

# ECDIS – navigation and the law



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The use of ECDIS (Electronic Chart Display and Information System) is here to stay. Members are advised to be aware of the practical and legal issues arising therefrom. The following article considers the legal framework underpinning the use of ECDIS in today's digital age.

The introduction of ECDIS is an opportunity to enhance operational standards if embraced properly; nevertheless, it also represents a risk if it is not. It is recommended that members adopt a proactive approach to ECDIS implementation and training.

## **Carrier's contract of carriage obligations**

It is well known that a lack of or deficiency of navigational aids, equipment or charts can affect a vessel's seaworthiness under marine insurance policies. When considering the obligations imposed on carriers under international law, and in particular the Hague/Hague-Visby Rules (HVR) in relation to ECDIS, the starting point is to consider the obligation on the carrier to provide a seaworthy ship. The HVR set out a requirement for the carrier *'before and at the beginning of the voyage to exercise due diligence to make the ship seaworthy'* (our emphasis added) and *'properly man, equip and supply the ship'*.

The requirement of due diligence is roughly equivalent to the common law duty of care under English law. Whilst the carrier could seek to pass on some of the onus for installation and maintenance of ECDIS to the equipment manufacturer, for example by way of indemnity, the carrier will regardless be obliged to show some due diligence on its part.

Should there be an allegation of unseaworthiness, due in whole or in part to failings of on-board ECDIS or seafarers using it, then there must be a causal link established between the failure and the damage or loss suffered.



## **Obligations**

- due diligence test for a 'seaworthy ship'
- staged implementation and training requirements
- causal link between ECDIS failings and damage/loss

## **Practical guidance**

- know your systems
- uniformity of systems across the fleet
- general and type-specific training

## **Navigation exception?**

Article IV HVR provides for certain exceptions, including the navigation exception under Article IV Rule 2 (a). Should the carrier seek to rely on this exception, the burden of proof rests with it to show that it exercised due diligence.

If and/or when the Rotterdam Rules are ratified, the position in respect of the navigation exception is likely to change as the Rotterdam Rules will do away with the navigation exception. The Rotterdam Rules will only come into effect 12 months after 20 countries have ratified them. While the International Group of P&I Clubs' official stance is that it is 'in favour' of the Rotterdam Rules, the loss of this exception is likely to have quite a substantial impact on carriers and cargo interests.

## **International law requirements**

The recent amendment to the International Convention for the Safety of Life at Sea (SOLAS) Chapter V (Safety of Navigation) Regulation 19 requires mandatory carriage of ECDIS for certain new ships built on or after 1 July 2012 and sets out a subsequent timeline plan through to 2018 for retrofitting ECDIS to existing applicable ships. The precise implementation of ECDIS is determined by flag states.

Under the Manila Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), applicable since 1 January 2012, ECDIS training is a requirement for all navigational officers sailing with ECDIS on-board ships. It is therefore crucial that deck officers are properly trained and know how to effectively operate ECDIS and all its associated functions. Additionally, section 6 of the International Safety Management Code requires that seafarers are provided with familiarisation training. However, there is no uniform system of training or minimum standards, with many flag states reliant on some form of computer-based training software.

Members are advised to carry out generic and type-specific ECDIS training and include ECDIS familiarisation as part of their Safety Management Systems to ensure compliance with their statutory obligations.