

**АКТУАЛЬНІ АСПЕКТИ МОРСЬКОГО ПРАВА**

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**The Legal Status of Master-owner  
of the Merchant Ship**

This article is devoted to the problem of legal position of shipmaster in case he/she is not an employed person but owner or partowner of the ship. In shipping industry the effective management together with safety and security and the role of master have become a complex and demanding task requiring a comprehensive study and solution. The focus of the article is on need to adopt the management best practice with shipmaster in the center of it.

**Keywords:** management of merchant ships, legal status of shipmaster, master's role and responsibility.

Стаття присвячена актуальній проблемі визначення правового статусу капітана морського судна, коли він/вона одночасно є юридичним власником або співвласником такого судна. В галузі морського судноплавства питання ефективного управління при забезпеченні високого рівня безпеки мореплавства є однією з ключових і потребує вивчення і вирішення. Основна увага в статті робиться на необхідності удосконалення системи управління в судноплавстві та підвищення ролі капітана в прийнятті управлінських рішень.

**Ключові слова:** управління в галузі судноплавства, правовий статус капітана, роль та відповідальність капітана у прийнятті управлінських рішень.

Статья посвящена актуальной проблеме определения юридического статуса капитана морского судна при условии, когда он/она одновременно полностью или частично владеет таким судном. В торговом судоходстве вопросы эффективного управления при обеспечении высокого уровня безопасности мореплавания есть одними из ключевых и потому требуют изучения и решения. Основной акцент в статье делается на необходимости совершенствования системы управления и повышения роли капитана в принятии управленских решений.

**Ключевые слова:** управление в морском судоходстве, правовой статус капитана, роль и ответственность капитана в принятии управленских решений.

Today the quality of management is among the most discussed subject in society, whether it be in politics or economics. In shipping industry the effective management together with safety and security has become a complex and demanding task requiring a comprehensive study and solution.

Globalism has significantly influenced the mechanics of world economy on the whole and shipping industry in particular. Likewise, it has also affected the owning and operating structures of merchant ships. Increased economic pressure and technological progress, changes in social life have gradually diminished the role of shipside management and first of all the legal status of master. Since invention of modern communication systems the shoreside management has only increased its importance. All time in every corner of the world the master can immediately receive detailed instructions from a shipowner's office. As a result, the role of the master has been gradually changed from being next to God to being a simple driver of a vessel. Some three decades ago the master was still a supervisor of ship and of 25–30

crewmembers without touching anything by himself (or herself). These days the master is responsible for a large number of wide-ranging tasks on board. He/she has to be present on board almost all the time. He/she is responsible for the working conditions of those on board as well as performing most of the duties of an employer regarding personnel management. Ship's master have huge routine and dull paperwork, he/she is now also a radio officer, has to run the watch as navigator, has to load the ship and on small ships the master is also an engineer if not a cook. Many of well known problems within industry – low manning levels, crew qualifications, fatigue, language difficulties and the blame culture among others directly influence the position of master. No matter how fantastic all the new technology and equipment are, these problems will most likely only increase in the future.

The technical progress has in fact undermined the master's role as the only one with ultimate power on board. Today master is directly dependant on the shipowner for his/her employment. Normally the master is in charge of the day-to-day operation of the vessel and has got no influence on the management of the shipping company on the whole. As Chris Haughton recently noticed, under pressure from owners, charterers and class societies shore managers are seizing the decision-making functions traditionally associated with the ship's master [1, 3]. The emphasis on profit is not completely new but it has gradually increased last years. And this is quite understandable. Any industry has as its primary target to make money. Investors will not stay in a business which is not oriented towards making a profit. Shore based management is often represented by young talented graduates who has no idea about seafaring. They might never even have seen the vessels, they only see the financial reports.

Analyzing the legal status of ship's master, Marcus Toremar noted that the accountant minded shore managers have little care for the professional satisfaction of masters doing the job properly on board and having a different social life than ashore [2, 12]. As a result the ship master feels undervalued by shore staff. But the ship is really operated by the master, not by a person sitting ashore. The master is supposed to have an independent position and the opportunity to make decision on its own, without having to consult the shipowner first.

A generation ago in classical age of shipping it was very important for master to be a first class mariner. Master had that time unprecedented power and the same extent of responsibility. Nowadays it is important to report to managers, fulfill their order and do paperwork. So the actual formula of master's position today – less power and more responsibility. The blame culture in connection to the master is dominated in maritime world. If everything goes normal that's shore side, if wrong – the ship side will be responsible.

On the other hand the ship staff usually has little knowledge about ship management and commercial side of shipping. Many mates or even masters have no idea about shipping business matters. They do not learn it deeply in marine colleges and not involved in it onboard the ship. This alienation of senior ship staff from management process can have some costly consequences for the industry. To narrow this alienation gap, the owners should give the masters a good dose of self motivation. Seafarers should not be exempted from decision making process as they deliberately face more dangers and problems than they shoreside counterparts. Therefore

time is coming to re-consider the role, function and responsibilities of masters.

Usually the master is employed just as a rest of the crew. Employed master is the shipowner's representative and shall be appointed by him. The legal relationship between the shipowner and the master is a power of attorney. Master can act on behalf the shipowner but when it comes to major decisions and if possible to contact the shipowner, he/she must consult with him. Employed master has no influence on the shore side management and is not responsible for the commercial performance of the vessel. Economic authorities of an employed master in most jurisdictions are limited to his/her rights to enter agreements on the transportation of more goods and to sell some cargo if this is necessary to keep crew or to repair the ship but actually it is rarely used in practice.

Of course, there are many differences between masters of different vessels. There are many differences in how shipping ventures are structured. Therefore there are also differences in how they are owned and managed. In the unceasing search for a better management model, the shipping community has worked out different approaches. The abovementioned Marcus Toremar noticed the idea to make the master's position similar to that of a marine inspector at a classification society, when he is employed by latter and then leased to shipping company [2,18]. From the point of view of this idea's authors it would strengthen the independence of the master and give him/her more real authority onboard the ship. Another suggestion is to remove the responsibility from the master for certain tasks which has no real influence or which could just as well be performed by someone else, for example by superintendent. Captain Toni Bielic supports the matrix form of organisation with decentralised fleet management with project manager responsible for vessel performance that can lead to a stronger motivation of the master and returning authority back to the ship [3,12].

Sometimes the way in which shipping was handled in earlier years is still influential on today's shipping industry. Some companies use management models, verified by time, in order to involve the master in management and decision making process. For instance, Dutch shipping company Wind Group have structured the management control inside the company with every vessel as an independent company with the master responsible for the budget and operations. This is a way of decentralizing the shipping company and changing the trend of more and more power being transferred from the master to the head office and thereby diminishing his influence. A theory is that the shore based management of shipping companies are acting more as financiers than as traditional shipowners. In company's opinion the master is in practice an area based office manager, so why not make him/her responsible for the economic questions as well. This way the master could raise his/her status and improve the financial performance of the vessel.

The experience of Wind Group shows that there is a huge potential for using the master-manager-owner system in a set of affiliated companies. Because this system has already proven its efficiency and can be a key element for long term business strategy. The master should be able to take part in developing his/her company and receive the appropriate remuneration. Such approach strengthens the master's independent position and gives him/her opportunity to make decisions on his/her own. But before any such implementations can be undertaken, it is of the utmost importance to define the role of the master in the system clearly. Communication and trust

between the shore and ship managers must be central concepts there. Besides it, it must be taken into account that not every able ship master has leadership qualities and appropriate knowledge in management and business matters.

How to define master- manager-owner system? At the heart of this concept is integration of operational, commercial and technical management. In other words, it is a type of management system, where captain combines two roles: you are not only master (no collision, no pollution, no fire, no injuries) but also a manager of ship, responsible for budget. Having an 'eye for detail', being an area based manager, doing risk assessment, the master makes most management decisions without having to consult the office first.

When master is also the owner of the vessel (or company) he/she is not viewed as employee. He/she is not protected by employment law as an employed seafarer. Nevertheless the master is really motivated through involvement in business matters which resulted in intellectual enrichment and enhanced career satisfaction. By shifting organizing principles from master's obedience to performance, company will be rewarded with remarkable productivity. The more people enjoy the process, the better the results. When developing modern management philosophy, Dr. Eliyahu Moshe Goldratt worked out his well known theory of constrains (TOC). According to Dr Goldratt, the strength of any chain, process or system depends upon its weakest link [4,47]. Anything that prevents a company from reaching this goal is labeled as a constraint. Constraints may appear in the form of capacity, logistics, the market (demand), behavior, or type of management policy – in our case, it can be a type of management system which leaves shipmaster devalued.

Anyone who has been in a management and leadership position knows that finding the right balance is crucial to success. The abovementioned explains the basic concept of master-manager-owner system: right balance of objectives such as cost, safety and efficiency.

This management type looks somewhat outdated – but note, it is an opportunity for enthusiastic and ambitious seafarer for showcase performance, for achieving commercial results. You are not only legally responsible to your flag and port state, cargo owners, charterers and other stakeholders but for investments and development of company.

The most typical question if master-manager-owner system comply with ISM principles. Paragraph 4 of the ISM Code preamble recognizes that no two shipping companies or shipowners are the same and that ships operate under wide range of different conditions. Notwithstanding we like it or not, but ISM is a regime our seafarers have to operate within. SMS is often a bureaucratic system generating large volumes of papers and checklists. But in our case the master-manager-owner can himself establish and implement a policy for achieving the objectives ISM and can directly monitor how SMS is running onboard. It guarantees better understanding of strengths and weaknesses, rather than just relying on pieces of paper prepared and signed by other people. Presence of owner on board is main driving force behind successful implementation of ISM. From the very beginning of ISM the idea of introduction of the designated person was aimed at improving the lines of communication within the company because designated person has "direct access" to the highest management and can supervise how the ISM plan is implemented and

maintained. The designated person is viewed as a link between the shipping company and the ship. In our case it is master-owner (and relieved master-owner) who plays the critical role in linking the ship and shore management. Dr Bhattacharya noted that successful implementation of ISM demands employee participation in management of such system through development of trust-based relationship with their managers [5,89]. On the opposite, excessive focus on controls and extensive “tick box” audits are authoritarian obsessions that only make matters worse for the seafarers and force them to bypass the ISM requirements [6,23].

Despite many advances brought in the maritime world, human factors remain unsolved enigmas. Statistic says that the most severe accidents are caused by a catastrophic combinations of human and organizational errors. These errors can be minimized by creating the right working environment. Who is more qualified as the master-owner to know what is needed to manage his/her investments and how many crew must be onboard. The master controls the system of continuous assessment of each crewmember during all period of employment. He/she is interested in forming a “company culture” with normal friendly, safe and secure working and living environment. He is present on the ship most of the time and eats the same food as any crewmember. On the opposite, distant ship managers very often do not really care about or understand the needs of the seafarers.

The master-manager-owner can implement policy of selection and retention of personnel for safer and more efficient shipping services through continuity of employment, train and develop them in order to build strong, professional and safety-minded team. As a result, seafarers feel valued as a part of the company. In the situation, when industry faces the recognized shortage of qualified personnel and the fight for competent seafarers, such strategy will be very useful.

Author’s own contrasting experience of being the master and the master-partowner allows to indicate the potential weaknesses of proposed management system. First of all, wearing a number of different hats – of master, operational manager and commercial manager – can cause the conflict of interests when combining the responsibility as master and owner. The person has to separate these two roles and sometimes it is difficult to decide which role master is acting, because it is not easy to deal with problems irrespective of commercial considerations as business has to be profitable.

One can say that one of the characteristic of a modern society is the division of labour when people tend to specialize in some field. The question is if sole master has proper qualifications and can be an expert in navigation, human resources management, technical issues, maintenance, maritime law, financial operations, etc. It deserves to be asked whether safety at sea will benefit from the master who has to sit behind the desk. Other most typical problems include day-to-day management, stress and fatigue issues. Therefore it should be considered to place the responsibility for several of these tasks on other persons on board, who might already be performing the duty in the first place. If master is a general ship manager, the chief engineer can be a technical manager, chief officer is safety manager, with other shore-based support applied if required. Besides it, the master can always employ one more navigator to be an office manager to ease the workload of the master and chief officer. Of course, it must be a strong team which requires a strict selection criteria and further

integration into a company with a sense of belonging to it.

It deserves to be examined if the shipowning company can limit the liability if the master at the time of accident is also an owner. If the error was committed in the position of the master, then it can be limited according to the usual rules. But is the error was committed in the position of owner, then the right to limit liability is lost.

To summarise the findings, it must be said that this type of management cannot be used by all companies for all ships. The key to success is not necessarily lying in master-manager-owner system. Huge variations in a size, specialization, operations of the shipping companies need same variations of management type which can be suitable in every case. It is an issue that deserves further investigation. The wider adoption of management best practice will develop a true safety culture, improve leadership skills of seafarers, a risk based approach to shipping operations instead of dominated in maritime world 'checklist mentality'.

Being a master is a very old profession which all time faces great changes – from being next to God to ship driver and check list maker. All shipping history has proven that the position of the master is a mirror of changes in industry. The role of master has changed historically and it will most likely change again in the future. But this very complicated issue has been neglected over a number of years. When everything is running smooth the master is not very interesting, but when something goes wrong he/she is alone with his/her problems. Many new internationally adopted regulations often look like bureaucratic inventions but we as seafarers well know that no codes will ever substitute common sense and good judgement at sea.

Abovementioned system of management is not only a nostalgia for a past time. At sea, the art of navigation and the art of management are already intimately linked. Shipping is under immense pressure from the global community to ensure the safety and efficiency. The industry needs well paid, highly motivated and enthusiastic seafarers to improve industry's image. The master-manager-owner system is a way to return a decision making process back to the ship which helps to bring synergy in relations between sea and shore staff – two very important but different maritime worlds. Shipping industry must accept seafarers, especially masters, as equal partners.

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