International Safety Management Code (ISM Code)

What does it mean for shipowners and how can the Club assist?

One only has to read Lloyd's List or any of the array of shipping journals published today to note the interest (or should we perhaps classify it as panic?) being generated by the pending compulsory application of the ISM Code. Hardly a day goes by without another article appearing on the subject. We regret we too are going to jump onto that bandwagon, for very soon the ISM Code will be something a shipowner can ignore only at his peril.

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So, what exactly is the International Safety Management Code (The ISM Code) that everyone is talking about?

It is the work of the International Maritime Organisation (IMO) and was created with a view to providing an international standard or benchmark, for the safe management and operation of ships and for the prevention of pollution. The purpose of the Code is to ensure safe practices in ship operation and to improve ship management and thereby, hopefully, improve safety on board. The emphasis is upon the implementation by a shipowner of safe operating systems and procedures both ashore and on board. The ISM Code does not introduce any new liability compensation schemes nor technical requirements as to operating standards and procedures. It is purely about management. The IMO is currently in the process of trying to raise awareness of the Code.

Ok, so we now know what it is, but why the panic?

The ISM Code will be compulsorily applicable to passenger ships, oil tankers, chemical tankers, gas carriers, bulk carriers and cargo high speed craft of 500 gt and upwards on 1st July 1998. For other cargo ships and mobile offshore units of 500 gt and upwards, it becomes compulsorily applicable on 1st July 2002. However, as regards Ro-Ro passenger vessels, the Council for the European Union has brought forward the date for the implementation of the code by a Regulation, having direct applicability to member states, as from 1st July 1996. This will apply only to Ro-Ro ferries, irrespective of their flag, operating on a regular service to or from parts of EU member states. It is already mandatorily applicable to Norwegian passenger vessels capable of carrying more than 100 passengers.

1st July 1998, Plenty of time for most of us, no need for us to think about it yet

We are sorry to shatter illusions but it is time to think about it now! To establish and then implement the ship management and operating procedures required in order to comply with the Code, will take time. Members who have not already started the process should focus their attention on the Code and begin the process of preparing the required Safety Management Procedures.

You had better tell us more about it

A company that owns or operates ships will need to have in place a so-called Safety Management System (SMS). The SMS will have to address the stated objectives of the Code which are to ensure safety at sea, prevention of human injury or loss of life and the avoidance of damage to the environment, particularly the marine environment.

What precisely will the SMS have to cover?

An SMS will need to ensure that quality control procedures are established in accordance with the ISM Code. They will guarantee compliance with mandatory rules and regulations and ensure that applicable guidelines and standards recommended by bodies such as the classification societies and maritime industry organisations are taken into account.

The ISM Code particularly requires that the SMS incorporate the following:

1. A safety and environmental protection policy;

2. Instructions and procedures to ensure safe operation of ships and protection of the environment in compliance with relevant international and flag state legislation;

3. Defined levels of authority and lines of communication between and amongst shore and shipboard personnel;

4. Procedures for reporting accidents and non-conformities with the provisions of the Code;

5. Procedures to prepare for and respond to emergency situations; and

6. Procedures for internal audits and management reviews.

The procedures laid down by each vessel's SMS have to be in writing and are required to be compiled in a document which will be referred to as the "Safety Management Manual". A copy of the manual has to be carried on board each vessel.

Communication and reporting seem to be important - what else does the Code have to say on those matters?

A very important part of the SMS and really one of the issues at the heart of the ISM Code is communication between shorebased and shipboard personnel. The thinking is that in order to ensure the safe operation of a ship there has to be a well-defined link between the shipowner or operator and those on board. Therefore, the Code requires every shipowner/operator to designate a person or persons ashore who will be the contact person for personnel on board the ship. Under the Code such persons are known as the "Designated Person(s)". The Designated Person is assigned the following tasks under the Code:- "...The responsibility and authority of the designated person or persons should include monitoring the safety and pollution prevention aspects of the operation of each ship and ensuring that adequate resources and shore-based support are applied, as required".

When we have organised our Safety Management System and produced our Safety Management Manual, what next?

The shipowner or person who has assumed responsibility for operating the ship from the shipowner (e.g. a manager) will need to obtain certification of compliance with the Code. In reality this means submitting both the SMS and shorebased and shipboard management to an audit with an accredited authority, such as for example a classification society. There are two relevant certificates; the Document of Compliance (DOC) and the Safety Management Certificate (SMC). The DOC is a document issued by the government of the State whose flag the ship is entitled to fly or by an organisation acting on behalf of that government (e.g. Classification Society), evidencing that the relevant shipowner or operator (manager) has established a satisfactory SMS. A copy of the DOC will be required on board each ship. The SMC is similarly issued by the government of the flag State or an organisation recognised by that government. The SMC is issued after the auditing body is satisfied that the shipowner and its shipboard management operate in accordance with an approved SMS (i.e. has obtained a DOC).

We can see the practical implications, are there going to be legal implications?

To some extent the ISM Code will codify existing practice in an individual shipowner's organisation so far as ship management procedures are concerned, especially in respect of communication with shipboard personnel and compliance with mandatory rules and regulations. However, as the purpose of the Code is to establish an international standard of shipmanagement, a norm against which performance can be measured, it is almost inevitable that it will have a wide-ranging impact. It is arguable that failure to comply with an established SMS could have an impact upon an owner's ability to defend claims under, for example, the Hague or Hague-Visby Rules or limit his liability under the limitation conventions, particularly the 1957 Limitation Convention. It is also possible that failure to comply with the SMS could have an impact upon an owner's insurance contracts, both hull and P&I. In any situation where a shipowner's diligence to provide a seaworthy ship is involved or his knowledge of the condition of his ship is raised, the ISM Code is likely to have an impact. If a claimant can demonstrate non-compliance with what will become an established standard for the safe operation and management of ships, an owner may be found to have been negligent and consequently liable for any damages flowing from such non-compliance. Conversely, those owners who have established an effective SMS and adhere to it, may find it easier to defend claims against them. They will now have an accepted standard to point to and if they can demonstrate they have acted in accordance with that standard, life may be easier when faced with claims. Additionally, those owners who have established a satisfactory SMS may see a reduction in claims as a result of a better-organised operation run by more highly-trained personnel.

How does the Club fit into all of this?

Many Members have already implemented or are in the process of implementing SMS's in accordance with the ISM Code. The Association believes the reduced number of claims it has witnessed in recent years, is at least in part due to the fact that the ISM Code has increased awareness of the importance of safe management and the need for the well-organised operation of ships. This is one of the reasons why the Association wishes to draw attention to and assist owners with the implementation of the Code.

What assistance can the Club give to Members?

Pursuant to Article 1.4 of the ISM Code, it is the owner himself who has the primary responsibility to establish a SMS in accordance with the principles laid down by the Code within the fixed time frame. Although the Club cannot offer a full scale consultancy service with regard to the drafting and implementation of a SMS which complies with the Code, the Club can offer assistance in respect of some key areas relating to P&I risks and handling of P&I claims. Gard's philosophy is to share the Club's experience with its Members, both in relation to claims' prevention and claims' handling. Instructions and procedures included in an owner's Safety Manual on these areas can be reviewed by the Club. Additionally, emergency response plans should be harmonised with the Club's own emergency plan, ensuring where possible and practicable that Club and Member work as an integrated team in an emergency situation.

ISM Code Resource Group

The Club has established a team consisting of lawyers and master mariners to act as a resource group for Members with enquiries relating to the ISM Code. In addition to answering enquiries the team will also offer seminars and workshops for Members on issues relating to the Code, tailoring them to an individual Member's requirement and needs.