Time Pressures in the Maritime Industry

Port/Terminal Due Diligence Guide

HEIG
Human Element Industry Group

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Foreword

Time pressure is present in maritime shipping in many ways. Like all industries, working and delivering on time is a crucial factor in activities within maritime shipping. Unfortunately, this means that time pressure can sometimes be a contributing factor in the cause of maritime incidents. This focussed guide aims to highlight the presence of time pressure to stakeholders in the maritime sector.

The aim of this guide is to:

- Promote awareness of time pressure within the maritime community.
- Improve understanding of different types of time pressure, including self-induced time pressure.
- Emphasise the importance of addressing this issue from top of the leadership chain and developing a visible management commitment to maintaining a safety culture.
- Develop guidance on the importance of repair and maintenance strategy, planned maintenance systems in managing resource issues.
- Emphasise the effect that time pressure can have on safety and well-being on board.

In our daily lives we often recognise the effects of time pressure. When in a hurry we may take risks that we otherwise would not, sometimes even unconsciously. Time pressure has an effect on the way we think. It tends to make us neglect our deeper knowledge and training, and sometimes may lead to potentially lethal consequences. It makes us cut corners, both literally and figuratively. One model used to describe this is 'Fast and Slow Thinking'[1]. An example of this can be seen in enclosed space incidents where one seafarer collapses in an enclosed space, which may have a hazardous atmosphere, and their colleague rushes to assist without thinking about the consequences. This has resulted in many deaths. Another model is the 'Efficiency Thoroughness Trade Off'[2] (ETTO) which suggests that, with limited time available, some tasks may be overlooked or compressed.

Time pressure leads to stress and as with most forms of stress, there is a balance. There is nothing wrong with setting a realistic timeframe to complete an action or task. It is when the timeframe is unrealistic that 'excessive' time pressure becomes a problem.

[1] Kahneman, Daniel. *Thinking, Fast and Slow*. New York: Farrar, Straus and Giroux, 2011.
[2] https://erikhollnagel.com/ideas/etto-principle/

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Introduction

The varied and conflicting demands on our time, from professional commitments to domestic responsibilities, push us to squeeze the most from every minute (Hochschild, 1997; Perlow, 1998, 1999).

Modern innovations like fast food drive-throughs, mobile telephones, microwave ovens, productivity applications etc. continually increase our ability to get more done in less time. Organizations strain to make the most efficient use of their employees, laying off those who can be spared and pushing those who remain to do more in fewer hours (Schor, 1991).

Experts such as Hochschild and Schor recognize the pressure that companies are under and highlight the impacts that can be felt by their employees such as constraining cognitive capacity and impairing performance. The maritime shipping industry is not exempt from these effects, with ships being capital intensive assets where operating costs or expenses have a major impact on how the ship is run.

Time pressure is a feature of many areas of ship operation and there are numerous high-profile examples: -

Navigation: The request to meet a 'challenging' Estimated Time of Arrival/departure (ETA/ETD) can lead to shortcuts being taken or insufficient time available for voyage preparation. Some of the best-known examples include the *Titanic* sinking, the capsize of the *Herald of Free Enterprise* and more recently the grounding of *Rena*[3].

Mooring/unmooring: There may pressure to berth a vessel or to unberth to clear the berth within a certain timeframe. The *Hoegh Osaka* capsize is a supporting example[4].

Cargo operations: Pressure to prepare tanks, holds or cargo itself may lead to incidents in cargo spaces. Incorrect or incomplete lashing of containers plays a part in the eventual loss of containers overboard. There has been a trend of increased container losses in recent years.

Maintenance: Pressure to complete repairs may result in rushed repairs causing damage to critical equipment or injury to crew.

Given that the existence of time pressure in general is beyond doubt, and that there is no formal recognition of time pressure within the maritime shipping industry, there is an opportunity to provide industry stakeholders with insight on the subject.

To establish effective management of the risk associated with time pressure, there is a need to:

- Recognise where excessive time pressure is influencing behaviour.
- Identify where existing safeguards may be used to avoid incidents.
- Evaluate where help should be available under ISM.

This guide will detail situations, issues, and subjects to give the reader an understanding of time pressures in the maritime industry, specifically in a context of shipowner and/or manager and share recommendations on how to manage them.

[3] https://www.taic.org.nz/inquiry/mo-2011-204
[4] https://www.gov.uk/maib-reports/listing-flooding-and-grounding-of-vehicle-carrier-hoegh-osaka

Time pressure

Time pressure is a form of stress that may impair a person's ability to make safe decisions. It can be a form of 'commercial pressure' and businesses may struggle to find the balance between maintaining safety on board and maximizing the commercial performance of the ship. In other words, there is a fine balance between conducting operations safely and efficiently. Tilting the balance in favour of one may negatively affect the other.

It may not be apparent to individuals (or stakeholders) that their actions and/or instructions may result in time pressure being applied to staff further down the communication line. In other words, any person directly or indirectly involved with ship operations has the potential to exert time pressure. Examples include.

- Agents
- Authorities
- Charterers
- Colleagues
- Ports and terminal managers
- Port and/or cargo workers
- Shipboard managers
- Shore based managers.

Why does time pressure happen?

Some examples of why this happens include:

- Excessive administrative demands
- Imbalance between resources and workload
- Poorly constructed or non-existent procedures
- Weak safety culture
- Lack of awareness of the effect that instructions and messaging can have on people.
- Reluctance to challenge real or perceived authority
- Structure of reward programmes for seafarers

There are three different types of time pressure:

Explicit time pressure

This is sometimes called direct time pressure. A formal instruction, which is time bound, is given by a party with apparent legitimate authority that creates a pressure on the receiving party to carry out the instruction within the assigned time. In some cases, this formal instruction is recorded. The situation is, therefore, visible during audits and investigations.

> *Example – A voyage instruction is sent from a charterer to a shipowner with a tight schedule for a ship. An instruction is sent from the office to the ship to prepare the cargo hold for the next cargo - however the time allowed is not sufficient.*

Implicit time pressure

This is sometimes called indirect time pressure. In communications between parties, times are not explicitly mentioned, but are implied in the way the communication is carried out. In this case the recipient individual's decision-making is shaped by implicit messages in the communications and processes.

Sometimes, this affects people's perceptions of what the organisation wants. Implicit time pressure is not easily visible or recordable and will seldom be visible in an investigation or audit.

> *Example – A instruction to carry out repair work is sent out from the technical department of a shipowner to a ship with no mention of time. However, in most other cases, such an instruction is carried out with the highest priority.*

Self-induced time pressure

This type of time pressure does not originate from a third party but from one's own self. It is the perception that a task needs to be carried out within a particular timeframe determined by the individual, which is usually shorter than the desired timeframe.

> *Example, a vessel/technical manager who must leave the office to complete an important personal errand may choose to approve a safety work permit from the ship slightly more quickly than usual, paying more attention to the time taken to do the job than to the risks involved.*

Resources[5] are available from charities or mental health professionals on self-induced time pressure (stress).

[5] https://www.seafarerswelfare.org/seafarer-health-information-programme/good-mental-health

https://www.itfseafarers.org/en/health/managing-stress

https://www.mind.org.uk/information-support/types-of-mental-health-problems/stress/what-is-stress/

While self-induced time pressure can occur in any part of the organisation, it is mostly found on ships, as ship's staff are the ones that carry out the sharp end of the tasks. Although self-induced time pressure can occur in the shore side of any organisation, this has not been very visible in this analysis as most of the time it has either been a direct or an indirect time-pressure that affects the shore staff the most. Of course, there are difference in personalities in people and this can lead towards time pressure.

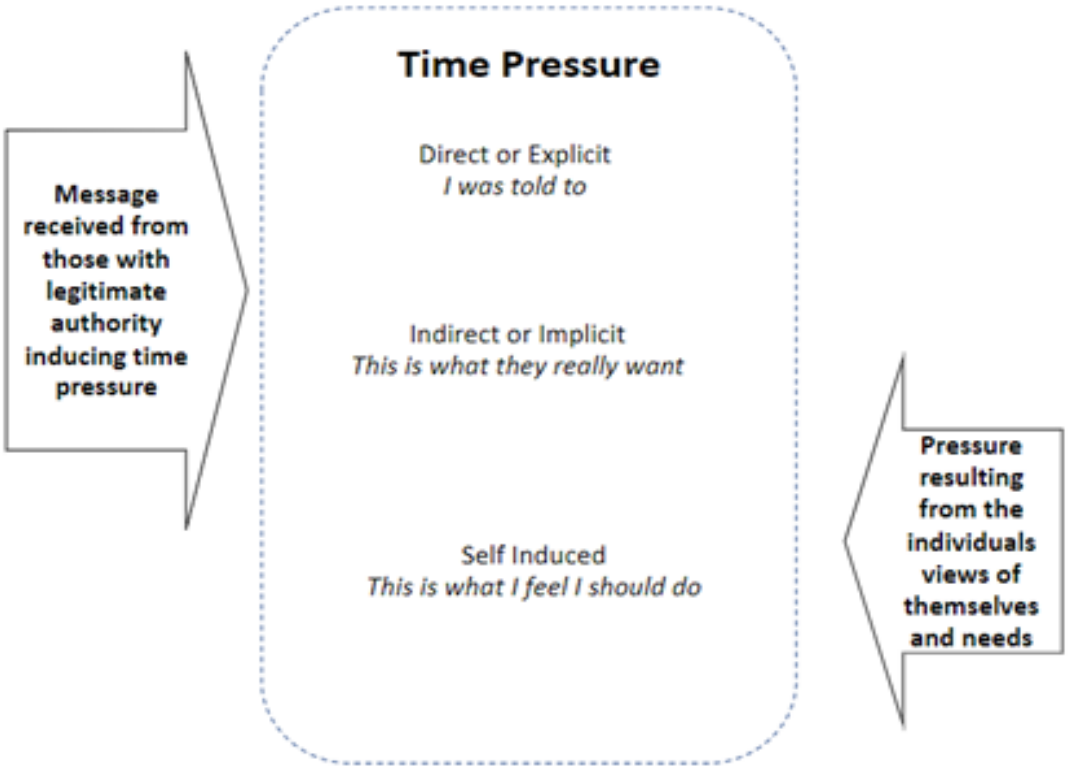
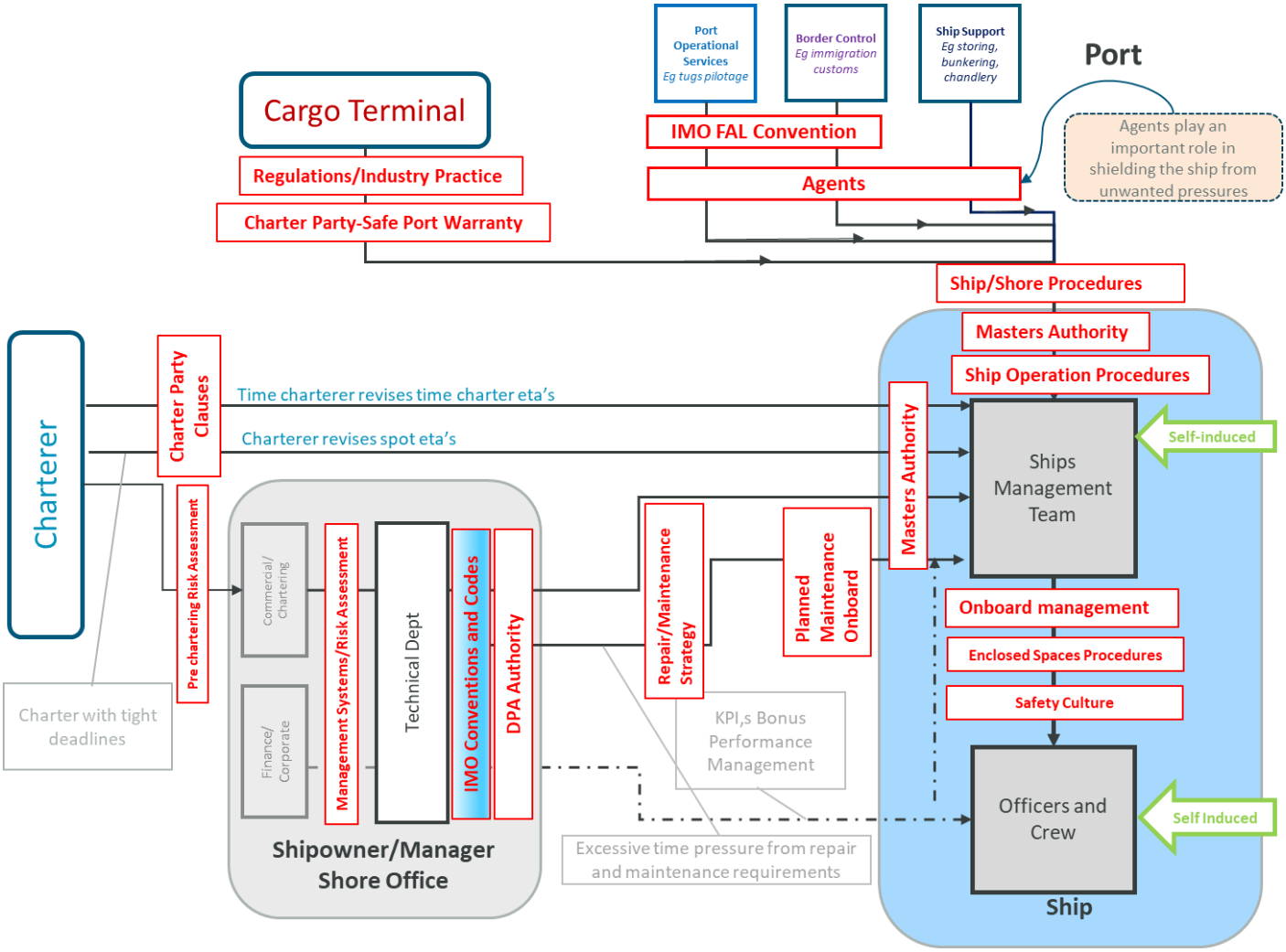


Figure 1 - Types of time pressure

Sources of time pressure in the maritime industry

In a typical shipping company context, time pressure can arise from different sources. An analysis has been carried out to identify the various sources of time pressure and how they interact with the ship and ship-owner. The result is summarised in the following model.



In this model, the grey box represents the shipping company's shore office, and the blue box represents the ship. Arrows indicate the flow of communication - and in turn, time pressure.

Continuous arrows represent direct time pressure, broken arrows represent indirect time pressure travels. The red boxes represent existing safeguards or barriers regulating time pressure within the system.

It is important to stress that time pressure can originate from within the line of responsibility and from other outside sources.

Time pressure can arise from within the 'Company' (as defined in the International Safety Management Code (ISM)) or from an outside source, which then affects the company both ashore and on board.

Time pressure can arise from charterers in the form of tight deadlines. A common source of time pressure is amending the time required to arrive at a port or berth, or a request to change cargoes and therefore tank/hold combinations on a tight deadline.

Ports and terminals also create time pressure on the ship – for example, by giving a ship at anchorage waiting for a berth a very short time to prepare and come alongside. If the ship requests more time, the port may assign the berth to another ship and ask the waiting ship to continue waiting for another berthing opportunity.

What does time pressure look like?

Stress due to time pressure can manifest differently between people. While some may show many physical signs, others may show only some or no signs at all.

Physical signs may include: decreased energy and insomnia, headaches, weight change and change in appetite, frequent sickness, rapid heartbeat, and sweating.

Non-physical signs may include: irritability and generally acting differently or changed mood. Increased complaints and grievances are another sign that may be an effect of time pressure.

Preventing time pressure

Preventing time pressure and managing expectations can go a long way to mitigating circumstances that can cause incidents. Below is a list of mitigations that can be put in place to reduce the adverse effects of time pressure.

- Understanding the sources of time pressure
- Knowing the visible signs of time pressure
- Planning and prioritising work
- Having an accessible safety management system
- Confident leaders and a healthy safety culture
- Having a strategic view of workload
- 'STOP the job' practices.
- Supporting the master's authority
- Strong and open communication
- Challenging time pressure (P.A.C.E[6])

[6] Refer to Annex A for further information.

This part of the guide offers plain language explanations of the measures ports and terminals may adopt to address the risk presented by excessive time pressure on seafarers and port workers alike.

The guidelines are non-prescriptive and seek to identify aspects of port operations that have the potential to introduce time pressure on ships' crew and port workers alike, and describe measures that may be taken to mitigate the associated risk.

Some charter forms now request the charterer to perform due diligence in nominating a safe port. But what does this require in practice, and what is 'due diligence' in the context of establishing whether a port is 'safe'? The second part of these guidelines go on to describe measures which may inform the due diligence associated with port and/or terminal nomination within the scope of a 'safe port warranty'.

Port Operations

Port Call Process

For every port call many different operations must be performed at just the right time. The process broadly consists of two phases: contractual and operational. Making sure that these phases are properly completed in the right sequence and interact at the right points is an important element in safe and efficient shipping.

The contractual phase includes the hiring (charter) of the ship together with the port / terminal services required, to fulfil the needs of the cargo owner (shipper) seeking to move goods from one location to another.

The operational phase includes the planning and delivery of all related activities through the various phases of port operations as summarized in Figure 3.

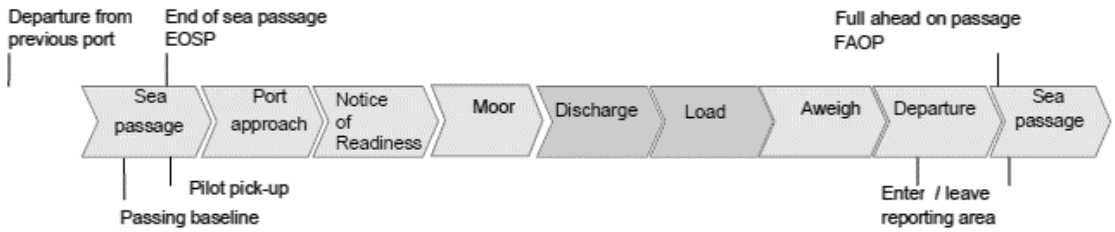


Figure 2 - Port operational phases

Said operations involve a substantial number of shore-based actors. To enter port, authority approval must be secured; typically the service of pilots and tugs secured, and stevedores engaged and thereafter overseen to handle cargo operations without compromising the safety of the ship, or themselves.

In addition, the ship must deal with, among others, waste disposal contractors, chandlers and bunker suppliers, and in all likelihood the representatives of cargo interests, all demanding the attention of ship's staff, particularly the Master and senior officers – often in time that ideally should be prioritized for rest[7].

[7] Minimum hours of rest as determined in the MLC and STW.

Ship shore communication

As reflected in the IMO Bulk Load and Unloading (BLU) Manual, effective communication, and the securing of agreement, between ship and port personnel is an essential mechanism for addressing the risk associated with the port process. The exchange of expected and realistic times to complete the tasks associated with the port operational phase make it possible to plan a port call in a smarter and more efficient way while also enhancing safety.

Among other things, prior to commencing cargo operations the Master and terminal representative should collectively agree on the time necessary to ensure that checks are undertaken so that cargo spaces and other enclosed spaces are either secured (to prevent entry by port personnel) or persons - not least stevedores - are permitted to enter only after the spaces have been declared safe for entry in accordance with the guidelines developed by the IMO[8].

Further, the master should be satisfied that sufficient time is allowed such that port personnel are made fully aware of the ship's policies and procedures established within the scope of the International Safety Management (ISM) Code, for example, through training toolboxes if not previously assured in some way at the time of port nomination.

The time allocated to this should not be compromised or otherwise constrained by commercial and other pressures to proceed with haste.

Enclosed Spaces

Serious risks to health can arise from entering or working in confined spaces. Although there are potential confined spaces in warehouses and elsewhere in port areas, incidents during port work are most likely to occur on board ship, particularly when port workers enter holds. Unfortunately, as reported by the International Bulk Terminals Association (IBTA)[9] among others, such incidents involving port workers occur too frequently and often involve fatalities.

The term 'confined space' generally means an area that is totally enclosed. However, this does not mean airtight, nor does it refer just to a small space. While small spaces can be confined and potentially dangerous to enter, the risks also apply to much larger spaces. For example, a ship's hold may be a large void but must be treated as a confined space and the atmosphere in it, including the access ways to the hold, may well be hazardous. Special precautions should be taken and the enclosed space entry procedures established by the ship strictly observed where there is a risk of an unsafe atmosphere, particularly where:

- The cargo has been fumigated.
- The cargo has oxygen depleting characteristics.
- The cargo is liable to give off flammable or toxic vapours.

[8] IMO Assembly Resolution A.1050.

[9] Analysis-of-Shipboard-Confined-Space-Accidents-1999-April-2018, IMO Paper CCC 5/INF.12 (United Kingdom and IBTA).

Safe Port Warranty

Many standard form charter parties contain an express warranty or similar contractual obligation on the part of the charterer[10], to the benefit of the ship owner, to ensure the 'safety' of the nominated port. Even in the circumstance where such a warranty is not expressly provided for there remains the possibility that such warranty could be implied should a dispute subsequently arise between ship owner and charterer.

In law, the long-standing definition of a 'safe port' is established to be:

'A port will not be safe unless, in the relevant period of time, the particular ship can reach it, use it, and return from it without, in the absence of some abnormal occurrence, being exposed to danger which cannot be avoided by good navigation and seamanship…'(Court of Appeal in *Leeds Shipping v Société Française Bunge* (The EASTERN CITY) [1958]).

Should disputes arise, thus far the factors taken into account in the determination of the 'safe port' obligation established through the charter largely resolve to matters physical.

> *For example, the US Supreme Court ruling on Citgo Asphalt Refining Co. v Frescati Shipping Co., Ltd., the dispute arising from a 2004 oil spill in the Delaware River involving the M/T Athos I striking a submerged 9-ton abandoned anchor on the approach to intended berth, puncturing the hull of vessel and causing 264,000 gallons of heavy crude oil to spill into the river.*
>
> *Finding in favour of the ship owners, the court opined the contract (charter) must be construed as an express warranty of safety, imposing on the charterer an absolute duty to select a safe berth. Which does not preclude consideration of non-physical dangers to a ship and crew in a safe port warranty dispute like those now being taken into account in seaworthiness disputes[11]. Indeed, in its ruling, the Supreme Court reminded the parties that vessel Masters have an 'implicit' right to refuse entry to a port should they find it unsafe, for any reason, and that refusal requires charterers to pay the associated cost[12].*

In response to the case referenced above, and similar, some charter forms now expressly qualify the obligation to nominate a safe port to one of due diligence. In these instances, the charterers' obligation is merely to take reasonable care to establish that the nominated port is safe.

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[10] The 'charterer' is the entity that contracts (hires) the ship on behalf of the cargo owner (the 'shipper'). These may be one and the same entity.

[11] The CMA CGM Libra grounded on an uncharted shoal in the approaches to Xiamen, China. The owners of the vessel claimed against cargo interests for contribution in General Average. Concurring with the original judgement, the UK Supreme court subsequently found that, although the owners had otherwise provided a seaworthy vessel, nevertheless the vessel's passage plan was defective, which was causative of the grounding, and that this involved a breach of the carrier's seaworthiness obligation. (https://www.clydeco.com/en/insights/2021/11/supreme-court-decision-on-the-cma-cgm-libra-ga-def)

[12] 'Ruling Confirms Safe Berth Warranty in Athos I Oil Spill Case' Christopher Nolan / Robert Denig – Holland & Knight LLP New York (https://www.steamshipmutual.com/publications/articles/safe-berth-contractual-clarity-in-us-and-beyond052020)

But what does this require in practice? What is ‘due diligence’ in the context of establishing whether a port is ‘safe’?

There is no simple answer; whether a charterer has sufficiently discharged its due diligence duty is a highly fact intensive and case-by-case determination. Nevertheless, notwithstanding the complexity of the problem, leading counsel recommends charterers should methodically approach their due diligence obligations by developing vetting practices that keep abreast with industry standards and evolving case law and that are consistent with the company's overall approach to HSE issues but also customized to the unique risks of a particular terminal.[13] From the perspective of time pressure, the matters to address in this vetting process are considered below.

[13] https://www.nortonrosefulbright.com/en/knowledge/publications/6604b7c3/us-supreme-court-provides-critical-guidance-but-leaves-key-safe-berth-question-unanswered

Due Diligence

Due diligence is a process that involves a risk and compliance check; conducting an investigation, review, or audit to verify facts and information about a particular subject. Put simply, due diligence means one party acquiring knowledge before entering into any agreement or contract with another (a counterparty), to establish as far as reasonably practicable that the engagement will not subsequently present an unacceptable risk. Many shipping companies routinely perform due diligence on new and existing customers, for example, to satisfy themselves that they are not engaging with an entity subject to sanction by the United States – to do so would be potentially catastrophic.

What form of due diligence is appropriate depends on the specific situation, business transactions and the level or scale of risk. Again using sanctions as an example, **basic due diligence (BDD)**could take the form of a non-rigorous review of information or other public domain sources, such as screening against key sanctions lists, which may be sufficient for a EU-based counterparty that is unlikely to be involved in nefarious dealings with North Korea or Iran.

Conversely, if the counterparty is based in a regime with less robust controls on finance and exports, **enhanced due diligence** (EDD)in the form of the identification and screening of the ultimate beneficial owners and the completion of declarations of compliance may be considered prudent.

Beyond that, should the counterparty be a diverse multinational embracing activities in states with a large number of entities and / or individuals subject to sanction, then full robust **integrity due diligence** (IDD) may be called for in the form of site visits, third party investigations and / or engagement of legal counsel or other specialist for fact finding.

It is important to stress that there is no legal obligation on a shipping company or charterer to perform due diligence on their counterparties, including ports and terminals. This is a matter for the relevant management to determine as a function of its risk appetite. Bearing in mind the time required and costs involved, performing due diligence on a port or terminal prior to nomination may be considered an unnecessary burden.

Nevertheless, with increasing societal pressure on the shipping sector to deliver on the principles of ESG[14] establishing a consistently robust risk and compliance check on a port and / or terminal, through due diligence has the potential to make an organization shine in the eyes of investors, financers and the attestation bodies that increasingly benchmark the industry, and may address hitherto largely unconsidered risk associated with port operations.

[14] Environmental, Social and Governance

Port/Terminal Due Diligence

The following recommends essential questions to pose in the conduct of due diligence on ports / terminals to address the risk associated with time pressure and the welfare of seafarers in general.

Each question is followed by a brief description of the issue with a summary of the underpinning regulatory framework and / or industry best practice. In addition, a range of indicators is offered to demonstrate port commitment to compliance from the weakest; level 0 – minimal (if any) compliance; through to the strongest; Level 3 – full compliance.

A check list covering the questions associated with the conduct of due diligence on a port, and others, is provided in the Annex.

Without suggesting this is in any way definitive, or prescriptive, a matter that only a court / arbitrator may subsequently determine, in the context of maintaining risk as low as reasonably practicable (ALARP), a port that fulfils Level 3 compliance may reasonably be considered 'safer', i.e., less risky, than a port that does not.

Further, and likewise without implying this represents a mandate in any form, the degree to which the risk associated with the counterparty relationship may be controlled is a function of the scope or depth of the due diligence performed. For a major port or terminal established in a regime with a robust port regulatory framework including national standards for operational safety management, and / or which scores highly against port-related safety and environmental benchmarks established by reputable accreditation bodies – beyond just economic measures of efficiency – basic due diligence may be considered sufficient; compliance with the equivalent of Level 3 generally though not assuredly assumed.

On the other hand, even for larger ports and terminals rated highly for efficiency, in the absence of a detailed national regulatory framework, including port authority governance, enhanced due diligence prior to nomination may be considered prudent. Beyond that integrity due diligence could be called for. For reasons of ESG, this is not precluded from being the norm.

Has the port embraced digitalisation?

Issue

Port operations necessarily involve bureaucracy. They must secure the permit (written, electronic or informal) to allow a certain process to be performed.

> *For example, bunkering, or handling the documentation associated with the cargo; bills of lading etc.*

Depending on the circumstance, port-related bureaucracy can have both a direct and indirect impact on time pressure. Each actor has their own deadlines and likely considers that their own needs should have the highest priority, from the cargo owners seeking to secure clearance to commence cargo operations through to the chandler with a rapidly deteriorating stock of perishable goods, each requiring 'time' to complete their task.

Traditionally, port bureaucracy was handled by the ship's agent. To the extent that the Master was required to be directly involved with port and / or cargo interests, they would be assisted by otherwise 'spare crew', for example the purser.

However, with improved ship-shore communications, some may consider the services of an agent to be an unnecessary luxury. This is compounded by the near extinction of the purser and other 'spares' to a ship to offer the Master support to deal with the bureaucracy especially where this remains paper-based.

Finally, bureaucracy can be associated with nefarious practice, i.e., corruption. Direct access to the Master and other senior staff, on the pretext of demanding completion of paperwork, is seen to improve the likelihood of securing financial or other benefits from the ship.

Reducing, or ideally removing, the need for external actors to access the ship in port has a direct impact on reducing the potential for corruption, as is achieved through digitalisation.

Regulation and Standards

The main objectives of the IMO Facilitation Convention (FAL) are to prevent unnecessary delays in maritime traffic, to aid co-operation and to secure the highest practicable degree of uniformity in formalities and other procedures associated with maritime traffic, including those associated with port operations.

Effective April 8, 2019, FAL requires contracting governments to establish a protocol for an electronic information exchange between ship and port without the need for personnel to demand the personal attention, and time, of the Master.

Further, at the fortieth session of the Facilitation Committee (FAL.40), the IMO adopted resolution FAL.12(40) to amend FAL requiring the establishment of systems for the electronic exchange of information associated with the port process through a 'single window' compliant with the guidelines of the organisation[15].

Presently a recommendation, the requirement for each port to establish – or have access to - a single window for port-ship data exchange, and the completion of all documentation related to any aspect of the port process, is anticipated to be mandated from 1 January 2024[16].

Compliance Best Practice

Level 0	No provision for electronic submission of documents related to the port process; actors seek and require unfettered direct access to the master and/or requirement on ships to engage an agent.
Level 1	Key regulatory port clearance documents (IMO FAL series) accepted electronically, however actors generally seek direct access to the master; local port regulation requires engagement of a ship's agent.
Level 2	Single window established to handle submission of essential regulatory and port operational documents, for example pilot booking, but not fully compliance with IMO standards, some actors, e.g., cargo interests, continue to demand access to master, ships agents subject to licensing by the port.
Level 3	Single-window established compliant with IMO standards, all port regulatory, operations and cargo-related information exchange facilitated with minimal (no) requirement for direct access to master, and by extension other key stakeholders, including acceptance of electronic signatures[17]; local port regulation requires licensed agents conform to UNCTAD standards.

[15] IMO Circular FAL.5/Circ.42/Rev.2

[16] Assuming formal adoption by IMO in accordance with due process.

[17] IMO regulation under development.

Does the port embrace agency?

Issue

The engagement of a shipping agent reduces the burden of bureaucracy on the ship and, with that, the time pressure on individual crew members, notably the Master.

Regulation and Standards

The United Nations Conference on Trade and Development (UNCTAD) has established Minimum Standards for Shipping Agents that, among other things, seek to uphold a high standard of business ethics and professional conduct among shipping agents[18]. This includes:

a) Negotiating and supervising the charter of a ship;

b) Collection of freight and / or charter hire where appropriate and all related financial matters;

c) Arrangements for Customs and cargo documentation and forwarding of cargo;

d) Arrangements for procuring, processing the documentation and performing all activities required related to dispatch of cargo, including signing or endorsing cargo-related documentation[19];

e) Organising arrival or departure arrangements for the ship

f) Arranging for the supply of services to a ship while in port.

In summary, an agent who meets the minimum UNCTAD standards can discharge virtually all bureaucracy related to the port process without the need for the direct involvement of the Master.

This includes cargo documentation. The Master may consider they are responsible for the authorization of cargo documentation, but this is not in fact the case, i.e., they are imposing self-induced time pressure.

Compliance Best Practice

Level 0	No requirement on ships' principals to engage an agent in the port.
Level 1	Local port regulation requires engagement of a ship's agent.
Level 2	In addition to Level 1, ships agents subject to licensing by the port.
Level 3	In addition to Levels 1 and 2, local port regulation requires licensed agents conform to UNCTAD standards.

[18] UNCTAD/ST/SHIP/13, 7 September 1988.

[19] Other than in particular circumstance, there is no requirement for the master to be involved in the process of issuing or endorsing cargo-related documentation such as the Bill of Lading albeit if the agent discharges the function, unlike the master, the agent may need to be expressly authorised to do so.

Does the port promote seafarer welfare?

Issue

Port welfare for seafarers is not a luxury. The ability to relax away from the work environment provides an essential relief of the stress and anxiety identified to have adverse impacts on performance and, with that, the probability of human error.

Regulation and Standards

MLC 2006 Regulation 4.4 encourages member states to ensure ports provide access to shore-based welfare facilities for seafarers, to secure their health and well-being. The Guidelines in Part B of the MLC Code detail the welfare facilities and services that should be provided in the port. Member states are also encouraged to increase internet access in ports and associated anchorages without cost to seafarers.

Further, the FAL Convention explicitly prohibits port states from requiring seafarers obtain visas for shore leave. The same right is enshrined in ILO Conventions 185 and 108.

Compliance Best Practice

NB for some ports and terminals shore leave is impractical, for example those on sea islands. In performing due diligence, account should be taken of physical limitations and such best efforts as may be made by the port to deliver welfare facilities and services within the constraints, for example provision of internet access.

Level 0	Seafarers are explicitly prohibited from leaving the ship in port with no welfare services delivered.
Level 1	Limited welfare services, including Wi-Fi / 5G cellular services, no shore leave.
Level 2	Unrestricted access to MLC compliant welfare facilities and services on port premises, including free Wi-Fi / discounted cellular services, crew not permitted to leave the port premises without visa or similar.
Level 3	MLC compliant welfare and service facilities on or off port, free Wi-Fi or cellular, proactive engagement by the port with the ship to arrange local sightseeing tours or similar, public transport passes, social events etc.

Does the port proactively engage with the ship?

Issue

As observed in the *OCIMF Marine Terminal Information Booklet: Guidelines and Recommendations (MTIB),* the risk associated with bringing a ship into port can be reduced through pre-planning, ensuring ship and port personnel are fully aware of each other's facilities, restrictions, requirements, expectations, responsibilities and authorities, particularly that of the ship's Master.

The more that issues can be resolved prior to arrival, for example stevedore briefing and awareness training[20], the less the pressure on time to deal with outstanding matters on arrival.

Regulation and Standards

Other than FAL, which primarily deals with matters regulatory and trade, there are no international standards relating to pre-arrival ship – port information exchange that generally apply to all ships.

Nonetheless, the IMO Bulk Load and Unload (BLU) Code and the associated BLU Manual may be regarded as authoritative in this respect. Likewise, the OCIMF MTIB serves as an industry template for facilitating pre-arrival negotiations and agreement between ship and port personnel, reducing if not totally negating the need to allocate time for the process after the ship has berthed, facilitating prompt commencement of cargo operations.

Compliance Best Practice

Level 0	The port offers limited information in the public domain relating to the conduct of cargo operations and / or the services on offer, with no protocol for pre-arrival communication with the ship or otherwise to exchange information / secure agreement on the conduct of cargo operations.
Level 1	The port publishes a Port Information Guide broadly fulfilling the International Harbour Masters Association (IHMA) standards[21] but does not engage in formalized pre-arrival negotiation with ships.
Level 2	The port demonstrates fulfilment of the BLU Code / Manual, or similar, including agreement on a ship-shore safety checklist, ideally through a single window.
Level 3	In addition to Level 2, the port engages a 'customer champion' to proactively liaise on all matters as may be raised by the ship prior to arrival, including crew welfare, with established rules / policy / procedure that unambiguously recognizes and respects the authority of the master in port.

[20] With broadband now available on many ships, there is no reason why stevedore training cannot be delivered remotely in advance of berthing.

[21] Standards for Nautical Port Information, published by the IHMA and UK Hydrographic Office.

Does the port conform to an International Code of Safety Management?

Issue

The overall objective of any Code of Safety Management is to define clear and unambiguous performance criteria, to facilitate the development, implementation, monitoring, evaluation and refinement of an effective safety management system for the purpose of controlling/minimising risk. In short, conformance to a code speaks to the commitment of port management to compliance.

Regulation and Standards

There is no equivalent to the IMO International (Ship) Safety Management (ISM) Code for ports[22] albeit the ILO Code of Practice on Safety and Health in Dock Work (1977) and the ILO Guide to Safety and Health in Dock Work (1976), provide advice and assistance to those charged with the management, operation, maintenance and development of ports and their safety.

However, individually or cooperatively, several IMO member states have established port safety codes that are broadly similar, specifying requirements for port safety, health and environmental management systems, i.e., to enable relevant port stakeholders to control identified risks. Among others, these include the United Kingdom, New Zealand and the Partnerships in Environmental Management for the Seas of East Asia (PEMSEA).

Generally, even where a national code exists, local port laws do not prescribe compliance. Nonetheless, ports may be expected to comply with the local code as a prerequisite to the demonstration of management commitment to safety. Moreover, nothing precludes a port from voluntary adoption of another code where no local code exists.

Compliance Best Practice

Level 0	There is no local port safety code nor voluntary compliance by the port with a published safety code.
Level 1	The port has voluntary committed to a published safety code but can provide no independent verification of conformity.
Level 2	The port has committed to a published safety code, securing certification to ISO standards associated with code requirements, for example ISO 14000 - environmental management.
Level 3	The port has achieved a high level of excellence in international safety code conformity, demonstrated through ongoing independent risk audit of code compliance by a specialist in port safety assessment.

[22] The relevance / impact of the ISM Code to the contractual relationship between ship owner and charterer, including the performance of counterparty due diligence, is covered elsewhere by the HEIG.

Has the port established 'Protected Periods' to complete essential ship safety tasks? Does the port require their completion as a condition of granting clearance?

Issue

As introduced previously, on arrival the ship must complete a number of essential tasks:

a) Prior to commencing cargo operations; and,

b) On completion of cargo operations before departure.

For a); these include finalizing outstanding issues with the terminal, such as hold ventilation and the 'briefing' of stevedores, if not completed prior to berthing.

For b); among others, stability calculations must be completed, with adjustments made to ballast if necessary – a critical risk factor for Ro-Ro ships – and the Master must be satisfied that the cargo has been stored and secured in compliance with SOLAS requirements – similarly risk critical in particular for Container ships.

These essential tasks require time - time that may be viewed a non-productive 'burden' on the port, and that will be reflected in the performance standards adopted by among others the World Bank Group, inadvertently perhaps suggesting 'failure' by the port to maintain optimum port efficiency thus lose status[23].

Furthermore, in addition to the direct payments from ship owner to port for berth 'overstay', and potential breach of the lay time agreed with the charterer, depending on the circumstance, an extended period alongside may introduce wider social costs as other ships wait for the berth. To save time, and therefore costs, the master may be motivated to either not complete essential tasks or to seek to complete them at sea prior to arrival or after departure, at increased risk to ship, crew and environment.

Regulations and Standards

There are no internationally adopted regulations that specifically address the issue of pre and post port cargo operations' tasks. Nonetheless, SOLAS and associated instruments such as the ISM Code implicitly enshrine their completion in law.

Some large shipping operators, notably those involved with tankers, have established port / terminal vetting regimes that cover, in principle at least, the protocols for completing tasks pre and post cargo operations. Moreover, at least one major port (Rotterdam) has established local byelaws that prohibit seagoing vessels from lashing or releasing containers and other goods while at sea, tasks that must now only be completed while the ship is safely alongside the berth[24].

[23] *The Container Port Performance Index 2021* – World Bank Group 2022

[24] Rotterdam Municipal Gazette 2021 no. 121493. In addition, larger ships may only be lashed by lashing companies licensed by the port.

Compliance Best Practice

Level 0	The port has no policy associated with ensuring the ship completes mandated pre and post cargo operations tasks, and / or is known to 'force' ships to depart the berth immediately on completion of cargo operations for example, through a punitive tariff.
Level 1	The port does not apply punitive tariffs for non-productive time alongside but does not otherwise recognize the need for the ship to complete essential tasks on arrival / prior to departure, for example, pilots are booked for immediate completion of cargo operations.
Level 2	The port has established policy / procedure (within the scope of a code-compliant safety management system) that formally recognizes the ship requires time to complete essential tasks pre and post cargo operations, for example, an established minimum time between completion of cargo operations and the booking marine services.
Level 3	In addition to Level 2, the port has established local byelaws that formalise a requirement on some (or all) ships to complete mandated pre and post cargo operations tasks on the berth, i.e., banning undertaking said tasks prior to port arrival or departure, and delivers (or prescribes) services in port to complete / assist to master and crew discharge the tasks (without undue delay).

Annex A

The PACE model and assertiveness

Assertiveness from more junior team members could potentially lead to conflict if it is not used in the correct manner. However, if the assertiveness is graded, the risk of confrontation within a team can be minimised.

The PACE model is a way of using graded assertiveness in shipboard operations to help someone reconsider the instruction that they have given. It comprises of four steps, although it may not be necessary to use all of them. An example is given below for explanatory purposes.

PROBE **For better understanding**

Chief Officer: OK, Bosun, please could you enter the freshwater tank and start cleaning it.

Third Officer: Chief, why are you asking the Bosun to enter the freshwater tank before we have tested the atmosphere inside?

Chief Officer: The tank only had fresh water in it, and it is now empty. It will be safe in there.

ALERT **To the potential consequences if the instruction is carried out as intended.**

Third Officer: But if we don't test the atmosphere, there may not be sufficient oxygen and the Bosun may be unable to breathe.

Chief Officer: The tank doors have been open already for 12 hours for ventilation, so it should be fine, besides, we only have a couple of hours to finish this work. We need to hurry up**.**

CHALLENGE **Offer an alternative solution.**

Third Officer: As per procedures, we should not enter any space before testing the atmosphere and completing the pre-entry checklist.

Chief Officer: Departure is in two hours; we don't have time and we need to get this tank cleaned and closed up before then. I don't want any delays.

ESCALATE **-Contact higher authority.**

Third Officer: OK, I don't think this is safe, I am going to contact the Master.

Annex B

Safe Port – Due Diligence Checklist

- ☐ Is there a risk of war/conflict?
- ☐ Is there a security risk, such as piracy?
- ☐ Are the port security and safety measures that are relevant to the vessel and crew acceptable?
- ☐ Where applicable, does the port comply with their obligations under relevant requirements (e.g. BLU Code, FAL Convention, and MLC)?
- ☐ Are there any significant navigation risks that would be unsafe for the vessel?
- ☐ What significant local weather patterns and conditions may be experienced during the port stay?
- ☐ Is there reasonable available navigable space taking account of the vessel dimensions?
- ☐ What is the range and standard of the local facilities that are available for the interest of crew wellbeing?
- ☐ Are there facilities that allow for the proper supply of required stores and provisions?
- ☐ Are there adequate waste reception facilities?
- ☐ Is there an availability of needed local expertise, such as pilotage services, ships agents and correspondents?
- ☐ Is there wide recognition of the concept of master's Authority in the proposed port?
- ☐ Are port staff aware that permissions must be obtained from the vessel/vessel procedures complied with prior to boarding and operations commencing?
- ☐ Is there a sufficient number of competent shore personnel to 'work' the vessel that are able to (or nominated person(s)) clearly communicate with ship staff?
- ☐ Are there clear lines of communication with port authorities, traffic services and support services, as applicable?