lesser as permitted according to the issued certificates;
- e. take measures to prevent abuse of the international distress signal and the use of signals which may be confused with an international distress signal;
- f. render assistance to ships and aircraft in distress and on a request for assistance comply with relevant regulations;
- g. ensure that the regulations for radio watches as well as those regarding warnings concerning dangers at sea are observed;
- h. enter in the ship's log or in the engine-room log what action has been taken to meet the obligations imposed under b. to g. inclusive;
- i. ensure that the required certificates are at all times on board and that crewmembers can always look into these certificates or copies of those;
- k. ensure that regulations relating to war or threat of war are complied with;
- l. ensure that regulations relating to transport of cattle on board are complied with.

## **Supervision**

This subject is dealt with in the articles 10 to 17 inclusive of the Ships Act.

**Art. 10 SA** - All ships remain subject to constant Government supervision.  
This supervision is executed by the Inspector-General and his officers.

## **Detention**

**Art. 16 SA** - An officer of the IVW/DS is entitled to detain a ship if it is apparent to him that this ship is not provided with the necessary valid certificates.

If an officer of the has sound reasons to doubt the seaworthiness of a ship he is entitled to detain the ship.

## **The Safety Committees**

### **The General Safety Committee**

**Art. 26a SA** - There is a General Board for the Prevention of Labour Accidents to Seafarers to be called the Board.

The Board has the responsibility to advise the Secretary of State regarding taking measures for the prevention of labour accidents to seafarers.

### **The safety committee on board ships**

**Art. 26e SA** - There is a safety committee on board any ship.

The safety committee has the responsibility to advise the master regarding taking measures for the prevention of labour accidents on board.

**Art. 26f SA** - The composition of the safety committee shall be defined by the Minister of Transport.

**NOTE: the composition of the safety committee is laid down in an executive decree. The minimum composition depends on the number of crewmembers and should comprise officers and ratings.**

**Art. 26g SA** - The master appoints the members of the safety committee.

**NOTE: by preference volunteers with at least one year sea experience should be appointed. The composition of the safety committee should be recorded in the logbook. The members of the safety committee have to be indicated in the enrolment form by the letters VC (*Veiligheids Commissie = Safety Committee*) behind their name.**

## **Inquiry into shipping disasters**

### **The Inquiry**

**Art. 27 SA** - On behalf of the Government an inquiry is made into the causes of shipping disasters that have taken place.

The inquiry consists of a preliminary inquiry by the IVW/DS if necessary followed by an inquiry by the Court of Inquiry (*In future the Court of Inquiry will be replaced by the Court of Transport Accidents*).

The preliminary inquiry is pursued, when a ship has been struck by a shipping disaster.

**Art. 28 SA** - Notaries public and Netherlands' consular servants are to send copies of the ship's protests drawn up to the Inspector-General.

#### **The investigation by the Court of Inquiry**

**Art. 29 SA** - After the Inspector-General has made a preliminary inquiry into a shipping disaster he imparts the results of this inquiry to the chairman of the Court of Inquiry. At the same time he makes a proposal whether or not to have an inquiry made by the Court with a view to the nature and magnitude of the disaster.

A committee from the Court composed of the chairman and two members summoned by him decides whether or not to make an inquiry into the shipping disaster.

When it has been decided that an inquiry shall be made the chairman appoints place, time and day and summons the witnesses and experts for this session of the Court.

#### **Incompetence of masters, mates, engineers and radio-telephony operators**

**Art. 34 SA** - In consequence of a shipping disaster the Inspector-General may propose to the Court of Inquiry to make an inquiry into incompetence of masters or the above mentioned officers.

Under extraordinary circumstances the Inspector-General can make such proposal even without a shipping disaster.

**Art. 36 SA** - The Court may declare the master or the above mentioned officers unqualified for service on a ship if the Court deems the person involved incompetent for performing professional duties.

**ART. 41 SA** - The Court of Inquiry may wholly or partly return the qualification taken from the interested party when the latter is assumed to be competent to perform his professional duties.

#### **Disciplinary measures**

**Art. 48 SA** - The Court of Inquiry may inflict disciplinary punishment on the master in case of misconduct towards a third party and those on board. Likewise the Court of Inquiry can take disciplinary measures in consequence of a shipping disaster against the master and other officers involved. These measures can be a reprimand or taking in qualifications for a certain period not in excess of two years.

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## **SHIPS DECREE 2004**

### **General certificates**

#### **CHAPTER 2**

##### **Certificates and surveys**

##### **§ 1. Required certificates**

###### **Art. 4 SD International Load Lines Certificate**

For ships with a length of 24 meters and above which are engaged on international voyages, an International Load Lines Certificate as referred to in Article 16 of the Load Lines Convention is required.

#### **Art. 5 SD International Safety Certificates (SOLAS)**

1. For ships engaged on international voyages, the following international safety certificates mentioned in provision 1/12 of the SOLAS Convention are required:
  - a. for passenger ships: the passenger ship safety certificate;
  - b. for cargo ships of 500 GT or above: the cargo ship safety certificate;
  - c. for cargo ships of 300 GT or above, but less than 500 GT: the cargo ship radio safety certificate.
2. The first paragraph is not applicable to sailing ships of less than 500 GT, used for the transport of not more than 36 passengers, and ships not equipped with mechanical means of propulsion.
3. For ships to which provision II-2/19 of the SOLAS Convention applies, the document of compliance for the transport of dangerous goods mentioned there is also required.

#### **Art. 6 SD National Safety Certificate**

1. For a ship for which no international safety certificate as referred to in article 5, first paragraph, item a or b, is required, a national safety certificate is required which has to be determined by regulation of Our Minister.
2. The first paragraph is not applicable to cargo ships with a length of less than 12 meters.

#### **Art. 7 SD High-Speed Craft Safety Certificates (SOLAS)**

1. For a high-speed craft as referred to in provision X/1 of the SOLAS Convention with regard to which under article 16, first paragraph, has been opted for application of the HSC Code 1994 or the HSC Code 2000, the high-speed craft safety certificate related to the relevant Code is required, as well as the operating permit required in that Code.
2. The safety certificate referred to in the first paragraph and the permit referred to in that paragraph replace the safety certificate required under article 5 or 6.

#### **Art. 8 SD Certificates for ships with special cargo (SOLAS, IMO)**

1. For ships engaged on international voyages, the following special certificates are also required in addition to the certificates required by or pursuant to this Decree:
  - a. for ships carrying grain in bulk as referred to in provision VI/8 of the SOLAS Convention: the document of authorization, related to the Grain Code;
  - b. for chemical tankers as referred to in provision VII/8 of the SOLAS Convention, built on or after 1 July 1986: the International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk, related to the IBC Code;
  - c. for chemical tankers as referred to in the BCH Code, built before 1 July 1986: the Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk, related to the BCH Code;
  - d. for gas tankers as mentioned in provision VII/11 of the SOLAS Convention, built on or after 1 July 1986: the International Certificate of Fitness for the Carriage of Liquefied Gases in Bulk, related to the IGC Code;
  - e. for gas tankers as referred to in the GC Code, built before 1 July 1986: the Certificate of Fitness for the Carriage of Liquefied Gases in Bulk, related to the GC Code;
  - f. for ships, used for the carriage of packaged irradiated nuclear fuel, plutonium or high-level wastes as referred to in provision VII/14 of the SOLAS Convention: the document of compliance, related to the INF Code.
2. The first paragraph is equally binding to ships engaged on national voyages.

### **Art. 9 SD Safety management certificate and ship security certificate (SOLAS)**

1. For a ship for which a passenger ship safety certificate, a cargo ship safety certificate or, in case of a ship engaged on international voyages, a high-speed craft safety certificate is required, the following certificates are also required:
  - a. the safety management certificate, related to the ISM Code;
  - b. the international ship security certificate, related to the ISPS Code.
2. For the exploitation of a ship as referred to in the first paragraph, a document of compliance with regard to the type of ship concerned is required, related to the ISM Code. A copy of this document is available on board of the ship.

### **Art. 10 SD Records of equipment, appendices and the like related to certificates**

The certificates referred to in the articles 4 through 8 are accompanied by the records of equipment and appendices which are related to the certificates, as well as the stability data or other data with regard to ship or cargo required by the relevant conventions or Codes.

### **Art. 11 SD Certificate of exemption (SOLAS, Load Lines Convention)**

1. An International Load Lines Certificate issued in accordance with the exemption or release granted pursuant to article 5 of the Ships Act, is accompanied by an international certificate of exemption with respect to the load lines as referred to in Article 16 of the Load Lines Convention.
2. Certificates as referred to in Article 5, issued according to the exemption or release granted on the basis of Article 5 of the Ships Act, are accompanied by a certificate of exemption as referred to in provision I/12 of the SOLAS Convention.

### **Art. 12 SD Other certificates**

1. By regulation of Our Minister may be determined that ships with special qualities or destined for special purposes or sailing areas a special certificate is needed. In the regulation may be stated that this certificate replaces the national safety certificate.
2. By regulation of Our Minister additional regulations may be determined regarding the certificates required for the transport of cargo or for the management of ships.

**NOTE: the Merchant Shipping Manning Act requires a safe manning certificate for all ships.**

## **Investigations and requirements**

### **Appointment of classification societies**

**Art. 37 SD** - Before a first investigation for granting certificates takes place the owner or shipbuilder of a ship selects for the rules of a distinct classification society. At following investigations the rules of that classification society will be applied.

### **Art. 67 Methods of acting in the case of damage**

1. If a ship has been damaged or if an incident has occurred which makes it likely that damage or a defect has been caused that may affect the safety of the ship, the master informs the Head of the Shipping Inspectorate as soon as possible. If the damage or the incident is related to the hull or the machinery and electrical installations, the master also informs the authority referred to in article 37. Furthermore, if the ship is in a port outside the Kingdom, he informs the authorities which are competent in that area.
2. If the ship is in port, the voyage may not be continued before the master has received a statement from the Head of the Shipping Inspectorate or from the authority referred to in the first paragraph, implying that possible repairs have taken place properly or that the

voyage can be continued without causing trouble to the safety, as far as the locally competent authorities do not oppose against continuation of the voyage.

#### **Art. 68 Navy documents**

1. The master is obliged to accept the documents to be handed over to him on behalf of Our Minister of Defence, to take note of these documents and to follow the directions given there. The master keeps the documents in an appropriate place.
2. The first paragraph is equally binding to documents which have been provided by means of electronic data carriers or digitally.

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## **INTERNATIONAL CONVENTION ON STANDARD OF TRAINING, CERTIFICATION AND WATCHKEEPING FOR SEAFARERS, 1978, AS AMENDED (STCW CONVENTION)**

#### **Aims of the revision**

The main aims of the revision were:

- to transfer all detailed technical requirements to an associated Code;
- to clarify the skills and competency required and to take account of modern training methods;
- to require Administrations to maintain direct control over and endorse the qualifications of those masters, officers and radio personnel they authorize to serve on their ships;
- to make parties to the Convention accountable to each other through IMO for their proper implementation of the Convention and the quality of their training and certification activities;
- to get the amendments into force with the least possible delay.

The 1995 Amendments replace the entire annex to the Convention. The revised Convention consists of the original articles and of basic legal requirements in regulations. These are organized in eight chapters as shown in table 1.

#### **Table 1**

Convention annex

- |                |   |
|----------------|---|
| - Chapter I    | - General provisions  |
| - Chapter II   | - Master and deck department  |
| - Chapter III  | - Engine department   |
| - Chapter IV   | - Radio communication and radio personnel                             |
| - Chapter V    | - Requirements for personnel on certain types of ships                |
| - Chapter VI   | - Emergency, occupational safety, medical care and survival functions |
| - Chapter VII  | - Alternative certification   |
| - Chapter VIII | - Watch keeping   |

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### **International Safety Management (ISM) code**

#### **Purpose**

The purpose of this Code is to provide international standards of safety for shipping and for the prevention of pollution particularly of the marine environment.



The Assembly of the International Maritime Organization (IMO) invited all Governments to take necessary steps to safeguard the master in the proper discharge of his responsibilities with regard to maritime safety and the protection of the marine environment.

The Assembly further recognized the need for appropriate organization of management. This enables those on board ships to achieve and maintain high standards of safety and environmental protection.

Recognizing that no two shipping companies or ship owners are the same and that ships operate under a wide range of different conditions the Code is based on general principles and objectives. The code is expressed in broad terms so that it can have a wide spread application. Different levels of management will require different levels of knowledge and awareness of the items outlined. For a successful safety management the management should commit itself firmly.

In matters of safety and pollution prevention it is the commitment, competency, attitudes and motivation of individuals at all levels that determines the end result.

Owners should develop, execute and maintain Safety Management Systems.

**NOTE: the standards laid down in this International Maritime Organization Convention are mainly adopted in the Merchant Shipping Manning Act and the Labour Conditions Act.**

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## **LABOUR CONDITIONS ACT (ARBO ACT)**

### **Purpose of the Act**

The purpose of the Act is to promote humane labour by settling stipulations concerning safety, health and well-being in connection with labour.

### **Definitions**

**Art. 1 LCA** - This article contains a copious list of definitions from which it becomes apparent that many statutory bodies are involved in enforcing this Act.

### **Scope of application**

**Art. 2 LCA** - In principle the Labour Conditions Act applies to all labour organizations. From 1992 onwards it applies as well to personnel employed on board sea-going ships flying the Netherlands' flag.

### **Labour conditions policy**

#### **Arbo Management**

##### **General obligations of the employer**

**Art. 3 LCA** - This is undoubtedly the quintessence of the Labour Conditions Act. In this article are laid down the basic principles in the domain of safety, health and well-being to which any employer shall be committed in composing labour condition policy which concerns principal requirements. In organizing and distributing labour the employer should always make provision for optimal labour conditions in the factual business organization.

### **Reporting accidents and occupational diseases**

**Art. 9 LCA** - If an accident happens to an employee in connection with performing labour causing serious bodily or mentally injury or death the employer shall report this immediately to a for that purpose commissioned official as expressed in article 24 LCA.

### **General obligations of the employees**

**Art. 11 LCA** - The employee shall in connection with labour exercise the necessary caution and carefulness and take care of his own safety and health and that of others. The employee is obliged to:

- use labour appliances and dangerous goods in the correct way;
- use safeguarding appliances and personal means of protection in the proper way;
- cooperate in instruction organized on his behalf;
- report dangers to the management without delay.

### **Officials in charge of the supervision**

**Art. 24 LCA** - The Secretary of State of Social Affairs and Employment appoints the officials under his jurisdiction to supervise the observance of this Act and the regulations based on it.

The official may enter premises or come on board for inspection.

They may investigate accidents at all times. The reports made should be forwarded to the employer and the works-council.

### **Sanctions**

**Art. 32 LCA** - The employer shall not act or omit to act contrary to this Act if he knows or reasonably should know that danger of losing life or serious damage to health arises or can be expected.

Not observing this obligation is a crime.

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## **LABOUR CONDITIONS DECREE**

For stipulations concerning safety, health and well-being in connection with labour this Decree of 1997 consists of about 397 articles. The major part of it results from guide-lines and conventions from the European Union and the International Labour Organization. This Labour Conditions Decree creates a well-organized system of regulations for labour-protection.

### **Transport**

#### **Limitation on Interruption of service not applicable**

**Art. 1.20 LCD** - With regard to service performed on a sea-going ship interruption of service by the employee (article 29 Labour Conditions Act) is not applicable if this is in contravention with the obligations of the master as meant in article 27 of the Merchant Shipping Manning Act.

Interruption of service by the master of a seagoing ship is not permitted if he in doing so is in contravention with the obligations pursuant to the Navigation Manning Act.

**NOTE: loading and discharge is regulated by the Stevedores Act. The safety aspects are incorporated in the Safety Decree subject to the Labour Conditions Act.**

#### **Regulations regarding sound levels on board sea-ships and aviation**

**Art. 6.23 LCD** - The regulations mentioned in this article are worked out in more detail in the Announcement to Shipping No. 213/87.

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## WORKING HOURS DECREE

The aim of this act associates with that of the Labour Conditions Act: safety, health and well-being of the employees in connection with labour.

### Navigation

The chapter navigation contains new international rules among others in connection with the Standards of Training, Certification and Watchkeeping for Seafarers (STCW).

The rules in this chapter are operative for all those on board beyond passengers, pilots and stevedores.

### Resting-period

**Art. 6.1.3 Wh.D** - Resting-period , other than the break indicated in 6.5.4 Wh.D, in this chapter means a period of at least one hour wherein no labour is to be performed.

### Applicability of labour on board of sea ships

**Art. 6.3.1 Wh.D** - The rules in this Decree are applicable to the master and crewmembers of sea-going ships registered in the Netherlands

### General Obligations

#### Duty-roster

**Art. 6.4.1. Wh.D** - The master sees to it that on board a duty-roster of himself and his crewmembers has been posted on an accessible place.

#### Registration

**Art. 6.4.2 Wh.D** - The master sees to it that within a week the working- and resting-periods have been recorded on a working-list the specimen of which has been laid down by the Secretary of State. The completed duty-roster should be signed by master and crewmember. The master takes care that every crewmember will receive a copy.

The master will see to it that the completed and signed duty-rosters are delivered to the managing owner at the latest eight weeks after being drawn up.

#### Crew members 18 years old and over

**Art. 6.5.2 Wh.D** - The master will organize work in such a way that his rest times and those of his crew members aged 18 or over, will amount to at least 10 hours for each continuous 24-hour period, to be counted starting from the beginning of the rest.

The rest time can be divided into no more than two periods, one of which contains an unbroken rest of at least 6 hours. In such an instance, the 24-hour period will be counted starting from the beginning of the longest rest time enjoyed. The time between two contiguous rest periods may not amount to more than 14 hours.

The master will organize work in such a way that his rest time and those of his crew members aged 18 or over, amounts to 77 hours in each 7 day period

### **Juvenile crew members**

**Art. 6.5.3 Wh.D** - The master will organize work in such a way that juvenile crew members:

- a: perform no more than 8 hours of work in each continuous 24-hour period;
- b: have, at least; a 12-hour rest in each continuous 24-hour period, 9 hours of which will be unbroken and which include the time period between 00.00 hours and 05.00 hours;
- c: perform no more than a maximum of 40 hours work per week;- d: have an unbroken rest of at least 36 hours in contiguous time period of 7 times 24 hours;
- e: in principle perform no work on Sunday.

Juvenile crew members are given a break, unbroken whenever possible, of at least 30 minutes in the event of daily working times being longer than 4,5 hours.

Contrary to the provisions under a and b juvenile crew members may:

- perform a maximum of 12 hours work in each contiguous 24-hour period if on account of the watch schedule, is actually keeping watch throughout those hours;
- perform work between 00.00 hours and 05.00 hours should this be necessary in connection with his training.

### **Break**

**Art.6.5.4 Wh.D** – The master will organize work in such a way that crew members work is interrupted by a break after a period not to exceed a 6-hour maximum.

### **Obligations of the managing owner**

**Art. 6.6.1 Wh.D** - The managing owner takes care that the text of this Act and this Chapter (6) of the Working-hours Decree are available on board.

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## **ANNOUNCEMENT TO SHIPPING NR 213/87; REGULATIONS REGARDING SOUNDLEVELS ON BOARD SHIPS**

### **Preamble**

The aim of these regulations is to restrict sound levels on board in order to:

- provide safe labour-conditions;
- to protect seafarers against potentially harmful sound levels;
- to provide on board an acceptable acoustic environment for the crew.

### **Appendix to the Announcement to Shipping nr 213/87**

#### **General**

#### **Purpose of these regulations**

**Art. 1.2** - The purpose of these regulations is to limit sound levels and to limit exposure to harmful sound in order to:

- create safe labour conditions by paying attention to the necessity of oral communication and to the audibility of alarm-signals as well as to a bearable environment in controlling stations, navigation-rooms, radio-stations and manned engine-rooms in which level-headed decisions may be taken;
- to protect the crewmember from excessively high pitched sound levels which might lead to loss of hearing;
- to provide the crewmember with a reasonable measure of well-being in sleeping-quarters, recreation-rooms and other accommodation.

### **Limits to the sound-load of seafarers**

**Art. 5.3** - Crewmembers entering rooms with a sound level exceeding 85 dB(A) such as engine-rooms and workshops are obliged to wear hearing protection aids.

In no case a seafarer may be exposed even wearing hearing protection aids to a sound level above 120 dB(A).

### **Hearing protection aids and warnings**

#### **General**

**Art. 7.1** - If the sound level in a space is 85 db(A) or over hearing protection aids should be issued to personnel that have to enter such a space.

**Art. 7.2** - Hearing protection aids should result in approximately the following sound-reductions:

- earplugs..... minus 20 dB(A)
- ear caps..... minus 30 dB(A)
- earplugs and ear caps..... minus 35 dB(A).

As this is an approximation caution should be observed using earplugs when entering spaces with very high sound levels (100db(A)) and over.

#### **Warning signs**

**Art 7.4** – Warning signs must be installed at the entrance of rooms where the sound level exceeds 85 dB(A).

**NOTE:** - Regulations regarding sound levels on board ships are also mentioned in the Labour Conditions Decree articles 6.1 to 6.11 inclusive.

**Art. 6.23 Labour Conditions Decree states that at a time to be decided by Royal Decree the sound level of 85dB(A) will be reduced to 80 dB(A).**

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## CIVIL CODE VOLUME 4

### **Form of last wills**

#### **Last will and testament during voyage**

**Art.101 CivC (4)** - Those on a voyage on board a sea-going ship may make a public last will and testament in the presence of the master or the first officer or for lack of these persons in the presence of the person representing them.

#### **Requirements for last wills and testaments on voyage**

**Art. 103 CivC (4)** - The last wills and testaments as meant in among others article 101 Civil Code Volume 4 are passed in the presence of two witnesses.

They will be put in writing properly and signed by the testator as well as by the witnesses and the person in whose presence they have been passed.

The witnesses shall be of age and understand the language in which the last will and testament has been couched.

If the testator or one of the witnesses declares to be impeded from signing through ignorance or any other cause his declaration replaces the signing provided that this declaration will be inserted in the instrument.

### **Last will**

**Art. 104 CivC (4)** - The testator is among others in case of article 101 also competent to make a private instrument signed by him and given in the presence of two witnesses in open deposit to a person in whose presence he may pass a last will.

This person draws up a memorandum of deposit immediately either on the paper of the last will or on its cover or on a separate paper.

Article 103 Civil Code Volume 4 is of similar application to this memorandum.

**Art. 105 CivC (4)** - If the private last will has been dated and the testator deceases without the last will and testament having been deposited in pursuance of the law the last will is nevertheless valid unless the testator had been able to make a last will conform the articles above.

**Arts. 106 to 110 inclusive CivC (4)** - These articles contain rules and details regarding the Central Registry of Last Wills and Testaments in The Hague, their expiration and their formalities.

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## **CIVIL CODE VOLUME 1**

### **Birth and decease certificates**

#### **Birth and decease on board**

**Arts. 19a and 19g CivC (1)** - The obligations of the master in case of birth and decease are found in article 19a.2 of the Civil Code Volume 1 for "birth" and article 19g.3 of the Civil Code Volume 1 for "decease".

As "acting civil servant of the Civil Registry" the master shall within 24 hours after the birth or the decease of a person at sea on board a ship registered in the Netherlands record a "provisional birth certificate" or "provisional death certificate" in the ship's log in the presence of two witnesses and if possible the father.

**Note: specimen of a "provisional death certificate" and of a "provisional birth certificate" should be on board.**

**After entering the next Netherlands' port the master shall forward as soon as possible a copy of this "provisional certificate" to the official of the Civil Registration of the Municipal The Hague.**

**After entering a port abroad a copy of the provisional birth or death certificate will be handed in to the Netherlands' consul to be kept in his files. An other copy authenticated by the Netherlands' consul will be forwarded to the official of the Civil Registration of the Municipal The Hague.**

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## **DISPOSAL OF THE DEAD ACT**

**Art. 70 DisDA** - By Decree We (*formal for "I" used by the King*) prescribe regulations concerning the way in which dead bodies of persons or of still-born infants deceased at sea on board Netherlands' ships should be dealt with.

Thereby are regulated the instances in which a dead body is committed to the deep or is subjected to a method of preservation.

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## DISPOSAL OF THE DEAD DECREE

This Decree contains rules how to deal with dead bodies of persons deceased at sea or of still-born infants born at sea on board Netherlands' ships.

**Art. 18 DisDD** - Dead bodies of persons deceased at sea on board a Netherlands' ship are dealt with in such a way that in the manner of disposal of the dead body as well as the place where this will take place can be provided in accordance with the wish of the person deceased.  
The dead bodies of still-born infants are dealt with in such a way as is in accordance with the wish of the mother or of both parents.

**Art. 19 DisDD** - In so far as no intention of will as meant in article 18 DisDD is known care is taken that the dead body is conveyed back to the country where the deceased person or the mother of the still-born infant holds domicile.

**Art. 20 DisDD** - Dependent on the expected period of time in which the dead body will be preserved on board preservation takes place after the day of decease or after the day of birth:

- for a period of up to a maximum of five days separated from those on board;
- for a period of up to a maximum of eight days in surroundings in which temperature is not in excess of four degrees centigrade in a hermetically sealed wrapping;
- for a period of over eight days in surroundings in which temperature is not in excess of minus fifteen degrees centigrade in a hermetically sealed wrapping.

**Art. 21 DisDD** - If in pursuance to article 18 of the Disposal of the Dead Decree the wish has been expressed that the dead body be committed to the sea this is not done within 36 hours after the decease or the birth.

**Arts. 22 to 25 DisDD inclusive** - The articles 22 to 25 inclusive of the Disposal of the Dead Decree provide regulations concerning committing the dead body to the sea when there are signs or indications of non-natural death. Furthermore they provide rules concerning the recording in the ship's log of all acts, experiences and the position of the ship.

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## CRIMINAL CODE

### Applicability of the Netherlands' Criminal Code

**Art. 3 CrimC** - Netherlands' criminal law is applicable to any one committing any punishable act outside the Netherlands on board a Netherlands' ship or aircraft.

**Art. 7 CrimC** - Netherlands' criminal law is applicable to the skipper and those on board a Netherlands' ship if they commit outside the Netherlands on board as well ashore one of the punishable acts defined in Title XXIX Volume 2 (*shipping offences*) and Title IX Volume 3 (*shipping crimes*).

**Art. 8 CrimC** - The applicability of articles 3 and 7 of the Criminal Code are limited by exceptions acknowledged in international law.

## **Punishments**

**Art. 9 CrimC** - The punishments are:

### **Principal punishments:**

- imprisonment;
- custody;
- the performance of unpaid labour for the benefit of the community;
- monetary fine;

### **Attendant punishments:**

- deprivation of certain rights;
- detention in a governmental labour institute;
- forfeiture of certain objects and claims;
- publication of the verdict.

The judge can impose a monetary fine at the same time. In case of conviction to imprisonment or to custody substituting custody not included.

An attendant punishment can be inflicted separately as well as in conjunction with principal punishments and other attendant punishments.

## **Shipping and aviation crimes**

### **Examples of shipping crimes**

**Art. 381 CrimC** - Piracy: committing acts of violence on the high seas against other ships or against persons or goods on board without being authorized to do so by a belligerent power or belonging to the navy of a recognized power.

**Art. 389bis CrimC** - The skipper of a Netherlands' ship drawing up a ship's protest in the knowledge that its contents are in contravention of the truth (*so-called "forged" ship's protest*). Crewmembers cooperating in drawing up this forged ship's protest.

**Art. 390 CrimC** - The skipper on purpose shirking from the command of a Netherlands' ship during the voyage if this behaviour endangers the safety of those on board, the ship or the goods on board.

### **Insubordination**

**Art. 395 CrimC** - The person on board a Netherlands' ship who on board the skipper factually assaults, opposes him with violence or threat of violence or purposely deprives him of his freedom to act is culpable of insubordination.

Also the crewmember who on board or in service factually assaults a senior, opposes him with violence or threat of violence or purposely deprives him of his freedom to act is culpable of insubordination.

**NOTE: This crime against the master may be committed by any person on board. However against a superior this crime can only be committed by a crewmember.**

### **Mutiny**

**Art. 396 CrimC** - Mutiny is insubordination committed by two or more persons in conspiracy.



**Art. 400 CrimC** - A person on board a Netherlands' ship purposely not obeying any order given by the master in the interest of safety on board.

A person on board aware that the master has been deprived of his freedom of action and does not render him assistance.

A person on board being aware of an intention to commit insubordination purposely neglects to inform the master of this in good time.

The person on board not being a crewmember who purposely does not obey any order given by the master for maintaining order and discipline.

### **Raising the measure of punishment for ship's officers**

**Art. 401 CrimC** - This article mentions four articles of the Criminal Code (among others insubordination and mutiny) where by the maximum measure of punishment can be raised by one third if this crime is committed by a ship's officer.

**Art. 408 CrimC** - The person who on board wilfully destructs, damages or renders unusable the cargo, ship's stores or provisions on board.

**Art. 409 CrimC** - The master who carries the Netherlands' flag without being entitled to do so.

**Art. 411 CrimC** - Without necessity acting as master, mate or engineer without being qualified.

**Art. 414 CrimC** - Wilful non-observance of rendering assistance by the master if his Netherlands' ship is involved in a collision.

### **Shipping offences**

#### **Examples of some shipping offences**

**Art. 469 CrimC** - The master of a Netherlands' ship leaving for sea without the enrolment form having been made, signed and forwarded to the Inspector-General.

**Note: article 469 of the Criminal Code has not yet been adapted to the Navigation Manning Act and Navigation Manning Decree. See article 33 of the Manning Act and article 94 of the Navigation Manning Decree.**

**Art. 470 CrimC** - The master of a Netherlands' ship leaving for sea without having on board the ship's papers, books or documents required by law.

**Art. 470a CrimC** - The master of a Netherlands' ship undertaking a voyage without a valid Certificate of Accommodation.

**Art. 471 CrimC** - The master of a Netherlands' ship who does not see to it that on board his ship the required logbooks are kept in pursuance of the law or does not show these logbooks when and where the law requires so.

The master of a Netherlands' ship who does not keep the register of punishable acts required by law in pursuance of legal regulations, or does not show this when and where the law requires so.

The master of a Netherlands' ship who refuses third parties at their request inspection of or against payment of costs the supply of a copy of the logbooks kept on board.

**Art. 472 CrimC** - The master of a Netherlands' ship who does not comply with his legal obligation concerning entering and announcing births and deaths occurred during a voyage.

## INTERNATIONAL CONVENTION FOR THE PREVENTION OF POLLUTION FROM SHIPS

"International Convention for the Prevention of Pollution from ships" better known as MARPOL 73.

The Convention was amended by Protocol dated February 1978.

Convention and Protocol are to be read and interpreted as one and are referred to as "MARPOL 73/78".

### Purpose

Rules and regulations for the prevention of pollution of the sea resulting from discharging harmful substances from ships.

These rules are contained in seven separate appendices in MARPOL 73/78 namely:

- Appendix I - mineral oils;
- Appendix II - harmful substances carried in bulk;
- Appendix III - harmful substances in packed units or in cargo-containers;
- Appendix IV - harmful sanitary waste;
- Appendix V - refuse;
- Appendix VI - air pollution; SO<sub>x</sub>, NO<sub>x</sub> and Sulphur emission
- Appendix VII - ballast water (not yet effective)

For the construction, fitting up and equipment of ships specific requirements have been laid down, which also differ per appendix.

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## ACT FOR THE PREVENTION OF POLLUTION BY SHIPS

This act enables national execution of MARPOL 73/78, under this act and the next decree referred to as "the Convention". By means of Orders in Council separate effect can be given to regulations in various appendices.

### Application

**Art. 2 APPV** - Rules given by or based on this Act are applicable to all ships flying the Netherlands' flag unless the Act emphatically defines otherwise.

### General definitions

#### General rule

**Art. 5 APPV** - Discharge from a ship of harmful substances is prohibited.

- This rule applies as well to foreign ships whenever they are in Netherlands' territorial waters.

#### Port provisions

**Art. 6 APPV** - Port Authorities are obliged to provide for adequate equipment to receive remainders of harmful substances from ships without causing them unnecessary delay.

All costs involved are on account of the delivering ships.

#### Ship requirements

**Art. 7 APPV** - By Order in Council requirements are laid down where to construction, fitting up

and equipment of ship must comply to prevent or limit discharge of harmful substances. The requirements can differ according to the varying categories of ships, the maritime areas to be navigated, the voyages to be made and the harmful substance to be carried.

### **Certificates**

**Art. 8 APPV** - A certificate is issued to a ship complying with the requirements of its category.

**Art. 9 APPV** - Certificates expire if:

- the ship ends to belong to the category for which the certificate has been issued;
- the ship is reconstructed or radical changes in fitting up or equipment are introduced;
- the ship becomes a foreign ship (*i.e. flies a flag other than the Netherlands' flag*).

### **Additional stipulations**

**Art. 10 APPV** - By Order in Council rules may be stipulated concerning:

- instructions, directions for use and warnings at hand on board;
- stowage, package and labelling of harmful substances, as well as the relevant cargo documents;
- measuring and recording instruments as required on board as well as their use;
- performance on board of activities relevant to harmful substances and their remainders as well as the management thereby.

### **Obligations of the master**

**Art. 11 APPV** - The master should keep a register in which activities concerning transport and discharge of harmful substances are recorded.

The master is obliged to grant authorities on their request this register for inspection.

**Art. 12 APPV** - The master shall immediately report an incident in which his ship is involved. If the ship has been abandoned the same obligation is incumbent on the owner of the ship. The same obligation is incumbent on the master of a foreign ship if the incident occurs in Netherlands' territorial waters.

### **Leaving harbour**

**Art. 13 APPV** - It is prohibited to leave port if the ship is not provided with a valid certificate.

**NOTE: article 13 APPV applies as well to a foreign ship leaving a Netherlands' port.**

### **Supervision**

**Art. 14 APPV** - The officers of the IVW/DS are charged with the supervision and the observance of the stipulations in or by virtue of this Act. They exercise their duties world-wide.

### **Detention**

**Art. 20 APPV** - An officer of the is qualified to detain a ship:

- if a ship is not provided with all the required valid certificates;
- if the officer ascertains that the ship does not comply with the required demands for obtaining these certificates;
- if the ship has been built, fitted up or equipped in such a way that it constitutes a danger for pollution of the maritime environment;
- if the officer is hampered in exercising his duties.

## DECREE ON THE PREVENTION OF POLLUTION BY SHIPS

### Art. 1 Definitions of terms

a. Act: Act on the prevention of pollution by ships;

### Art. 2 Harmful substances

The following shall be regarded as harmful substances as referred to in Article 1(h) of the Act:

- a. oil and oily mixtures as referred to in regulation 1 to Annex I of the Convention;
- b. noxious liquids, including traces thereof, or ballast water, washing water from tanks or other mixtures that contain such substances;
- c. liquids which, on the basis of Annex II, have not been categorised or provisionally classified or assessed, or ballast water, washing water from tanks or other mixtures that contain such traces;
- d. harmful substances in packaged form;
- e. sanitary waste;
- f. garbage as referred to in regulation 1 of Annex V to the Convention.

### Art. 5 Requirements for ships on the basis of the MARPOL Convention

1. Each ship shall meet the requirements of Annex I to the Convention that apply to that ship.
2. A ship intended or used for the transport of noxious liquids in bulk shall meet the requirements of Annex II to the Convention that apply to that ship.
4. The following ships that make international journeys shall meet the requirements of Annex IV to the Convention that apply to that ship:
  - a. new ships as referred to in regulation 1 of this Annex of 400 GT or more;
  - b. new ships as referred to in regulation 1 of this Annex of less than 400 GT that are entitled to transport more than 15 people;
  - c. existing ships as referred to in regulation 1 of this Annex of 400 GT or more, with effect from 28 September 2008;
  - d. existing ships as referred to in regulation 1 of this Annex of less than 400 GT that are entitled to transport more than 15 people, with effect from 28 September 2008;
5. Each ship shall meet the requirements of Annex VI to the Convention that apply to that ship.
6. A ship that is equipped with one or more diesel engines to which regulation 13 of Annex VI to the Convention applies shall also meet the requirements included in the NO<sub>x</sub> Code in respect of those engines. Compliance with those requirements shall, for each of those engines, be evident from an Engine International Air Pollution Prevention Certificate, issued in accordance with the NO<sub>x</sub> Code.

### Art. 6 Requirements for ships on the basis of the Antarctic Treaty

One or more collection tanks with sufficient capacity for storing sanitary waste shall be present onboard each ship that is located in the Antarctic area.

### **Art. 33 Transport**

1. Transport of oil as referred to in regulation 1 to Annex I of the Convention as also ballast water will be carried out regarding as in the Annex given prescriptions.
2. Transport of harmful substances in bulk will be carried out regarding in the Annex II of the Convention given prescriptions.
3. Transport of harmful substances in packaged form will be carried out regarding in the Annex III of the Convention given prescriptions.
4. Art. 33, sub 3, is also enforced of transport of not cleaned empty packaging who are first used for transport of harmful packed substances unless sufficient measurements are taken witch assure that no remaining elements are left behind who can harm the maritime environment.

### **Art. 34 Obligations incumbent on the captain**

The captain shall ensure that the regulations and obligations included in Annexes I, V and VI to the Convention are complied with on board ship.

### **Article 36 Keeping of record books**

1. The captain of an oil tanker of 150 GT or more or of a ship other than an oil tanker of 400 GT or more shall ensure that oil record book Part I as referred to in regulation 17 of Annex I to the Convention is kept on board in compliance with the regulations in that regard in that Annex.
2. The captain of an oil tanker of 150 GT or more shall also ensure that oil record book Part II as referred to in regulation 36 of Annex I to the Convention is kept on board in compliance with the regulations in that regard in that Annex.
3. The captain of a ship intended or used for the transport of noxious liquids in bulk or of a ship as referred to in Article 5(3)(b) shall ensure that the loading record book as referred to in regulation 15 of Annex II to the Convention is kept on board in compliance with the regulations in that regard in that Annex.
4. The captain of a ship in the Antarctic region shall ensure that each discharge of sanitary waste is recorded in a sanitary waste record book or in the garbage record book referred to in regulation 9 of Annex V to the Convention in compliance with the regulations in that regard in connection with garbage in that Annex.
5. The captain:
  - a. of any ship in the Antarctic region, and
  - b. of any ship outside the Antarctic region with a tonnage of 400 GT or more or which may transport 15 or more people, shall ensure that the garbage record book as referred to in regulation 9 of Annex V to the Convention is kept in compliance with the regulations in that regard in that Annex.
6. The captain of a ship that uses various types of fuel oil in order to comply with regulation 14 of Annex VI to the Convention shall ensure that a record book is kept on board in compliance with that regulation.
7. The inspector-general shall make notes in the loading record book in accordance with the regulations in Annex II to the Convention.

### **Article 41. Promulgation of Codes**

1. Our Minister shall ensure that the Codes applicable pursuant to this Decree are promulgated.
2. The method of promulgation shall be published in the Government Gazette.

### **Article 42 Amendments to conventions and Codes**

1. Amendments to the conventions and Codes applicable pursuant to this Decree shall, unless otherwise stated by regulation of Our Minister, apply to the implementation of this Decree as of the day on which the amendment enters into force at international level.
2. Where an amendment as referred to in paragraph 1 applies only to ships built on or after aspecific

date, ships built before that date shall, unless otherwise stated by regulation of Our Minister, continue to be subject to the convention or Code as worded before the relevant amendment, taking into account the provisions regarding amendments in the amended convention or Code with regard to the regulations applicable to repairs, reconstructions and other alterations to the condition or equipment of a ship.

3. Paragraphs 1 and 2 shall apply *mutatis mutandis* to amendments to the conventions and Codes referred to in paragraph 1 that have already entered into force prior to the entry into force of this Decree.
4. A regulation of Our Minister as referred to in paragraph 1 or 2 shall be published in the Government Gazette.

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### (THE PARIS DECLARATION OF 1856)

**NOTE: Naval warfare law laid down in treaties is in practice only of importance in local conflicts between nations.**

International naval warfare law "The Paris Declaration (1856)" is to the effect that:

- privateering is and remains abolished. By privateering is understood warfare by means of an armed merchant ship,
- the neutral flag covers enemy cargo, war contraband excluded,
- the neutral cargo, war contraband excluded cannot be seized, even when sailing under enemy flag,
- blockades must be effective to be binding that is to say must be maintained by forces sufficient to be effective in prohibiting access to enemy coasts.

Warships of belligerent nations are allowed to stop all merchant ships and search them for contraband (Droit d'Arrêt).

Stop-signal by a warship: hoisting the flag "L" or signalling by lamp the letter "L" or if necessary firing a shot across the bow.

The merchant ship has to stop and has to show his national ensign lighted up by night.

The ship will be visited by an officer from the warship (Droit de Visite) who can ask for ship's papers and cargo documents.

The ship can be searched (Droit de Recherche). This search serves to verify the above mentioned documents.

If everything is in good order the ship will be released to continue its voyage. If matters are not in good order the warship will avail itself of the right to seize the ship (Droit de Saisie).

### **Contraband**

Contraband - these are goods of such great military value the supply of which by neutral ships to a belligerent is prohibited.

This concerns goods which are carried to a country with which a third nation is at war. They may be detrimental to this third nation.

Absolute contraband - these are goods directly serving warfare such as arms, ammunition, fuel.

Conditional or relative contraband - these are goods indirectly serving warfare for example leather, hides or skins, foodstuffs. These goods are listed by the various belligerent nations. These lists are open for inspection at the consular offices.

## NATIONAL NAVAL WARFARE LAWS

### Constitution and Defense Act

The Constitution article 96 and the Defense Act of the Netherlands provide general rules. Article 96 of the Constitution states - There is no declaration of war but after preliminary consent of the States General -.

### Code of Commerce

#### Concerning the master

**Art. 367 CofC (2)** - The master being informed that the flag under which he is sailing is no longer neutral (*i.e. the Netherlands are at war*) is obliged to enter the nearest neutral port and stay there until he can safely depart or has received from a person in authority positive orders to depart.

**Art. 368 CofC (2)** - If it becomes apparent to the master that the port his ship is bound for is blockaded he is obliged to enter the most suitable (*meaning suitable for ships*) port in the vicinity

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## GUIDANCE FOR SHIPOWNERS, SHIPOPERS AND MASTERS ON THE PROTECTION OF SHIPS FROM TERRORISM AND SABOTAGE

### Introduction

The International Chamber of Shipping has issued a guidance on terrorism and sabotage for ship owners, ship operators and masters. This document deals with security threats to ships, passengers and crew.

It identifies some of the ways in which ships can protect themselves from attacks by terrorists or saboteurs. The following is a summary of this guidance.

Terrorists and saboteurs will generally carry out a reconnaissance of potential targets for whatever type of operation they are planning. An unprotected target is more likely to be attacked than an obviously protected one. Moreover terrorist groups will be deterred by visible security arrangements which are known to be effective.

A ship whose crew is obviously vigilant is less likely to be selected as a target for a terrorist attack than one with a crew whose security procedures are neither comprehensive nor diligently enforced.

### Shipping company security policy, responsibilities and actions

Each company needs to develop a statement of its own security policy for its ships.

To accomplish this various decisions need to be taken such as:

- to promote security awareness amongst all employees;
- to appoint and empower a suitably senior staff member to have overall responsibility for security on board all company controlled ships;
- to appoint and empower a responsible officer as ship security officer on each ship;
- to establish a reporting and recording system for incidents.

Further the company needs to consider among others to instruct masters and crew.

### The Ship Operator's Security Officer

The International Maritime Organization (IMO) recommends that each ship operator should allocate responsibility for the security of the ships of that operator to a particular senior person

in the organization (the operator's security officer).

### **Shipping company security surveys**

In order to prepare security plans an initial comprehensive security survey should be undertaken of each ship to assess vulnerability of the ship to terrorist acts.

The level of security deemed necessary for each ship may vary from port to port, from ship to ship and from time to time.

### **Ship security officer's knowledge**

The ship security officer should have adequate knowledge of and if necessary training in among others:

- company policy, ship security plan and related emergency procedures;
- the layout of the ship;
- assessment of risk, threat and vulnerability;
- methods of conducting security inspections;
- recognition of profiles of persons who may be likely to commit unlawful acts;
- the detection and recognition of dangerous substances and devices;
- port and ship operations;
- methods of physical searches of persons, their baggage and other goods.

### **Ship's crew**

Crew members having specific security duties should know their responsibilities for ship security as described in the ship security plan and should have sufficient knowledge and ability to perform their assigned duties.

### **Level of threat and threat assessment**

The security arrangements in place will depend on the perceived level of threat.

The guidance distinguishes three levels of threat:

- level 1 - background level of threat;
- level 2 - heightened threat due to type of ship, port, current events with no defined target;
- level 3 - high level of threat against a specific target.

Each level entails its own contingency plan. The guidance gives suggestions for appropriate measures.

### **The Ship Security Officer**

The ship security officer is responsible for the security of the ship with responsibilities for among others:

- advising the master on the threat assessment for the voyage and agreeing the ship's response;
- regular security inspections of the ship;
- encouraging security awareness and vigilance on board the ship.

Good security involves a readiness to accept that a threat exists and that arrangements might be necessary to counter it. The ship security officer together with the master should consider security education and awareness.

Ship security should be continually monitored and supervised by the ship security officer.

### **Hijacks**

"Hijack" is used to define the forcible seizure of a means of transport by terrorist or criminal groups as a way of furthering their cause, reaching their objective, making good their escape or even using the ship itself, and/or its cargo as a threat or as a weapon.



Terrorists may seek to board a ship by infiltration, ruse or assault. In each case the best defences for both the deterrence and prevention of unauthorized access are crew awareness and control of access to the ship and to key points on the ship such as the bridge, engine room and communication facilities.

### **Bomb threats to ships**

Ships are vulnerable to explosive or incendiary devices:

- in accompanied passenger cars, freight vehicles or coaches;
- in unaccompanied vehicles, export cars or semi-trailers;
- in miss declared cargo;
- carried on board by passengers or by those from a previous sailing leaving a timed device;
- in luggage placed in a baggage trolley;
- in ship's stores;
- in the post;
- carried on board by shore workers on board in port;
- carried on board by contractors personnel.

Bomb attacks can be conducted by covert entry and quick-plant devices. The saboteur wishing to attack a ship alongside may wish to board the ship undetected, plant an explosive or incendiary device and disembark before it detonates.

A bomb attack can be conducted by sabotage by remotely controlled or delayed action devices. The saboteur may use some convenient means of concealing and smuggling on board delayed-action bombs or incendiary devices in passengers' or crews' baggage or in deliveries of ship's stores.

A bomb attack can be conducted by external sabotage. Major damage to a ship can be caused by a saboteur reaching the hull either from another ship or underwater and placing an explosive device in a vulnerable area.

### **Dealing with terrorist devices**

To remember - the disposal of any device is the responsibility of the security services and no attempt should be made to deal with any discovered device.

The guidance gives further information how to deal with devices found, devices exploded on board or near the ship and bomb warnings received.

### **Reports of unlawful acts**

Reports on incidents and the measures taken to prevent their recurrence should be provided to the authorities as soon as possible.

### **Conclusion**

Threats from terrorism and sabotage are part of the risks faced by the shipping industry. It is sound sense and good seamanship to reduce possible risks and those imposed by terrorists or saboteurs are no exception.

The industry is conscious of the dangers that can arise.

But in many parts of the world ships will be obliged to rely on the co-operation of shore authorities over whose security arrangements they will have no influence. It is therefore essential that at both company and ship level security measures are maintained at a level commensurate with the threat.

**Good security is as much an attitude of mind as the application of physical protective measures. The guidance helps to inculcate the attitude of mind and provide advice on the application of physical protective measures.**