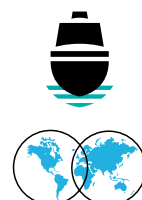


<b>Non-refoulement</b>	The international obligation not to send back refugees or asylum seekers to a country in which they will be persecuted, tortured, ill-treated, etc.
<b>Note of protest</b>	An official written statement of the Master describing the voyage during which damage could have occurred to ship or cargo. Also known as a sea protest.
<b>Notice of readiness (NOR)</b>	A notification by the Master that the ship is ready to start the charter or ready to start the loading of goods or to start the laytime.
<b>Other officers</b>	Electricians, medical officers, and others holding a professional qualification but who are neither deck nor engineer officers.
<b>Overwhelming powers</b>	Extraordinary forces, too strong to resist.
<b>Peril(s) of the sea</b>	Extraordinary forces during a ship's voyage, such as high winds and heavy waves, stranding, sinking or collision.
<b>Port State/ Administration</b>	The Government of the country in which a port is situated. Also known as the port Administration.
<b>Port State Control</b>	The inspection of foreign ships in national ports to verify that the condition of the ship and its equipment comply with the requirements of international regulations and that the ship is crewed and operated in compliance with these rules.
<b>Privately Contracted Armed Security Personnel (PCASP)</b>	Armed personnel hired from a Private Security Company to protect a ship against pirates.
<b>Private security company</b>	Companies with a focus on providing Private Contracted Armed Security Personnel.
<b>Proximate cause</b>	A close relationship between an action and the result. Opposite is a 'remote cause'.
<b>Reasonable despatch</b>	Shipment should be delivered by the carrier at the appointed time for delivery or as otherwise stated on the bill of lading. Delay should be reported.
<b>Recognised organisation</b>	An institution authorised by the competent authority to undertake surveys and related work and to issue statutory certificates on behalf of the Government.
<b>Right of innocent passage</b>	The right of a ship to enter and pass through foreign territorial seas so long as it is not prejudicial to the peace, good order or security of any other State.
<b>Risk</b>	A combination of the likelihood and consequences of a specified hazardous event occurring.
<b>Risk analysis</b>	Assessing the likelihood of an event occurring.
<b>Risk assessment</b>	An examination of what on board may cause harm to persons, property or environment so that it can be determined whether adequate precautions have been taken.

<b>Risk management</b>	A process that involves assessing the risks that arise in the workplace, putting health, safety and environmental protective measures in place to control them and then ensuring they work.
<b>Safety Management Certificate (SMC)</b>	A document issued to a ship which signifies that the shipowner operates by the approved Safety Management System.
<b>Safety Management System (SMS)</b>	An organised system planned and implemented by the shipping company to ensure the safety of the ship and marine environment.
<b>Search and Rescue (SAR)</b>	<p>Search is an operation, normally co-ordinated by a rescue co-ordination centre using available personnel and facilities to locate persons in distress.</p> <p>Rescue is an operation to retrieve persons in distress, provide for their initial medical or other needs, and deliver them to a place of safety.</p>
<b>Ship Security Assessment (SSA)</b>	A risk-based analysis of security threats for each ship that a shipowner has. The basis for the SSP.
<b>Ship Security Officer (SSO)</b>	The officer with the responsibility for implementing and maintaining the Ship Security Plan.
<b>Ship Security Plan (SSP)</b>	A ship-specific plan that identifies threats and vulnerabilities and provides measures and duties for personnel on board under different levels of security. A requirement of the International Ship and Port Facility Security (ISPS) Code.
<b>Shipowner</b>	The owner of the ship or any other organisation or person, e.g. the manager or the bareboat charterer, who has assumed the responsibility for operation of the ship from the shipowner and who, on assuming such responsibility, has agreed to take over all the duties and responsibility imposed by the ISM Code and the MLC Convention.
<b>Special Compensation Clause (SCOPIIC Clause)</b>	A specific clause incorporated in LOF contracts, recommended by P&I Clubs and which can be invoked by the salvor at any stage.



## Editorial notes

In this guide, the word 'must' is used where guidance relates to a regulation, and the word 'should' is used for guidance that is generally considered best practice.

Always refer to the latest versions of regulations as they may have been updated after this guide was published.

The term 'crewing' is used instead of the term 'manning' where possible, in line with guidance encouraging the use of inclusive language in the ICS Diversity and Inclusion Toolkit for Shipping.

# Part 1 General



# 1 Introducing the law

## 1.1 Introduction

In this guide, the 'Master' means the person in command of a ship. The Master has:

- Tasks;
- Responsibilities;
- Authorities;
- Rights; and
- Obligations.

The Master is sometimes referred to as the Master Mariner, Shipmaster, Captain, Commander or Skipper, but in this guide the term 'Master' is used for consistency.

The Master fulfils a complicated legal position under international law. They and the ship sail through international waters and the national waters of countries which are subject to different laws and regulations.

The Master has different responsibilities under the law to the shipowner, who the International Maritime Organization's (IMO) International Management Code for the Safe Operation of Ships and for Pollution Prevention (ISM Code) defines as "the owner of the ship, or another organisation or person such as the manager or the bareboat charterer who has assumed responsibility for the operation of the ship from the shipowner, and who, on assuming such responsibility, has agreed to take over all the duties and responsibilities imposed by the Code".

Because of the increasing number of legal incidents and the criminalisation of seafarers in general and the Master in particular, the latter should be aware of which laws and regulations apply to the ship as it sails through the waters of different countries or calls at their ports during its voyage.

This guide describes the Master's legal position under international and national maritime law as well as in relation to their contractual obligations. It provides the Master with guidance and best practice in maritime law.

This chapter introduces the subject of law from the perspective of the Master and acts as an introduction to the chapters that follow.

## 1.2 Law

The Master must obey the law and make sure it is obeyed on board the ship.

'The law' is a set of legal rules used to maintain order in a country, including its ships. For the Master, this law is usually known as flag State legislation or the laws and regulations of the flag State.

'Legal rules' mean regulations connected with the law. Some substitutes for the term are 'requirements', 'provisions', 'norms', 'regulations', 'laws', 'bills', 'acts' or 'orders'. In this guide, the general term 'laws and regulations' is used.



**Figure 1.1:** The terms ‘laws’, ‘regulations’ and ‘rules’ may be used differently from country to country

Source: Shutterstock

Term	Definition
Law	Mandatory legal rules issued by a country’s government
Regulation	Mandatory legal rules issued by an agency, ministry or department of the country’s government
Legal	Connected to law
Guideline	Non-mandatory instrument or recommended practice
Requirement, provision or clause	Part of a written legal document, such as a law, regulation or contract, including statements indicating that a certain thing must take place or be done

**Table 1.1:** Various legal terms

Laws and regulations may be enforced by government agencies, such as the police, customs, coast guards, immigration officers or shipping inspectorates.

The term ‘laws and regulations’ may vary according to a country’s legislation. Every country has the right to use its own terminology for their legal instruments.



The law, like merchant shipping, has its own terminology, resources and structure. It may contain mandatory requirements and non-mandatory directions, while legal terms used in international or national law systems are not always the same. Often, legislation uses a mix of terminology and/or uses different terms synonymously.

The way words are used and their intended meaning in laws and regulations are not the same in all countries. In this guide the following legal terms are used:

- 'must' – imposes a legal obligation; and
- 'should' – indicates that the rule is not a legal obligation, but rather a professional requirement.

The terms 'shall' and 'will' are sometimes confusing and ambiguous when used in legal documents, including shipping contracts. The Master should make sure they understand the meaning of these words when used in statutes or contracts.

The law is a country's system of laws and regulations that regulate the behaviour of people in that country, including on board its ships. Countries may enforce their law through imprisonment or fines.

### 1.2.1 Maritime law

The Master mainly deals with maritime law, sometimes under international law (e.g. the maritime conventions), and sometimes under the national or domestic law of the flag State or coastal State.

'Maritime law' or 'admiralty law' is a combination of national and international laws and regulations that govern transport by sea. In many countries there is no difference between admiralty law and maritime law, and both terms are often used interchangeably.

Maritime law governs safety matters or commercial disputes, such as concerns between the shipowner and the charterer or shipper. Maritime law also covers shipping contracts, marine insurance, and the carriage of goods and passengers by sea.

Parties such as shipowners and charterers from anywhere in the world may have the freedom to enter into contracts without too much interference from governments. It is up to these parties to agree which national law will apply to any disputes. Shipping contracts are often concluded under English law, and disagreements may go to English courts or arbitration tribunals for resolution.

United Nations agencies including the International Maritime Organization (IMO) and the International Labour Organization (ILO) adopt international agreements in the form of conventions, protocols and codes, e.g. the United Nations Convention on the Law of the Sea (UNCLOS), the International Maritime Convention for the Safety of Life at Sea (SOLAS), the International Convention for the Prevention of Pollution from Ships (MARPOL), the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) and the Maritime Labour Convention (MLC).

Once in force globally, following ratification by the specified number of States, these agreements are (in theory at least) legally binding between the contracting States, which are generally called 'State Parties' or 'Parties'.

Governments implement international agreements, such as IMO conventions, via their national law and regulations, and the requirements can then be enforced by the country's maritime Administration, national shipping inspectorate, and other appropriate authorities such as customs and police. At sea, State parties' coast guards, maritime police and other national authorities such as the navy may also enforce these international agreements as implemented under national law.

These international agreements therefore govern relations between governments and legal persons such as the Master or shipowner.