

Crew death: an overview from a Singapore perspective



Augustine Liew, Partner
Haridass Ho & Partners
+65 6230 1173
augustine.liew@hhp.com.sg



Eric Wong, Associate
Haridass Ho & Partners
+65 6230 1198
eric.wong@hhp.com.sg

It is always tragic when a crew member dies at sea. Whilst understanding the emotional impact on the crew and family of the deceased, a guide as to what can be expected in the due process may assist members to cope during this difficult time. We consider below the subject of crew deaths on board a vessel which is in Singapore or due to call at Singapore in the course of or at the end of her voyage.

What should the shipowner do?

- (i) As soon as possible, preserve all evidence, documents and information relating to the deceased and the death to facilitate investigations into the deceased's death, particularly the cause of death. The master/shipowner should, *inter alia*:
 - photograph the position and condition of the deceased's body when found (including any injuries and/or marks on the deceased's body) and the area where the body was found;
 - retain the deceased's personal belongings, and any documents/ items relating to the deceased (including email messages) and/or the death, taking care to leave them where they are, if feasible, but to secure them and the place of incident; and
 - properly preserve the deceased's body.
- (ii) As soon as practicable, report the deceased's death to the shipowner and a Singapore police officer (where applicable).¹ Also notify the Immigration & Checkpoints Authority of Singapore.
- (iii) Notify the Port Health Office of the Singapore National Environment Agency not less than four hours and not more than 12 hours before arrival.²
- (iv) If the vessel is Singapore-registered and the death occurred outside Singapore³ or if the deceased is a Singapore citizen⁴, report the death as soon as practicable but within 30 days after the death to the Director of Marine of the Maritime and Port Authority of Singapore (MPA).⁵ In the former case, as soon as practicable, but not more than three days after the death, also notify such persons (if any) named by the deceased to be next-of-kin of the death.⁶
- (v) Additionally, if the vessel is Singapore-registered:
 - report the death to the Director of Marine of the MPA within 24 hours.⁷
 - probe the nature and cause of the death, and submit an inquiry report⁸ to the MPA.
 - the deceased's employer or principal should notify⁹ the Singapore Commissioner For Labour and their P&I club in writing of the death, not later than 10 days after the date of the incident.¹⁰
- (vi) Take charge of all of the deceased's property left on board the vessel and make an entry in the official log book signed by the master and another crew member of a list of such property.¹¹
- (vii) Appoint lawyers to protect their interests, where deemed necessary.

1 Section 5(1) of the Singapore Coroners Act (CA). See also the Second Schedule of the CA, which sets out the statutory circumstances of 'reportable deaths'.

2 MPA Port Marine Circular No. 11 of 2014 dated 25 September 2014.

3 Regulation 4 of the Merchant Shipping (Returns of Births and Deaths) Regulations (MSR).

4 Regulation 5 of the MSR.

5 Regulation 6 of the MSR.

6 Regulation 4 of the MSR.

- 7 Regulation 7 of Merchant Shipping (Maritime Labour Convention) (Health and Safety Protection and Accident Prevention) Regulations 2014. The report shall be made in the form set out in the Schedule of the Regulation. See also the MPA Shipping Circular No. 4 of 2013 dated 8 March 2013.
- 8 Regulation 9 of the MSR. The inquiry report should contain the particulars specified in the Third Schedule of the MSR or so many of those particulars as the master may reasonably be able to obtain having regard to the circumstances of the death.
- 9 The notice of accident shall be in accordance with such form and be given in such manner as set out at the website <http://www.mom.gov.sg/iReport>. Regulation 3(4) of the Work Injury Compensation Regulations (WICR).
- 10 This is on the basis that the death may give rise to a claim for compensation under the WICA: Regulation 3(1) of the WICR and section 12(1) of the WICA.
- 11 See Regulation 4 of the Merchant Shipping (Property of Deceased Seamen) Regulations in the case of a Singapore-registered vessel.
- 12 Section 24 of the CA sets out the Jurisdiction of Coroner to hold an inquiry.
- 13 See section 25 of the CA, which sets out the coroner's duty to hold an inquiry and the matters that the coroner will have regard to in deciding whether to hold an inquiry.
- 14 Section 27(1) of the CA.
- 15 Section 27(2) of the CA.
- 16 Sections 3(1) and 17(1) of the WICA.
- 17 See section 7 and the Third Schedule of the WICA.
- 18 Section 3(5)(b) of the WICA.

What will happen at Singapore?

Upon the vessel's arrival at Singapore, the vessel's agent and a doctor engaged by the agent will board the vessel for the doctor to confirm the deceased's death. After the doctor has completed their checks, the replacement crew (if any) and the lawyers (if any appointed by the shipowners) may board the vessel. The Singapore coast guard officers (SPF) will also board the vessel to carry out their investigations (which must be permitted to be carried out without interference).

Lawyers will board the vessel to, amongst other things, investigate into and interview the crew members in relation to the death, although such investigations can only be done after the SPF has completed its investigations and assisted the master if advice is needed.

The deceased's body will be landed and brought to the mortuary by the SPF, where the deceased's next-of-kin (NOK) is usually permitted to view the body before the autopsy is undertaken.

After the initial interview, the SPF may request any crew to visit its office for a further interview. The vessel will not be allowed to leave port unless agreed by the SPF. The shipowner may be required to make the crew available for further investigation whenever required before the SPF will agree to allow the vessel to leave port. In this regard, it is prudent to ensure that the undertaking is limited to when the crew remains in the shipowner's employment.

Coroner's inquiry where the coroner has jurisdiction¹²

A criminal prosecution may be brought if the SPF suspects a crime has been committed. In that event, a coroner's inquiry is unlikely to be held.¹³ If no criminal prosecution is envisaged, a coroner's inquiry may be held to inquire into the cause of and circumstances connected with the

death.¹⁴ The coroner will not determine any question of criminal, civil or disciplinary liability.¹⁵ If the coroner is unable to arrive at a conclusion as to the cause of death, he may return an open verdict, in which event the case can be reopened in the future if more evidence surfaces. The shipowner's lawyer will usually attend these proceedings to assist the coroner in their findings and to ensure that any inaccurate and prejudicial evidence is corrected so as not to adversely affect the shipowner's interests in exposure to civil liability. It is in the discretion of the coroner whether or not to permit this participation, although the coroner will so permit in most cases.

Death compensation

In Singapore, the next of kin may seek compensation (i) if the vessel is Singapore-registered, under the Work Injury Compensation Act (WICA); or (ii) by bringing a civil suit in court. Compensation will be payable under the WICA so long as the death is caused by an accident arising out of and in the course of the employment (even if the shipowner was not at fault).¹⁶

The compensation amount payable is prescribed in the WICA.¹⁷ On the other hand, the next of kin will need to prove, *inter alia*, that the shipowner's fault (such as negligence and/or breach of the employment contract) caused their loss/damage in order to succeed in a civil suit. However, the compensation recoverable in a civil suit may be potentially higher than that payable pursuant to the WICA regime.

Compensation will not be payable under the WICA if the death results from suicide.¹⁸ Whether compensation is payable under the employment contract in the case of suicide will depend on the terms of the employment contract and/or any applicable collective bargaining agreement. Any contracts seeking to exclude compensation in the case of suicide will need to be drafted clearly to this effect.