

Designated Person Ashore - How Do They Perceive Their Role in the Organization and to Which Extent Are They Legally Exposed in Case of an Accident?

K. Sollien^{1,2}, T.E. Jensen^{1,3} and H. Schøyen^{1,4,*}

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ABSTRACT

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This paper focuses on how the Designated Persons Ashore (DPAs) perceive their role in the shipping organization in relation to the International Safety Management Code (ISM) requirements and to which extent they are legally exposed in case of an accident. The ISM Code expects continuous improvement in safety on board. The DPA is responsible for determining the effectiveness of the safety management system within the company and onboard the ship. This paper seeks to enlighten the DPA's role in the organization and the interpretation of the responsibility in relation to the ISM Code after an accident. The research questions are: (1) How do the DPAs perceive their position in the Company? ; (2) Can DPAs be legally exposed in case of an accident? ; (3) Can DPAs be charged with negligence?; and (4) Do DPAs need a special insurance? The method used is interviews with four DPAs working for shipping companies and two other experts in this field. In addition to this, e-mail exchange with other professional bodies, discussions with active DPAs and study of relevant literature. The results of the analysis show the absence of recent debate in this field and little attention from the accident reports. Further, one weakness of the ISM Code seems to be that it does not clearly define what is "top management" and therefore does not make clear demands on how high up in the system to DPA should report. This paper shows that to succeed in this role as a DPA he/she is dependent of a good cooperation with other departments in the organization and full support from top management.

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1. Introduction

The International Safety Management Code (ISM or the Code) is a dominant element within the safety issues ashore and onboard. An important element of this code is the Designated Person Ashore (DPA). The background to introduce the DPA was to create a contact point between the shore management and the ship. This person should be responsible for monitoring

the safe and efficient operation of the ship. The DPA should organize safety audits, report deficiencies and monitor that corrective action is taken. The DPA role has been controversial from day one. First and foremost, the legal aspects but also how this person/function should fit into an organization (Mandraka-Sheppard, 2007). To successfully implement the ISM Code, the choice of the DPA is fundamental. The area of responsibility for the DPA is huge and the uncertainties related to this function are many, in particular the legal and insurance issues.

In connection with the role of DPA and possible legal exposure following items are discussed among DPA's and marine lawyers/insurance professionals: (1) claim from an injured third party; (2) being accountable of any responsibility which may might fall on his employer, (3) alleged negligence for error or omission following a pollution incident, and (4) criminalized, following a pollution incident (in particular USA). In this

¹Faculty of Technology and Maritime Sciences. Buskerud and Vestfold University College, Norway

²Assistant Professor, Master Mariner, BSc, MSc. E-mail address: Ketil.Sollien@hbv.no.

³Assistant Professor, Executive MBA, Cand. Jur. (LLM). E-mail address: Tor.E.Jensen@hbv.no.

⁴Associate Professor, MSc, PhD. E-mail address: hs@hbv.no.

*Corresponding Author. E-mail address: hs@hbv.no.

connection, this paper seeks to find out to which extent a DPA is covered under the ship owners regular P&I insurance, and whether the DPA need to have contingency individual liability insurance. New rules and conventions have historically been the result of major shipping accidents. In the late 1980's and early 1990's the world witnessed many major shipping accidents, e.g. in 1987 the ferry "Herald of Free Enterprise" capsized of Zeebrugge and 190 people died and in 1990 the ferry "Scandinavian Star" caught fire en route from Oslo to Fredrikshavn and 158 people died. After these accidents a process started which later on developed to the ISM Code (Anderson, 2005). Investigations in the aftermath of these accidents pointed in one direction; lack of safety culture both in the shore based administration and on board the ships. It was estimated that 80-90% of the accidents are caused, at least in part, by some form of human error (Rothblum, 2000).

The concern about poor management standards finally led to a major legislative change in shipping, namely the ISM Code. The intention of the Code is to support and encourage the development of a safety culture. "The purpose of this Code is to provide an international standard for the safe management and operation of ships and for pollution prevention" (ISM Code 2010). International Maritime Organization (IMO) determines that the Code should be an international standard that will be implemented in the IMO's member countries' national legislation. The ISM Code itself does not take into account how DPA and other legal issues shall be resolved. The ISM Code objectives are to ensure safety at sea, prevention of human injury or loss of life, and avoidance of damage of the environment, in particular to the marine environment, and to property (ISM Code Ch. 1.2.1).

The ISM Code calls for openness and transparency and therefore a lot of documents in connection with internal-audit (as required by the ISM Code) and non-conformities will be available to external auditors. In case of a major accident the court will expect relevant documentation to be provided. Until the introduction of the ISM Code, retention of sensitive information regarding safety was an exclusive privilege of the ship owner. Indictments against the Owners/chairmen are not new, but the charges against a person who does not nearly have the same authority - DPAs- represents something new in maritime industry. Nonetheless, the fact that the DPA has a very central role in the ISM Code does not mean he has such a central role in the company that he should be held legally liable as Owners or a chairman. Maritime companies often have long traditions in organization and structure and it is not certain that this will change in line with new laws and regulations. All this documents could be used to incriminate the DPA and expose him/her to legal consequences.

The research questions in this paper are: (1) How do the DPA's perceive their position in the Company? (2) Can DPA's be legally exposed in case of an accident? (3) Can DPA's be charged with negligence? , and (4) Do DPA's need a special insurance?

The research method chosen is a qualitative case study with interviews with people who have experience in the field (Dencombe, 2005). Two employees from a tanker company, one

from a dry-cargo company and one from a ferry-line were interviewed by the authors. The participants were all former Captains with long maritime experience and presently employed as DPA in their respective company. In addition to this, one representative from a classification society and a specialist within the ISM Code were interviewed.

2. International Safety Management (ISM) Code

2.1. The objective of the ISM code

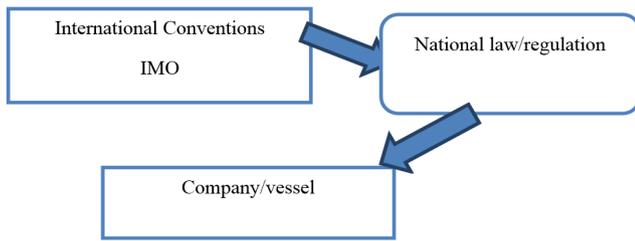
The objectives of the ISM Code are to 'ensure safety at sea, prevention of human injury or loss of life, and avoidance of damage to the environment, in particular to the marine environment and to property' (ISM Code). The ISM Code represented something new in safety thinking within the maritime industry. One can say that the shipping industry has adopted a safety culture that aviation industry had established long ago - the ISO Quality Standards. (Sagen,1999). It is obvious that safety can only be ensured provided that the ship's owners and employees commit themselves, and that the interaction between people and technical equipment are taken into account. The ISM Code has taken into account that shipping companies are of different sized and are organized in different ways, as shown in Panayides and Cullinane (2002), and therefore expressed in broad terms based on general principles.

With regards to the ISM Code, the company is defined in article 1.1.2 as, 'Company means the owner of the ship or any other organization or person such as the manager, or the bare-boat charterer, who has assumed the responsibility for operation of the ship from the ship owner and who, on assuming such responsibility, has agreed to take over all duties and responsibility imposed by the Code'. It can certainly seem unnecessary to define 'Who is the company?' but as demonstrated by Panayides and Cullinane (2002) and also in light of the many ship accidents where the ownership / responsibility was not clear, it is evident that this is absolutely necessary. Shipping needed a new attitude to when it came to safety and had to understand that organizational factors were as important as technical. This means the ability to both sailors and shore organization to cooperate effectively in order to maintain and improve safety on board. The ISM Code focused on this and introduced "new" concepts to the shipping industry like commitment, best practices, continuous improvement, safety policies and motivation. This motivation should come from the top management and go all the way through the shore organization and the ship management.

2.2. The ISM Code – Under the SOLAS Conventions

The Code became applicable, under Chapter IX of the International Convention for the Safety of Life at Sea, 1974 (SOLAS 1974), first for passenger ships, tankers and bulk carriers on 1 July 1998, thereafter for all other ships over 500 GT on 1 July 2002. The Code quickly became an "umbrella" over all other previous formal requirements, such as certificates and other technical requirements. If the Code should become a success it was not enough to make a new law that ships industry

Figure 1: The Line of command.



Source: Authors

should follow. The most important thing was that all parties within the shipping industry accepted the Code and understood the importance of it. Moreover, it depended on an effective implementation, firstly through the implementation of national laws / regulations, thereafter the individual company responsible for technical operation of ships, see Figure 4.

There is no doubt that the market itself rewarded companies with an effective safety management system in place and punished those who did not have it, see Figure 2. In other words an effective safety management system became a commercial advantage – good business. Not unexpected, it was some reluctance in the maritime industry when the Code was introduced. It soon turned out that statutory authorities such as Class Societies, Port State Control, maritime authorities world-wide were quick to recognize the Code. Another important element was that other players in the market, such oil companies and major charterers were also quick to acknowledge the value of the Code and put pressure on the ship owners to implement and follow up this.

To comply with the Code there are basically two certificates that must be maintained, confer Chapter IX of the annex to the 1974 SOLAS Convention, regulation 4, the "Document of Compliance" (for Companies) and "Safety Management Certificate" for vessels. Without these certificates, it is impossible for a company to operate the ships in the market. The ISM Code is a part of SOLAS (see SOLAS, 2009) and all nations that have ratified this Convention have also agreed to implement the Code in its legislation. With this starting point has "all" nations of the same law to deal with, but how the different courts in different states will deal with this is more uncertain. This in turn means that the outcome of a trial against DPA may be different in terms of the court to judge.

3. Designated Person Ashore (DPA)

3.1. Why DPA's

The concept of the ISM Code is influenced by and very similar to well established quality standard ISO 9000 which has been in use in other transport industries for a long time, in particular the flight industry (Sagen, 1999). However, one element appears to be completely new, the DPA, who has a very central role in the ISM Code. The DPA is meant to be a key communication link between the ship and shore (Anderson, 2009). It

it is up to the Company to decide how they are to ensure that the DPA provides a link between the Company and those on-board (Sagen, 1999). The code does not specify how much information, and when he/she shall inform the top management. In other words, how should access to the top management be utilized in the best way? If a DPA should go directly to the top management and by-passing others in the organization this may have negative effects. Whether the DPA should be a separate function or have other roles are decided by management depending on how the organization is structured. Within any one Company there might be several DPD's, depending on the number of ships managed. (Sagen, 1999). One of the pillars of the ISM Code (and in modern safety philosophy in general) is reporting of and following up possible discrepancies. Report all near misses, take necessary steps to prevent re-occurrence, share the information and learn from this. This shall lead to a better safety culture.

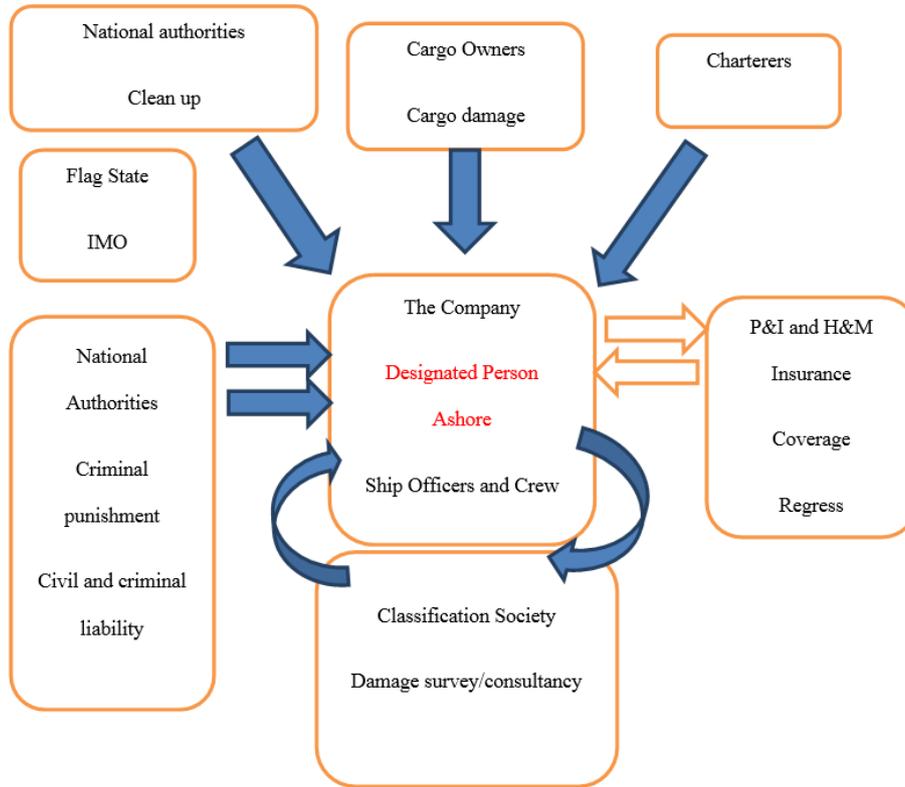
3.2. DPA's responsibility

The DPA is meant to be an important communication link between the ship and shore, but it is up to the Company to decide how they are to ensure that the DPA provides this link (Anderson, 2005). The DPA is intended to be 'an over-seer verifying and checking that the [safety management system] SMS is functioning adequately' (Anderson, 2005). This new role, DPA, should be a new strong link in order to improve safety. The DPA should have access to the highest level of management, monitor the operation of the SMS and ensure it is adequately resourced, and ensure that adequate resources and shore-based support are applied, as required-

IMO Circular MSC-MEPC.7/Circ.6 states the following: "Designated Person should be suitable qualified and experienced in the ship operations or management systems and be fully conversant with the Company's safety and environmental protection policies and Safety Management System. It is essential that they have the independence and authority to report to the highest level of management". There is no doubt that if a DPA should be able to perform this work is intended by the ISM Code, he/she must have a strong maritime background. This is in our opinion the only way the DPA will be able to perform his/her duty. It's somehow hard to define what is meant by strong maritime background. A DPA will have to go on board the company's ships, and perform internal audits as per ISM requirements. Methods and techniques for performing internal audit on board are in principle no different from doing the same thing in a shore-based organization. The authors don't think that you can do a qualified internal audit without an understanding of how the ship is organized and operated. During an audit the DPA shall review the safety management system (SMS) on-board. In this process he/she might have to ask questions to the ship officers they find both unnecessary and unpleasant. In order to achieve this, mutual trust is necessary. Guidance on the DPA qualifications is described in Appendix 3.

The ISM Code (section 12) requires the Company to conduct internal audits on each ship once a year. This task is usually conducted by the DPA. The procedure must be properly documented, verified, reviewed and evaluated (article 12 ISM

Figure 2: Parties Involved in an effective safety management system.



Source: Authors

Code). Any deviation from the SMS must be documented and sent to the Company. The reason for the deviation should be mapped and appropriate action against the deviations should be introduced. These reports are made available to external auditors on request. Then one question is whether transparency can 'backfire' on DPA or the Company.

DPA's formal qualifications do not deal with the "multicultural" aspect as a DPA have to deal with. Many of these cultures are characterized by a hierarchical system with high power distance (Hofstede, 1991). It is important for a DPA to be aware of this when doing an internal audit because this may affect the answers he get.

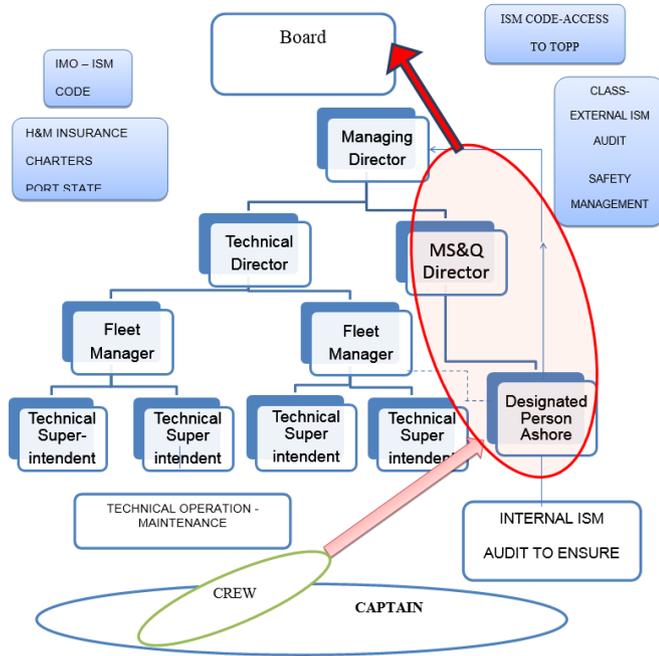
There are cases where a major non-conformity is so severe that immediately corrective action is required before the vessel leaves the port. For example, a defective SMS to which there is no "quick fix". A DPA is unlikely to report a major non-conformance without consulting senior management. In other words, using his/her access to the top management as described in the ISM Code. This can undoubtedly in some cases be a difficult choice for DPA. As there is not a clear cut between a non-conformance and a major non-conformance this will be subjective assessment. If the top management agreed to "demote" a major non-conformance to avoid detention this can have serious negative consequences later on in the event of an accident. In such cases, it might be advantageous if DPA reported directly to the Chairman. As already said audit reports are made available to investigators in the event of an accident

and could be misused by claimants. There is a possibility that the court find the ship owner guilty in not exercising due diligence to ensure the ship was seaworthy prior to departure. In any case, if non-compliance with the ISM Code is proved, the ship Owners insurance requirements, respectively P & I and H & M could be badly affected.

3.3. Organizational implementation of the DPA

Figure 3 shows – for the ship management company V.Ships Norway AS - that the DPA reports to the Marine Safety & Quality Director (MS&Q) and may also use the direct access to the Managing Director (MD) as required by the ISM Code. It also shows that the DPA cooperate with Fleet Manager and with the Captains. The pink arrow on Figure 3 indicates the "anonymous line" the crew can use to report or inform about safety related issues onboard. This model is like many others designed to meet the formal requirements of the ISM Code. It covers the requirements regarding DPA's right to direct access to the highest level of management and the role as internal auditor. Another question is whether this is the optimal organization model to meet the ISM Code's intent as Stated in the Code - 1.2.2.3; 'continuously improve safety management skills of personnel ashore and aboard ships'. This is the core of the ISM Code. "Many companies are happy to establish a standard and ignore the most important element in any quality assurance, namely the improvement process" (Sagen, 2012).

Figure 3: Ships Norway AS Model



Source: Authors

The model depicted in Figure 3 works for the ISM Code requirements. However, if the DPA report only to top management, they (Managing Director, MD) may neglect important information on safety issues which could have serious consequences. One reason could be to cover themselves because of poor work or simply a desire for everything to look good to the Board. This way the less serious operators who want to hide the potential weaknesses, or breach of regulations within the safety work can still continue to operate ships. By the ISM Code it is the intention that DPA’s direct access to the top management should ensure that safety issues was brought all the way to the top. In Figure 3 the red circle and the arrow in the above organization chart indicate that the DPA/MS&Q Director can bypass the Managing Director and go directly to the Board. Today this is not required by the ISM Code. Is it an advantage that the DPA can bypass Managing Director and go directly to the Board if he /she is not happy with the Managing Director’s response?

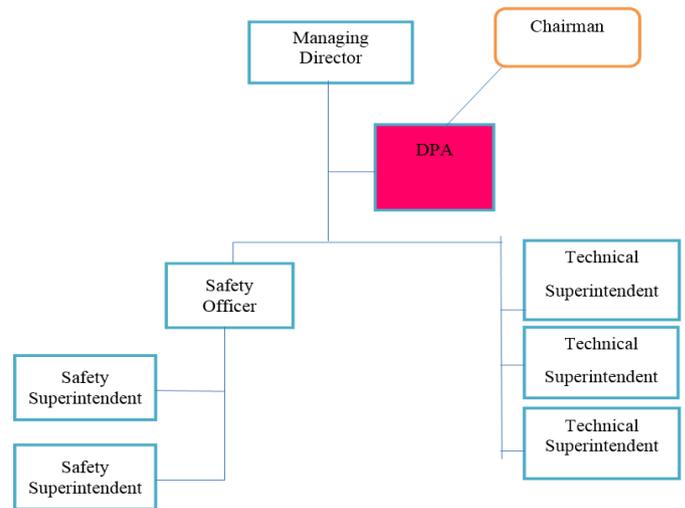
The below Figure 5 was received from DPA of Color Line Marine during the interview with the DPA.

The organizational model in Figure 4 is included for comparison to the model in Figure 3. As it appears from the model in Figure 4 the DPA is placed closer to the Managing Director and further away from technical inspectors compared to Figure 3.

It is not possible to claim that one model necessarily works better than the other because there are many other factors that come into play. However, under the same conditions, the one that DPA has access not only to top management, but also to the Chairman, can bring safety issues higher up in the system if required.

The significant differences between these two models in fig-

Figure 4: Color Line Marine Organization Chart.



Source: Authors

ures 3 and 4 are the DPA’s formal line to board. The reality is that the DPA discusses daily safety issues with the Managing Director who is located in the same office. It is nevertheless up to him/ her if any matters should be lifted to a higher level, the Chairman. It is not only large geographical distances between ship and shore organization today that cause a challenge, there are also major cultural differences. In a multicultural organization will often be special challenges around this with communication and reporting. The DPA must be able to bridge a potential gap between shore organization and the ship if this problem occurs.

4. Study of some high profile accidents

The reason why we want to look at some recent major shipping accidents is to see if the DPA role has been in focus. This can help to find out more about whether a DPA can be legally exposed in case of an accident. It seems that among DPAs it is a concern that it looks like more and more countries has jumped on a questionable trend, to criminalise seafarers in case of oil pollution. This perception is shared by several other players in this industry (Anderson, 2005). Table 1 shows some of the reports written by “Marine Accident Investigation Branch” (MAIB). The Marine Accident Investigation Branch (MAIB) examines and investigates all types of marine accidents to or on board UK ships worldwide, and other ships in UK territorial waters.

In all these reports in Table 1, the company’s safety management system has been scrutinized but the role of DPA is not mentioned specifically. This in turn suggests that in connection with accidents, it has been focused on to which extent to ship and shipping company meet the requirements of the ISM Code in its entirety.

Two high profile cases from Norway are the Bourbon Dolphin and Full City accidents:

Table 1: Some investigations by the Marine Accident Investigation Branch. MAIB (2013).

Vessel	Year	Incident	Casualties
CSL Thames – bulk ship	2012	Grounding	
Cosco Hong Kong– container ship	2011	Collision	11 dead
Yeoman Bontrup– bulk ship	2011	Fire/explosion	
Bro Arthur product tanker	2010	Tank accident	1 dead
Maersk Kendal– container ship	2010	Grounding	
Joe Eik –chemical tanker	2009	Vapour release	2 injured
Sea Mithil– gen.cargo ship	2008	Grounding	
Harvest Caroline gen.cargo ship	2007	Grounding	
FR8 Venture– tanker	2006	Heavy seas	2 dead

1. Bourbon Dolphin. This tragic accident where 8 people died after the ship capsized and sank was investigated by the Norwegian authorities in NOU Official Norwegian Reports “The loss of Bourbon Dolphin on 12 April 2007”, and the shipping company was finally convicted. The company’s Safety Management System was scrutinized. According to the report several non-conformities were filed, but the company’s DPA was not mentioned especially in this case. This may indicate the authorities who investigated the accident primarily focused on the company’s Safety Management System as a whole and not individuals within the organization.
2. Full City. The vessel grounded in Norway and about 300 tonnes heavy fuel oil leaked into the sea. The court found both the Master and the Third Officer guilty of violating the Norwegian Pollution Act, and they were sentenced to respectively 6 and 2 months in prison. Court documents put little emphasis on ISM related issues but focuses on the Captain and Third Officer. In an Accident Investigation Board Norway (AIBN, 2013) report the company’s Safety Management System is mentioned but nothing about the role of DPA. The case has touched on wider industry concerns over the criminalization of seafarers in connection with pollution incidents” (Corbett, 2010). In the Full City case it was the Captain and Third Officer who was convicted. What if the ship’s DPA had been aboard when the accident occurred, would he/she also risked being prosecuted and convicted for breach of the Norwegian Pollution Act?

5. Findings and discussion

5.1. Protection and Indemnity (P&I) Insurance and classification companies

The international group of P&I Clubs basically covers identical risks. The reason being that in the event of larger claims, the compensation is shared between the members. So what exactly is covered by a standard P&I insurance? Such insurance provides insurance for its members, who will typically be ship owners and ship operators, and will cover the following: Personal injury to crew, passengers and others on board, cargo loss and damage, oil pollution, wreck removal, stowaways and dock damage.

Marine insurers offer today special insurance to DPAs in case they are exposed to legal action of any kind. One must assume that since this type of insurance is available, it may under certain circumstances be necessary, unless marine insurance companies are playing on fear for their own benefit. We assume that the DPA is exposed to risks due to legal interpretations surrounding the ISM Code / DPA feature, then we have to look at what potential risk he/she is exposed to. When it comes to the degree of risk, we must also look at what a DPA possibly can be insured against. When it comes to risk/punishment it may range from fines to imprisonment. According to representatives from two major P&I Clubs located in Norway, namely Gard and Skuld, they confirm that their insurance did not cover negligent acts by DPA’s.

A standard P & I insurance covers maritime liabilities incurred by the member in direct connection with the operation of the entered vessel. The cover protects our members against losses and liabilities towards third parties. In the event of liability caused by a negligent action by any shore staff, this is usually covered by the ship owners or ship manager's liability policy. A DPA is an employee ashore, working in the office, in the same way as all others who have responsibility for safe operation of the ship. These include technical inspectors, marine managers, safety managers and technical director. The position of DPA should therefore not attract personal liability any more than any of those persons mentioned. In many ways does a DPA the same job as safety manger or technical inspector did before. This issue was not a subject of discussion until the ISM Code introduced the DPA feature. What is changed is possible legal issues surrounding the DPA position.

5.2. Insurance for DPA's available in the market

The study of special DPA insurance in the market served two purposes. Firstly, to find out what kind of insurance was offered to a DPA. Secondly, this information could also be an indication about the need for this kind of insurance. To find out what kind of insurance that is available in the market, the home page of three companies offering marine insurance were studied. These three companies are, Waveblue, Galleon Marine Insurance Agency and ITIC. It is quite clear that these companies live by selling insurance policies and argues for this need. In addition to these three (lesser known) insurance companies three major Scandinavian P&I Clubs: Gard, Swedish Club and Skuld, were contacted.

5.2.1. Waveblue

This company offer a wide range of risk insurance. Not only for DPA's but also insurance against kidnapping and piracy. According to this company a special DPA insurance is required for the following reasons: "In case the employer is declared bankrupt, the DPA will not be covered under any insurance, as insurance will automatically become redundant". Further, in case a conflict of interests between the DPA and the company, an insurer is not going to fight both causes and the company's position naturally take precedence. If a company's claims record is going to be affected, some employers might choose not to stand for their employee. In this context Waveblue states the following: "Issues relating to employment law, the jurisdiction in which a claim is brought, the limitation of liability, conflict of interest and the solvency of the employer render the need to the DPA's liability insurance very important".

5.2.2. Galleon Marine Insurance Agency

According to their web they have an insurance that is designed to protect individuals from an error or omission claim made whilst performing the duty of DPA. According to their web DPA's may need such insurance in case of an accident involving pollution, damage or injury. Their insurance basically covers negligent acts of the DPA's and they expect a claim to arise from accidents of pollution, injury and safety. In this context such matters are very sensitive with a great deal of media

interest. According to this company a special DPA insurance is required for the following reasons: "An injured party may be able to make a claim on the DPA's employer and also the DPA personally too". In other situations the DPA is vulnerable to claims made against him/her due to conflict of interest with their employer. Further they say that: "we would propose it is important the DPA has an insurance policy in their own name for claims arising from errors and omissions. In every case we see, the employer pays for the insurance anyway".

5.2.3. ITIC

This company is located in London and claim to be specialists in P & I Insurance. Unlike the two previous companies ITIC indicates that it would not be necessary with a separate insurance policy for DPA. They say further that the position of the DPA should not be more at risk than anyone else who works in a shipping company.

Summing up, the feedback from the above stated marine insurance companies does not give a clear answer on whether a DPA needs special insurance or not. Therefore, we contacted three major P & I clubs, namely, Swedish Club, Gard and Skuld. We contacted these three Clubs because they are all significant players in the P & I coverage market. Unfortunately Swedish Club did not reply.

5.2.4. Gard

From Gard was received the following answer: "It has occasionally been discussed whether we should develop and offer such coverage, but due to limited demand, we have not been found to prioritize this".

5.2.5. Skuld

Skuld do not provide cover for the DPA and have not found that there is any demand from our shipowner members to arrange this type of cover for their DPAs.

To conclude, in general terms, it seems that claimants would normally seek compensation from the ship owners who in turn rely on their insurance which would cover them for acts arising out of the acts of their employees, including the DPA. In practice claimants are unlikely to sue a DPA because this is unlikely to give them a better chance of recovery than they have by taking legal action against the ship owner. However, there could happen in extreme circumstances where, for example, the DPA intentionally causes harm but in such a case any insurance taken out by the DPA might also not respond. A more likely scenario is that the ship owner is insolvent or has ceased to exist (for example following a sale of the ship). There is always a risk (just as there is a risk of personal exposure for directors of the ship owning companies) and it is probably just a question of whether the risk is large enough to justify taking out insurance. Our impression is that it is not seen as a significant risk.

5.3. The classification societies

The ISM Code requires that the Administration or an organization recognized by the Administration should periodically verify the proper functioning of the ships Company's SMS as

approved. Classification societies are conducting the external ISM audits on board ships and through this job meet many DPAs. DNV GL is one such classification company approved to conduct external audit of the company and the ship to verify compliance with the ISM Code requirements. Through these external audits on board vessels surveyors from DNV GL reveals errors and omissions that DPAs during their internal audits should have discovered. One finding in the research presented in this paper is that there are indications that it is not uncommon that DPAs met by the classification society surveyor onboard hardly has the qualifications the ISM Code recommend. What could be the reasons for this is not the mandate for the classification society to find out, e.g. DNV GL's role is not to consider the DPA's qualifications, but to revise the SMS on board. DNV GL is however clear that company should facilitate so that the DPA could do the job in the best possible way. Furthermore, from the view of DNV GL the DPA has a responsibility to speak clearly, e.g. file a formal protest with reference to the ISM Code, if the company he was employed by were not structured or organized in such a way that he could follow up the ISM Code's intentions/requirements.

5.4. How DPAs see their role in the organization

Four DPAs were interviewed. The interview guide is enclosed in the Appendix. The purpose of the interviews was to find out how they did see their own role as a DPA, both operationally and regarding possible legal issues. They all had direct access to top management. No one had any problem with by-passing technical department to use their direct access to top management. They all stated that the relation with technical department was very good. When asking what kind of reactions can be expected from top management if you by-pass the Fleet Manager and report your safety concern to top management, there were different answers but in general they would try to resolve any problems before by-passing the technical department. This is drastic, but if required they would do so. Safety related issues are always on the agenda and an on-going process between the DPA and top management, and others in the companies. No safety matters are hidden, if you are not master of the situation, the DPA should report to the top management.

When asked how the company responds to your safety concern when reported, the response from all four interviewees were that the reports are taken seriously and evaluated based on how severe the case is. The top management will follow up the case. A DPA will put himself in a difficult situation by not reporting safety issues to the top management. The response and authority of the DPA is well known in their organizations, but the most important thing or tool the DPA can build/use is trust. The authorities of a DPA include the right to order safety equipment or training materials. When doing so it's always a budget to deal with. Money is always an issue but as long as a DPA can justify a purchase (safety equipment) there is no problem, were the answer from the DPAs interviewed.

If it can be proved that the DPA is responsible and have acted negligent, they think they can be used as a scapegoat if things go wrong, and all four agreed that an DPA is exposed to civil action for damage claimed by a third party. Summing

up they all felt very comfortable in the DPA function and were confident as long as they did their job as expected the top management would support them. They all understood that they could run into serious trouble in worse case. Moreover, the cooperation with the technical department they shall monitor is in general good. Budget is always an issue but safety related matters are on the daily agenda and they have the authority to order necessary safety equipment. Finally, no one had any special insurance and had never asked for it which indicates they do not believe they needed it.

6. Conclusions and recommendation for further research

The aim of this study was to study the DPA and their role within the organization in relation to the ISM Code requirements. By interviews with four DPA's and two experts in this field, we have not been able to reach any conclusion regarding these allegations. We think it is fair to say that the paper does not give a clear answer to whether a DPA can be legally exposed in the event of an accident on board a ship or if a DPA needs additional liability insurance. Despite this, it is possible to see common perceptions and views. All four DPA's agreed that in case of neglect they could be blamed for an accident and risk prosecution. Three of them believed that an own liability insurance could be useful under special circumstances. Two out of four marine insurers who were asked believe that a special DPA insurance is required. However; the two major P&I clubs Gard and Skuld does not offer any special liability insurance. Most indicators point in one direction - there is no need for any special insurance for DPA because he/she is not more legally exposed than anyone else employed by a shipping company. Some insurers may say so because they sell this insurance. Another possible explanation is that many cases were brought to arbitration rather than the court because the parties involved were too uncertain of the outcome of such a trial.

To succeed as DPA it is necessary with the support from the top management and a good cooperation with the technical department. Below is a summary of their answers to question related to this: 1) They all had direct access to top management, 2) No one had any problem with by-passing technical department to use their direct access to top management, 3) They all stated that the relation with technical department was very good, and 4) Different answers but in general they would try to resolve any problems before by-passing the technical department. This is drastic, but if required they would do this. The study of MAIB accidents reports suggest that the DPA is not in the spotlight in connection with ship accidents. In the casualty reports from the "Full City" and "Bourbon Dolphin", two high profile accidents in Norway, the role of DPA was not mentioned.

For further research it would be interesting to compare how different companies are organized in terms of internal audit and reporting. The ISM Code provides no direct guidance in relation to this and accepts that shipping companies are of different size, structure and operate within different segments/areas and therefore have different needs. It is quite clear that the reporting structure in a company will affect the DPA and to which

degree he/she is exposed. By interviewing a large number of DPA's in many different types of maritime companies, it would be possible to get a better picture of the situation.

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Appendix 1: The ISM code in perspective

The Code was adapted by the Assembly of IMO and incorporated in the SOLAS Convention of 1974, Chapter 9. And applied to:

- Passenger ships, oil, gas and chemical tankers, high speed crafts from 01.07.1998 (over 500 GT)
- Other commercial cargo ships and mobile offshore drilling units from 01.07.2002 (over 500 GT)

Appendix 2: ISM Code scope and application

4 Designated Person

- 4.1 A key role, as identified by the ISM Code, in the effective implementation of a safety management system is that of the designated person. This is the person based ashore whose influence and responsibilities should significantly affect the development and implementation of a safety culture within the Company.
- 4.2 The designated person should verify and monitor all safety and pollution prevention activities in the operation of each ship. This monitoring should include, at least, the following internal processes:
 - .1 communication and implementation of the safety and environmental protection policy
 - .2 evaluation and review of the effectiveness of the safety management system
 - .3 reporting and analysis of non-conformities, accidents and hazardous occurrences
 - .4 organizing and monitoring of internal audits
 - .5 appropriate revisions to the SMS, and
 - .6 ensuring that adequate resources and shore-based support are provided
- 4.3 To enable the designated person to carry out this role effectively, the Company should provide adequate resources and shore-based support. These include:
 - .1 personal resources
 - .2 material resources
 - .3 any training required
 - .4 clearly defined and documented responsibility and authority, and
 - .5 authority for reporting non-conformities and observations to the highest level of management
- 4.4 Designated person(s) should have the qualifications, training and experience as set out in MSC-MEPC.7/Circ. To effectively verify and monitor the implementation of the safety management system in compliance with the ISM Code

Appendix 3: Qualifications (Annex to MSC-MEPC.7/Circ.6)

1 Introduction

The present Guidance applies to persons undertaking the role of the designated person under the provisions of the International Safety management (ISM) Code.

2 Qualifications

- 2.1 Designated person should have a minimum of formal education as follows:
 - .1 qualifications from a tertiary institution recognized by the Administration or by the recognized, within relevant field of management, engineering or physical science, or
 - .2 qualifications and seagoing experience as a certified ship officer pursuant to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978, as amended, or
3. other formal education combined with not less than three years practical senior level experience in ship management operations

3 Training

- 3.1 Designated person should have undergone training relating to safety management elements in compliance with the requirements of the ISM Code, particularly with regard to:
- .1 knowledge and understanding of the ISM Code
 - .2 mandatory rules and regulations
 - .3 applicable codes, guidelines and standards as appropriate
 - .4 assessment techniques of examining, questioning, evaluating and reporting
 - .5 technical or operational aspects of safety management
 - .6 appropriate knowledge of shipping and shipboard operations
 - .7 participation in at least one marine-related management system audit; and
 - .8 effective communications with shipboard staff and senior management

4 Experience

- 4.1 Designated person should have experience to:
- .1 present ISM matters to the highest level of management and gain sustained support for safety management system improvements
 - .2 determine whether the safety management system elements meet the requirements of the ISM Code
 - .3 determine the effectiveness of the safety management system within the Company and the ship by using established principles of internal audit and management review to ensure compliance with rules and regulations
 - .4 assess the effectiveness of the safety management system in ensuring compliance with other rules and regulations which are not covered by statutory and classification surveys and enabling verification of compliance with these rules and regulations
 - .5 assess whether the safe practices recommended by the Organization, Administration, Classification Societies, other international bodies and maritime industry organizations to promote a safety culture had been taken into account; and
 - .6 gather and analyze data from hazardous occurrences, hazardous situations, near missed, incidents and accidents and apply the lesson learnt to improve the safety management system within the Company and its ships

5 Company requirements and records

- 5.1 The company should provide training courses covering qualification, training and experience and the appropriate procedures connected to compliance with the ISM code including practical training and continuous updating. The Company should also provide documentary evidence that the designated person has relevant qualification, training and the experience to undertake the duties under the provisions of the ISM Code.

Appendix 4

Questions to DPA's

Interview Questions to DPAs

The interviewee begun by telling a bit about his background and how long he has been employed in this position.

01) How can you utilize your "direct access" to the highest level of management?

02) If you for some reason find it necessary to by-pass the technical department and report directly to top management would this be problematic for you?

03) How is your dialogue with the technical department that is responsible for the operation of the ship?

04) What kind of reactions can be expected from top management if you by-pass the Fleet Manger and report your safety concern to top management?

05) To which degree do you discuss safety related issues with top management?

06) How much details do you think should be passed up to the top management and how frequently?

07) How does your company respond to your safety concern when reported?

08) Can you as a DPA put yourself in a difficult situation by not reporting safety issues to the top management?

09) The DPA feature is a relatively new role within shipping. Do you feel that you have the status of your responsibility within your company? How is the balance between responsibility and authority?

10) Does your authority include the right to order safety equipment or training materials?

11) Finances and resources are always an inevitable topic. Does this affect (or restrict) your work for preventive measures?

12) Does your company have any particular liability insurance for you? Do you believe that this is necessary?

13) Do you think that you as a DPA can be used as a scapegoat if things go wrong?

14) Do you think that you as a DPA is exposed to civil action for damage claimed by a third party?