

# Ship Management in the Eyes of a Filipino Lawyer

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I.	INTRODUCTION.....	803
II.	THE FACTORS OF SUCCESSFUL SHIP MANAGEMENT .....	804
	<i>A. Ship Manager's Knowledge of Local and National Legislation</i>	
	<i>B. Highly Skilled, Competent, and Efficient Personnel</i>	
	<i>C. Investment in Computing and Information Management Systems</i>	
III.	THE NEED TO KNOW AND TO COMPLY WITH THE FOUR PILLARS OF SHIP MANAGEMENT.....	808
IV.	A GOOD ORGANIZATIONAL STRUCTURE AND EFFECTIVE MANAGER .....	809
V.	EFFECTIVE MAINTENANCE AND SAFETY OF A SHIP .....	811
VI.	PORT STATE CONTROL DETENTION.....	812
VII.	TOKYO AND PARIS MOU DATA ANALYSIS .....	817
VIII.	SWOT ANALYSIS OF THE PHILIPPINE FLAG STATE ADMINISTRATION AND THE MARITIME INDUSTRY AUTHORITY .....	819
IX.	AN OUTLINE OF HOW LOCAL MARITIME RULES AND REGULATIONS ARE CREATED .....	827
X.	HOW IS A MARITIME POLICY CREATED?.....	834
XI.	SOLUTIONS.....	840
XII.	CONCLUSION .....	843

## I. INTRODUCTION

In this highly competitive shipping business world, the success of operating a ship or maintaining a shipping business is largely dependent on how effective and efficient the skills and ability of the ship managers are.<sup>1</sup> Lawyers are not

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exempted from these requirements, especially those who have less or no background at all on international and local maritime laws, i.e., merchant marine rules and regulations.

A deep perspective and understanding of the complexities of shipping management should be learned by heart by those who intend to engage in this specialized — yet financially promising — profession. The aspects, skills, and abilities that an effective ship manager should have must be possessed at any given time. Moreover, since shipping regulations are dynamic, especially the international regulations set by the International Maritime Organization (IMO), it is imperative that ship managers keep themselves abreast of the latest issuances from the IMO or Flag Administrations in order to be competitive and successful in the shipping management industry.<sup>2</sup>

## II. THE FACTORS OF SUCCESSFUL SHIP MANAGEMENT

Since shipping operation and ship management are complex undertakings, it is very important to learn the three basic management models:

- (1) *Traditional management model*,<sup>3</sup> “a fully integrated management system where the owner has created an in-house management system for the ship or ships[;]”<sup>4</sup>
- (2) *Outsourcing management model*,<sup>5</sup> “where the management of the ship is contracted out to a third-party organization or company[;]”<sup>6</sup> and
- (3) *Hybrid management system model*,<sup>7</sup> “where there is partial outsourcing of the functions from the owner to the management company.”<sup>8</sup>

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1. JOHN WADDELL DICKIE, REEDS 21ST CENTURY SHIP MANAGEMENT 1-2 & 8 (2014). In this Article, the term “ship manager” interchangeably refers to the ship management company and the individual or group of people occupying the top management level of the same company.

2. *Id.* at 55 & 63.

3. *Id.* at 2.

4. *Id.*

5. *Id.*

6. *Id.*

7. DICKIE, *supra* note 1, at 3.

8. *Id.*

The importance of knowing these models is that the type of model that will be used by the shipping management company will determine the factors of “[c]ost savings,”<sup>9</sup> “[f]lexibility,”<sup>10</sup> “[b]enchmarking,”<sup>11</sup> “[r]educing the problems of legislative demands,”<sup>12</sup> and “[n]o in-house expertise to operate the ships.”<sup>13</sup>

There are three indispensable factors of a successful shipping management company, namely: (a) ship manager’s knowledge of local and national legislation; (b) highly skilled, competent, and efficient personnel; and (c) investment in computing and information management systems.

#### *A. Ship Manager’s Knowledge of Local and National Legislation*

The very first indispensable factor that a ship manager should know or familiarize himself with when intending to open a ship management company is the existence of local and national legislations that lay down the requirements for the establishment of a ship management company based in the Philippines.<sup>14</sup>

In the Philippines, the most important local or national legislations, which have direct connection with the shipping management business, can be found, among others, under the rules and regulations of the following:

- (1) Securities and Exchange Commission, which implements the provisions of the Corporation Code of the Philippines;<sup>15</sup>
- (2) Bureau of Internal Revenue, which implements the provisions of the National Internal Revenue Code;<sup>16</sup>
- (3) Department of Labor and Employment, which implements the provisions of the Labor Code;<sup>17</sup>

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9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. DICKIE, *supra* note 1, at 3.

14. *Id.* at 11.

15. The Corporation Code of the Philippines [CORP. CODE], Batas Pambansa Blg. 68 (1980).

16. An Act Amending the National Internal Revenue Code, as Amended, and for Other Purposes [NAT’L INTERNAL REVENUE CODE], Republic Act No. 8424 (1997).

- (4) Philippine Overseas Employment Administration (POEA), which implements the provisions of the Migrant Workers and Overseas Filipinos Act of 1995<sup>18</sup> and other special laws for overseas Filipino workers;
- (5) Local Government Units (LGUs), for the business permits and licenses;<sup>19</sup>
- (6) Social Security System<sup>20</sup> and Philippine Health Insurance Corporation,<sup>21</sup> for compliance with the mandatory benefits of local employees; and, of course,
- (7) Maritime Industry Authority (MARINA), which serves as the government agency mandated to regulate all maritime enterprises that include ship management companies.<sup>22</sup>

Without the favorable endorsement from the MARINA, the application for registration with the foregoing government agencies will not be acted upon.<sup>23</sup> Obviously, without compliance with the local and national

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17. A Decree Instituting a Labor Code Thereby Revising and Consolidating Labor and Social Laws to Afford Protection to Labor, Promote Employment and Human Resources Development and Insure Industrial Peace Based on Social Justice [LABOR CODE], Presidential Decree No. 442, as amended (1972).
  18. An Act to Institute the Policies of Overseas Employment and Establish a Higher Standard of Protection and Promotion of the Welfare of Migrant Workers, Their Families and Overseas Filipinos in Distress, and for Other Purposes [Migrant Workers and Overseas Filipinos Act of 1995], Republic Act No. 8042 (1994).
  19. An Act Providing for a Local Government Code of 1991 [LOCAL GOV'T. CODE], Republic Act No. 7160, §§ 149 (3); 444 (b) (3) (iv) & (v); 447 (a) (3); 455 (b) (3) (iv) & (v); 458 (a) (3); 465 (b) (3) (iv); & 468 (a) (3) (1991).
  20. An Act to Create a Social Security System Providing Sickness, Unemployment, Retirement, Disability and Death Benefits for Employees, [Social Security Act of 1997], Republic Act No. 1161, § 4 (2)-(3) (1954) (as amended).
  21. An Act Amending Republic Act No. 7875, Otherwise Known as the "National Health Insurance Act of 1995," as Amended, and for Other Purposes, [National Health Insurance Act of 2013], Republic Act No. 10606, § 2 (2013).
  22. Providing for the Reorganization of Maritime Functions in the Philippines, Creating the Maritime Industry Authority, and for Other Purposes [Maritime Industry Decree of 1974], Presidential Decree No. 474, § 4 (1974).
  23. An Act Promoting the Development of Philippine Domestic Shipping, Shipbuilding, Ship Repair and Ship Breaking, Ordaining Reforms in Government Policies Towards Shipping in the Philippines and for other

legislations, there can be no ship management company or ship managers to speak of. This need not be overemphasized.

*B. Highly Skilled, Competent, and Efficient Personnel*

The next indispensable factor that will determine the success or failure of a ship management company is making sure that the people who will be hired to run the company — from the top management to the rank-and-file employees — are highly skilled, competent, and efficient.<sup>24</sup> The Author classifies personnel in two general categories.

The first category describes those who possess highly technical knowledge and skills on ship operation. These people are highly skilled and should have had actual on-board experience — they should be former officers and crew of a ship who are very familiar and who have knowledge and skills in actual ship operations. This category of company officers perfectly fit the operational side of the shipping management.<sup>25</sup>

The second category covers those company officers and employees who have skills in administrative management. This includes people who have expertise in the field of management, law, maritime education, accounting, and information technology (IT). They are in charge of the administrative side of the company.<sup>26</sup>

*C. Investment in Computing and Information Management Systems*

The third indispensable factor that a successful shipping management company needs is an investment in computing and information management systems. In other words, it is a must that the best computer hardware and software be acquired by the company for it to be able to catch up with the complexities and fast advancement of computing speed and processing power. Reliable and efficient computing tools would also make a difference in the data storage; thus, an efficient continual updating of records and assessment of accounts of individual ships for the effective assessment of operational costs.<sup>27</sup>

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Purposes, [Domestic Shipping Development Act of 2004], Republic Act No. 9295, § 7, 10 (2003).

24. DICKIE, *supra* note 1, at 56-58.

25. *Id.* at 164-65 (citing ISM Code A/1.2.2.3; A/6.2).

26. *Id.* at 9-10, 165 (citing ISM Code A/6.2; 6.3).

27. DICKIE, *supra* note 1, at 9-10.

III. THE NEED TO KNOW AND TO COMPLY WITH  
THE FOUR PILLARS OF SHIP MANAGEMENT

All ships of every ship management company should comply with the latest regulations set by the following:<sup>28</sup>

- (1) International Convention for the Safety of Life at Sea (SOLAS);<sup>29</sup>
- (2) International Convention for the Prevention of Pollution from Ships (MARPOL and its Annexes);<sup>30</sup>
- (3) Standards of Training, Certification and Watchkeeping for Seafarers (STCW);<sup>31</sup> and
- (4) The Maritime Labour Convention (MLC).<sup>32</sup>

Non-compliance with these regulations can bring financial disaster to the ship owner. This is because a single ship or crew detention<sup>33</sup> may translate to tens of thousands, or even millions, of dollars in the form of administrative penalties imposed by a Flag State Administration or Port State Control (PSC).<sup>34</sup> Furthermore, a single day of delay in the voyage of a ship certainly

28. See generally DICKIE, *supra* note 1, at 14-30.

29. International Convention for the Safety of Life at Sea, *adopted* Nov. 1, 1974, 1184 U.N.T.S. 278 (entered into force May 25, 1980).

30. International Convention for the Prevention of Pollution from Ships, *adopted* Nov. 2, 1973, 1340 U.N.T.S. 184 (entered into force Oct. 2, 1983).

31. International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, *adopted* July 7, 1978, 1361 U.N.T.S. 190 (entered into force Apr. 2, 1984).

32. Maritime Labour Convention, *adopted* Feb. 23, 2006, 45 I.L.M. 792 (entered into force Aug. 20, 2013).

33. Detention refers to the

intervention action taken by the boarding team/authority when the condition of the ship or its crew does not correspond substantially with the applicable laws to ensure that the ship will not sail until it can proceed to sea without presenting any danger to the ship or person on board, or without presenting any threat of harm to the marine environment[.]”

Philippine Coast Guard, Vessel Safety Enforcement Inspections, Memorandum Circular 06-2012, § 5 (Aug. 24, 2012).

34. See, e.g., Memorandum Circular 06-2012, § 7, para. 1.

brings losses to the ship owner.<sup>35</sup> If this happens, there is no one to be faulted except the ship managers to whom ships are entrusted to by the ship owners.

Thus, it is imperative that the company should have people who possess the knowledge and understanding of these legislations, including their updates, in order to ensure that ships are not detained by PSC authorities.<sup>36</sup> In this connection, it is therefore practical and wise to invest on the training of people who are responsible for compliance with these important international regulations.<sup>37</sup> They should be encouraged and supported logistically so that they can attend capacity-building trainings, conferences, and seminars to keep them abreast with the developments on these essential pieces of international regulations.<sup>38</sup>

The company staff who are responsible for compliance with these laws should also have exceptional knowledge and skills on certification and audit processes.<sup>39</sup> They should make sure that the certificates and documents that a ship is required to carry are at all times updated and in order.<sup>40</sup>

#### IV. A GOOD ORGANIZATIONAL STRUCTURE AND EFFECTIVE MANAGER

The structure divides the work of the organization among its members and coordinates their activities to ensure that all are working towards a common goal in the most effective and efficient way.<sup>41</sup>

A shipping management company, on one hand, should have an effective organizational structure wherein the tasks, responsibilities, roles, relationships, and lines of communications are clearly defined.<sup>42</sup> Having this kind of structure can greatly contribute to the success of the company.<sup>43</sup>

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35. ROBERT FORCE & NIELS F. JOHNSEN, ADMIRALTY AND THE LAW 80-81 (2d ed.), available at [http://www.fjc.gov/public/pdf.nsf/lookup/admiralty2d.pdf/\\$file/admiralty2d.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/admiralty2d.pdf/$file/admiralty2d.pdf) (last accessed Jan. 31, 2017).

36. DICKIE, *supra* note 1, at 11.

37. *Id.* at 165 (citing ISM Code, IMO Assembly Resolution A.741 (18), at para. 6.4 (Nov. 4, 1993) (as amended)).

38. *Id.*

39. See generally DICKIE, *supra* note 1, at 31-33.

40. DICKIE, *supra* note 1, at 31.

41. *Id.* at 56.

42. *Id.*

43. *Id.* at 57.

A ship management company is composed of several people in the hierarchy.<sup>44</sup> Thus, it is important that there is someone who can effectively lead and motivate these people in the company.<sup>45</sup> Only a skilled, efficient, and effective manager can do such a job.

An effective manager, on the other hand, should know the tools of management for ensuring that the company is running effectively.<sup>46</sup> Thus, a ship manager should learn and continually improve his or her skills in planning, organization, command, coordination, and control.<sup>47</sup>

He or she should also familiarize himself with the following proven management principles — “[d]ivision of work,”<sup>48</sup> “[a]uthority and responsibility,”<sup>49</sup> “[d]iscipline,”<sup>50</sup> “[u]nity of command,”<sup>51</sup> “[s]ubordination of individual interest to general interest,”<sup>52</sup> “[r]emuneration of personnel,”<sup>53</sup> “[s]calar chain [of command],”<sup>54</sup> “[o]rder,”<sup>55</sup> “[e]quity,”<sup>56</sup> “stability of tenure of personnel,”<sup>57</sup> “[i]nitiative[,]”<sup>58</sup> and “[u]plifting the morale and spirit of the people.”<sup>59</sup>

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44. DICKIE, *supra* note 1, at 57.

45. *Id.* at 57-58.

46. *Id.* at 56. Tools of management refer to the following:

- (1) Identification of activities;
- (2) Planning;
- (3) Organi[z]ation;
- (4) Direction Control; and
- (5) Clear definition.

*Id.*

47. *Id.* at 55-56.

48. *Id.* at 59.

49. DICKIE, *supra* note 1, at 59.

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. DICKIE, *supra* note 1, at 59.

56. *Id.*

57. *Id.*

58. *Id.* at 60.

59. *Id.*



A ship manager — the executive officer of the ship management company — should also possess good communication skills to effectively do his or her job.<sup>60</sup> A good manager should likewise possess skills on human relationships because, however technically competent the people are in the company, if there is no teamwork, the company is doomed to traverse a lost track, leading to overall poor business performance of the company.<sup>61</sup>

Therefore, ship managers should ensure that the people in the company, from top level management to rank-and-file employees, are connected and understanding of each other through an organized hierarchy, chain of command, and clear communication.<sup>62</sup> This can be achieved by having an effective manager who acts as the hub of human interactions within the company, as well as the pivotal point person in the intra- and inter-organizational dynamics of different players that deal with the company.<sup>63</sup>

#### V. EFFECTIVE MAINTENANCE AND SAFETY OF A SHIP

A well-maintained ship is like a goose that lays the golden egg. Thus, on one hand, a ship that is properly maintained<sup>64</sup> to optimize its effective and efficient use directly translates into profit on the part of a ship owner. A satisfied ship owner, on the other hand, will mean good business to the ship management company as the latter will be assured of regular or even expanding clients.

In order to achieve this, there should be highly technical employees in the company who are adept in ensuring that the provisions of the International Management Code for the Safe Operation of Ships and for Pollution Prevention<sup>65</sup> or the International Safety Management (ISM) Code, and the International Ship and Port Facility Security Code and SOLAS amendments<sup>66</sup> are diligently complied with by the ships being managed by

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60. *Id.* at 197.

61. DICKIE, *supra* note 1, at 55.

62. *Id.* at 59 & 155.

63. *Id.* at 155 & 197.

64. *See generally* DICKIE, *supra* note 1, at 63-67.

65. International Management Code for the Safe Operation of Ships and for Pollution Prevention, IMO Assembly Resolution A.741(18) (Nov. 4, 1993) [hereinafter ISM Code].

66. International Code for the Security of Ships and of Port Facilities, Conference Resolution 2, Resolutions of the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea (Dec. 12, 2002).

the company. This is non-negotiable. Otherwise, it could spell a great risk and loss to the company due to PSC detention.

To effectively carry this out, the company should ensure that highly technical people, on the operation side, who have onboard experience, should be assigned with the responsibility of complying with the standards. These people possess the vast knowledge and experience in audit schedule and compliance, as well as the different certificates pertaining to the ISM Code, such as the Interim Document Compliance,<sup>67</sup> Interim Safety Management Certificate,<sup>68</sup> Document of Compliance,<sup>69</sup> Safety Management Certificate,<sup>70</sup> among others.<sup>71</sup> Because of experience, they also have the special abilities to deal with non-conformities.<sup>72</sup>

Furthermore, the ship management company should also seriously consider investing in personnel who have deep knowledge, understanding, and skills to deal with PSC<sup>73</sup> and Third Party Inspections,<sup>74</sup> such as International Association of Classification Societies and P&I clubs, Administration and Charterer. These entities can be well handled by the technical people who are former ship officers who have had actual experience on dealing with PSC.

## VI. PORT STATE CONTROL DETENTION

As earlier discussed, even a single ship detention by PSC authorities could result in high costs or even unimaginable economic disadvantage for the ship owner. Such a detention would even become a blemish to the “clean” image, not only of the ship, but also of the company managing the ship, especially the technical managers. This is so because a previous detention, in some instances, can become a triggering factor for that particular ship to

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67. DICKIE, *supra* note 1, at 78.

68. *Id.*

69. *Id.*

70. *Id.*

71. DICKIE, *supra* note 1, at 82.

72. The ISM Code defines non-conformity as “an observed situation where objective evidence indicates the non-fulfillment of a specified requirement.” DICKIE, *supra* note 1, at 87 (citing ISM Code, *supra* note 65, at 1.1.9).

73. DICKIE, *supra* note 1, at 138.

74. *Id.* at 153.

become a “hot item” in the eyes of port authorities, which may translate to another detention.<sup>75</sup>

This Article discusses PSC ship detentions and analyzes the major causes for detention. It is important to take a serious look at the causes of detention because in doing so, the ship manager or the company can develop safety recommendations in order to avoid an incidence of ship detention.<sup>76</sup> If there are a lot of detention cases for a company, these will translate to economic losses, such as the payment of fines, delayed ship departures, and loss of hiring opportunities, among others. The ship may even be required to undertake an additional ISM audit.<sup>77</sup>

The herein discussion is limited only to the American Bureau of Shipping (ABS)<sup>78</sup> and Lloyd’s Register<sup>79</sup> classed vessels that have been subjected to Port State interventions and detentions.

For the vessels classed by ABS subjected to Port State interventions and detentions, the following are the top 11 grounds for detention of the world’s fleet:<sup>80</sup>

- (1) Safety navigation concerns (17%);<sup>81</sup>
- (2) Fire safety concerns (17%);<sup>82</sup>
- (3) Life-saving appliances (13%);<sup>83</sup>

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75. *Id.* at 130.

76. *Id.* at 138–39.

77. *Id.* at 139.

78. See American Bureau of Shipping, About Us, *available at* <http://ww2.eagle.org/en/about-us.html> (last accessed Jan. 31, 2017).

79. Lloyd’s Register Group Limited is the official trading arm of the Lloyd’s Register Foundation, a United Kingdom charity known for maritime classification and research and education on marine transportation and engineering. See Lloyd’s Register, Lloyd’s Register — improving safety, quality and performance, *available at* <http://www.lr.org/en> (last accessed Jan. 31, 2017).

80. American Bureau of Shipping, Guidance for Reducing Port State Reductions Pre-Port Arrival Quick Reference Version 1.0 at 3, *available at* [http://www.safety4sea.com/wp-content/uploads/2016/04/ABS-Guidance-for-Reducing-Port-State-Detentions-2016\\_04.pdf](http://www.safety4sea.com/wp-content/uploads/2016/04/ABS-Guidance-for-Reducing-Port-State-Detentions-2016_04.pdf) (last accessed Jan. 31, 2017). This data was gathered from January 2014 to December 2015. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

- (4) Propulsion and auxiliary (7%);<sup>84</sup>
- (5) Machinery (7%);<sup>85</sup>
- (6) Weather / Watertight condition (7%);<sup>86</sup>
- (7) Emergency systems (7%);<sup>87</sup>
- (8) ISM (7%);<sup>88</sup>
- (9) Working conditions (6%);<sup>89</sup>
- (10) Documents (6%);<sup>90</sup> and
- (11) Ship certificates (6%).<sup>91</sup>

For the vessels classed by Lloyd's Register, the number of vessels (not percentage of the vessels, unlike the figures from ABS) that were subjected to Ports State detention and interventions are as follows:<sup>92</sup>

- (1) Maintenance of the ship and equipment (189);<sup>93</sup>
- (2) Auxiliary engine (181);<sup>94</sup>
- (3) Lifeboats (179);<sup>95</sup>
- (4) Nautical publications (144);<sup>96</sup>

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84. *Id.*

85. American Bureau of Shipping, *supra* note 80, at 3.

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. American Bureau of Shipping, *supra* note 80, at 3.

92. Lloyd's Register, Port State Inspections Pocket Checklist Revision 1: Reducing the risk of Port State Control detentions, *available at* [www.harbourmaster.org/downloadfile.php?df=images/upload/files/hm-inspectionenforcement\\_docs\\_pdf\\_469.pdf&dfn=UFNDIHBvY2tldCBjaGVja2xpc3QucGRm&decode=y](http://www.harbourmaster.org/downloadfile.php?df=images/upload/files/hm-inspectionenforcement_docs_pdf_469.pdf&dfn=UFNDIHBvY2tldCBjaGVja2xpc3QucGRm&decode=y), at 4 (last accessed Jan. 31, 2017). The Table provides the "most common deficiencies (by number) found by the Ports State Control officers during the period 2009-2011 on ships classed by Lloyd's register." *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

- (5) Cleanliness of engine room (125);<sup>97</sup>
- (6) Ventilators, air pipes, and casings (123);<sup>98</sup>
- (7) Propulsion main engine (113);<sup>99</sup>
- (8) Charts (111);<sup>100</sup>
- (9) Emergency lightings, batteries, and switches (103);<sup>101</sup>
- (10) Fire dampers (92);<sup>102</sup>
- (11) Fire fighting equipment and appliances (91);<sup>103</sup> and
- (12) Oil filtering equipment (91).<sup>104</sup>

From the two sets of data, it is noteworthy that the common grounds for detention are the following — auxiliary and engine, lifeboats and lifesaving appliances, emergency systems, and machinery.<sup>105</sup>

Looking at the data, the Author begs the question — why are there still ships (and the number is big) detained for the above identified causes?

From the point of view of an outsider or a third person, just like the Author, it is puzzling why the foregoing causes of detention still exist. If one takes a closer examination at these causes for detention, one can say that such can be avoided if there is an effort to do so. All of them are, in fact, avoidable. How? This can be achieved through competent management with serious attitude towards the promotion of safety of ships. The right attitude from the management will eventually cascade and will be reflected onto the officers and crew onboard. In other words, if there is no honest-to-goodness effort on the part of the management to promote safety at all times, then it cannot always be expected that the officers and crew onboard shall always strive to attain the same. This is the primary cause for the ships to be detained.

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97. Lloyd's Register, *supra* note 92, at 4.

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. Lloyd's Register, *supra* note 92, at 4.

104. *Id.*

105. American Bureau of Shipping, *supra* note 80, at 3 & Lloyd's Register, *supra* note 92, at 4.

Stated differently, a strict and honest safety culture, practiced by the management, will result to ship officers and crew observing the highest degree of safety management.

As earlier mentioned, the causes for detention are avoidable. All the officers onboard have to do is to instill the right attitude in all the crew members to observe utmost compliance with the safety requirements. Once this right attitude is inculcated in the officers and crew, it becomes part of their work system and they will be, at all times, conscious with the level of safety they have to maintain.

For example, once the Chief Engineer has already developed in his or her system the highest form of safety consciousness, he or she is expected to ensure that the ship maintenance system is perfectly working at any given time. He or she must give the command to make sure that the ship's engine, auxiliary, equipment, and lifesaving appliances, among other things, are properly maintained and always in good condition. He or she must also comply with the documents required by the PSC. The Master or Chief Engineer should always know what he or she is doing and be consistent in doing it.

Under this set-up, all of the crew will just follow the Chief Engineer's command. But as mentioned earlier, this safety conscious attitude should start from the top management. If the officers are already recommending to the top management suggestions pertaining to safety, but the top management chooses not to adopt these suggestions, this sends a wrong signal to the officers.<sup>106</sup> The officers and crew would think that if the top management is not serious in attaining safety, then neither should they be.

Take for example the abovementioned data from Lloyd's Register. There were 125 ships detained or subjected to PSC intervention by reason of cleanliness of engine room. This is a very petty cause of detention. The reason is obvious. If the Chief Engineer had the highest regard for safety, he or she would not allow the engine room to become unclean because he or she should know that an unclean environment is a breeding ground for accidents.

These are supposedly simple things, but they have a great impact on safety. If there is a culture of safety inculcated in each and every crewmember and officer, these little things would never go unnoticed. If, in small things that affect safety, the officers and crew are very particular, we

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106. DICKIE, *supra* note 1 at 139.

could expect that in bigger and more obvious things or occurrences, they would be more strict and compliant.<sup>107</sup>

#### VII. TOKYO AND PARIS MOU DATA ANALYSIS

The Annual Reports<sup>108</sup> of the Tokyo Memorandum of Understanding on Port State Control in the Asia-Pacific Region<sup>109</sup> (Tokyo MOU) and the Paris Memorandum of Agreement on Port State Control<sup>110</sup> (Paris MOU) reveal interesting facts on ships detention within their areas of jurisdiction.

On one hand, one can see from the tabulated data of both the Tokyo and Paris MOUs that the type of ship which has the highest number of detention cases is a bulk carrier.<sup>111</sup> On the other hand, the type of ship which has the lowest number of detention incidents is a tanker.<sup>112</sup>

What does this data mean? The Author postulates that tanker vessels have the lowest number of occurrences of detention due to two points. First, tanker vessels are rigidly inspected before being given a certification by class. Second, the officers and crew of tanker vessels have developed a higher — if

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107. *Id.*

108. The websites of the Tokyo Memorandum of Understanding on Port State Control in the Asia-Pacific Region (Tokyo MOU) and The Paris Memorandum of Agreement on Port State Control (Paris MOU) permit access to the latest available research data in the form of Annual Reports. Asia Pacific PSC Tokyo MOU, Welcome to Tokyo MOU, *available at* <http://www.tokyo-mou.org> (last accessed Jan. 31, 2017) & Paris MOU on Port State Control, *available at* <https://www.parismou.org> (last accessed Jan. 31, 2017).

109. The Tokyo MOU refers to both the inter-government document and the inter-governmental organization on port State control in the Asia Pacific Region. TokyoMOU.com, About Tokyo MOU, *available at* [http://www.tokyo-mou.org/organization/about\\_tokyo\\_mou.php](http://www.tokyo-mou.org/organization/about_tokyo_mou.php) (last accessed Jan. 31, 2017).

110. The Paris MOU refers to both the inter-government document and the inter-governmental “organization [which] consists of 27 participating maritime Administrations and covers the waters of the European coastal States and the North Atlantic basin from North America to Europe. ParisMOU.org, Organisation, *available at* <https://www.parismou.org/about-us/organisation> (last accessed Jan. 31, 2017).

111. Tokyo MOU, Annual Report on Port State Control in the Asia Pacific 2015, *available at* <http://www.tokyo-mou.org/doc/ANN15.pdf> (last accessed Jan. 31, 2017).

112. Paris MOU, Annual Report 2015, *available at* <https://www.parismou.org/sites/default/files/Annual%20Report%202015%20published.pdf> (last accessed Jan. 31, 2017).

not the highest — level of understanding and attitude towards safety. In other words, these officers and crew of tanker vessels have undergone higher levels of trainings and orientation, most of which pertain to safety.

Since most of the cases of detention by PSC are caused by safety issues, the answer to avoid these detentions is to permeate a culture of safety among all the employees of the ship management company. As discussed earlier, the right attitude should start from the top management. If this is achieved, the rest will follow for the officers and crew of the vessels.

This begs the question: how can a culture of safety be fostered among top management? It can be done by:

- (1) Requiring top management officials to read books, publications, pamphlets, and articles on the Internet as well as constant attendance in trainings, seminars, and other fora wherein safe shipping and related topics are discussed.
- (2) Giving periodic in-house seminars, trainings, and discussions on topics related to safety. The company should invest in this by inviting expert resource persons.<sup>113</sup>
- (3) Investing in the production of hard copies of pamphlets, notices, and reading materials pertaining to safety to be distributed to all officers and employees ashore and onboard. This is an investment that entails costs but in the long run, the return would be less chances of detention of ships because there is already a culture of safety developed in each and every member of the company.
- (4) Doing periodic and honest-to-goodness evaluation of compliance with the company's safety manual and doing honest-to-goodness corrective actions if there are observations or deficiencies found in the system.

By reading and analyzing the data which show the causes of detention of ships by PSC, one can already anticipate and identify whether the ships have deficiencies that would warrant their detention. This only shows that the detention of ships can be predicted.

Hence, if the detention of ships can be predicted by just ticking the checklist for detainable acts or offenses, this means that, logically, the same can be avoided. It is just a matter of developing in each and every officer and employee of the company ashore and the officers and crew onboard the right

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113. DICKIE, *supra* note 1 at 166 (citing ISM Code, *supra* note 65, at 6.5).



attitude and the willingness to embrace the culture of safety in their system. If this is achieved by the company, the incidents of detention can be minimized, if not totally prevented.

#### VIII. SWOT ANALYSIS OF THE PHILIPPINE FLAG STATE ADMINISTRATION AND THE MARITIME INDUSTRY AUTHORITY

In order to predict the full potential of doing ship management business in the Philippines, the ship manager should analyze the Philippine Flag State Administration in terms of its strengths, weaknesses, opportunities, and threats (SWOT).

Some of the strengths are as follows:

- (1) The country's membership in the IMO<sup>114</sup> means that the Flag State can participate in the discussions in the IMO and vote in the promulgation of vital maritime policies.<sup>115</sup>
- (2) There is a single maritime agency by virtue of Republic Act No. 10635,<sup>116</sup> thus, there is no confusion from the point of view of other Flag States.<sup>117</sup>
- (3) The country's passing mark in the European Maritime Safety Authority audit signifies that the human element, training, and watchkeeping of our maritime industry is aligned and in accordance with international standards.<sup>118</sup>

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114. See generally International Maritime Organization, available at <http://www.imo.org/en/About/Membership/Pages/Default.aspx> (last accessed Jan. 31, 2017).

115. Maritime Industry Authority & Department of Transportation and Communications, Maritime Philippines: IMO Council Category "C" at 2-5, available at [https://phmarina.files.wordpress.com/2015/11/2016\\_imo-council-campaign\\_web.pdf](https://phmarina.files.wordpress.com/2015/11/2016_imo-council-campaign_web.pdf) (last accessed Jan. 31, 2017).

116. An Act Establishing the Maritime Industry Authority (MARINA) as the Single Maritime Administration Responsible for the Implementation and Enforcement of the 1978 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, as Amended, and International Agreements or Covenants Related Thereto, Republic Act No. 10635, § 3 (2014).

117. *Id.* § 4 (a) & (b).

118. See generally Tina G. Santos, *New Marina head confident of PH passing maritime safety audit*, PHIL. DAILY. INQ., June 12, 2013, available at <http://globalnation.inquirer.net/77447/new-marina-head-confident-of-ph-passing-maritime-safety-audit> (last accessed Jan. 31, 2017).

- (4) The existing Philippine Merchant Marine Rules and Regulations signify that the Flag State is enforcing the international standards on marine safety and environmental pollution.
- (5) Management officials, both high level officials and career officials, are well versed in shipping industry standards. They can promulgate internal rules and regulations in accordance with IMO standards/requirements.
- (6) The flexible charter and legal mandate of Presidential Decree No. 474 (P.D. No. 474)<sup>119</sup> and Executive Order No. 125 (E.O. 125)<sup>120</sup> to promulgate maritime regulations gives a Flag State a free hand in adopting rules and regulations to implement safety and environmental protection mechanisms and to regulate all forms of maritime enterprises.
- (7) Some divisions of the MARINA are International Organization for Standardization (ISO) certified. This shows that the confidence level of other Flag States will be higher because there is a third party who audited and certified that the status of the quality management system of MARINA is internationally acceptable. The Manpower Development Service (MDS) and the STCW Office are ISO certified by Bureau Veritas.<sup>121</sup>
- (8) There are key officials in all departments.<sup>122</sup> This is essential for the adoption and implementation of the plans and programs of the Flag State.
- (9) Key officials also participate in IMO meetings and other international meetings. The Flag State maintains its favorable

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119. Providing for the Reorganization of Maritime Functions in the Philippines, Creating the Maritime Industry Authority, and for Other Purposes [Maritime Industry Decree of 1974], Presidential Decree No. 474 (1974).

120. Office of the President, Reorganizing the Ministry of Transportation and Communications Defining Its Powers and Functions and for other Purpose, Executive Order No. 125, Series of 1987 [E.O. No. 125, s. 1987] (Jan. 30, 1987).

121. Maritime Industry Authority, MARINA STCW Office, Now ISO Certified (Press Release), *available at* <http://www.marina.gov.ph/Press%20Release/PR.%202015-023%20STCWO%20ISO%20Certification.pdf> (last accessed Jan. 31, 2017).

122. Maritime Industry Authority, MARINA Organizational Chart, *available at* <http://www.marina.gov.ph/profile/orgchart.pdf> (last accessed Jan. 31, 2017).

status in the eyes of the IMO. It remains in the radar of the international maritime industry and has the chance to participate, give input, and vote on substantial and procedural matters affecting the international maritime industry.<sup>123</sup>

- (10) Key officials and personnel participate in seminars, which are essential for human resource capacity building, which, in turn, is an important factor in any organization.<sup>124</sup>
- (11) The establishment of a Maritime Attaché<sup>125</sup> Post in London serves as a good marketing strategy for the Flag State to make it known to the international community as well as to remain updated with the developments in the policy making processes in the IMO.
- (12) There is a party list in Congress that represents the interest of the maritime industry. This is necessary to gain full support from the Legislature, that is, for the approval of laws that fully capacitate the Flag State.<sup>126</sup>
- (13) There is positive support from Congress in terms of budget allocation. This is essential for the Flag State to implement its programs and policies.
- (14) MARINA has good working relations with other government agencies. The cooperation and participation of the entire government is necessary since maritime industry interests do not merely concern the Flag State.
- (15) Private sector support is also essential for the ideal functioning of the Flag State. Thus, MARINA maintains its connection and

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123. Maritime Industry Authority, "Manila Statement" issued at IMOT Meet to Enhance Safety of Passenger Ferries (Press Release), *available at* <http://www.marina.gov.ph/Press%20Release/PR%20018.pdf> (last accessed Jan. 31, 2017).

124. Maritime Industry Authority, MARINA Intensifies Safety Campaign Under Its Ligtas Biyaheng Dagat Program (Press Release), *available at* <http://www.marina.gov.ph/Press%20Release/PR%20-%20Ligtas%20Byaheng%20Dagat%20Program.pdf> (last accessed Jan. 31, 2017).

125. Office of the President, Reorganizing the Department of Foreign Affairs-Maritime and Ocean Affairs Center into the Commission on Maritime and Ocean Affairs Under the Office of the President, Executive Order No. 612, Series of 2007 [E.O. No. 612, s. 2007], § 1 (Mar. 27, 2007).

126. ANGKLA Party-List, Legislation, *available at* [http://angklapartylist.org/?page\\_id=47](http://angklapartylist.org/?page_id=47) (last accessed Jan. 31, 2017).

relevance with its stakeholders through constant dialogue and adoption of policies beneficial to the stakeholders.

- (16) Filipino seafarers are by their very nature competitive. The competence and skills of Filipino seafarers are material in the promotion of the image of the Flag State, which eventually results to high confidence and high regard, in terms of standards, to the Flag State.
- (17) Competent officials and employees contribute to the performance of the organization. This is true in the case of a Flag State.
- (18) The strategic geographical location of the country<sup>127</sup> gives the Flag State an advantage because, by the very nature of the maritime industry, such is essential to maritime navigation and passage.
- (19) The existence of MARINA regional offices means that the rendering of services would be fast and would, thus, attract confidence of the shipping industry.<sup>128</sup>
- (20) The consistency in maintaining the image as a flag of choice and not as flag of convenience would give the impression that the Administration is strictly enforcing rules and regulations pertaining to safety of voyage and environmental protection.

However, there are also notable weaknesses in the Philippine maritime industry. These are:

- (1) The mandate of MARINA as an attached agency of the Department of Transportation (DOTr) slows down the policy-making and decision making process. The same adverse effect is also due to the centralization<sup>129</sup> of the decision making on policy matters to MARINA.

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127. World Bank, Philippines Coastal & Marine Resources: An Introduction, available at <http://siteresources.worldbank.org/INTPHILIPPINES/Resources/PEM05-ch1.pdf> (last accessed Jan. 31, 2017).

128. Maritime Industry Authority, MARINA Regional Offices, available at <http://www.marina.gov.ph/directory/dirregion.html> (last accessed Jan. 31, 2017) [hereinafter MARINA Regional Offices].

129. Rappler, Seafarers' training now centralized under MARINA, MARINA Regional Offices, available at <http://www.marina.gov.ph/directory/dirregion.html> (last accessed Jan. 31, 2017).

- (2) MARINA is not fully equipped with trained and competent inspection personnel.<sup>130</sup> This is an important component of being a Flag State.
- (3) MARINA is still not fully ISO certified. Most of its departments or divisions do not have quality management systems. Hence, the quality assurance of services rendered is still questionable.
- (4) Most of the high level management officials are political appointees. Thus, the decision making process may be vulnerable to political pressure and accommodation which is not good for an organization.
- (5) Since there is less competitive salary and benefits for officials and employees, the Flag State are unable to hire more competent personnel and officials who could contribute to the overall improvement of the image and services of the Flag State.
- (6) The headquarters and physical attributes of MARINA offices are not conducive to the public. This makes the image as well as the quality of service below the international standards. However, by the second quarter of 2018, MARINA is transferring to its own office located along Roxas Boulevard, within the Manila Port area.
- (7) The IT system is not updated and not at par with international standards. This results to the slow delivery of services to the stakeholders.
- (8) Not all regions have MARINA offices, such as Region III and the National Capital Region.<sup>131</sup> This also leads to the slow delivery of services.
- (9) Not all personnel positions are filled up. The element of capacitated human resource is not fully achieved.
- (10) The intramurals and factions among the personnel pose a negative impact on the overall performance and image of the organization.

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130. World Bank, Reforms in Ports and Shipping, (Discussion Draft) *available at* <http://siteresources.worldbank.org/INTPHILIPPINES/Resources/DB12-Portsandshippingpolicybrief-June29.pdf> (last accessed Jan. 31, 2017).

131. MARINA, Directory — MARINA Regional Offices, *available at* <http://www.marina.gov.ph/directory/dirregion.html> (last accessed Jan. 31, 2017).

- (11) There is an inconsistency in terms of the quality of services, particularly those of STCW assessors. This results to poor quality of service and a bad image.
- (12) The insufficient number of trainings for all personnel is a hindrance to human resource capacity building.
- (13) There is still an insufficient Maritime Attaché post. Additional Maritime Attaché posts would mean a more immediate response of the Flag State to maritime concerns in other countries. Also, this would mean good bilateral relations with other Flag States. This is a good marketing strategy for the Flag State.
- (14) The creation of additional Maritime Attaché posts entails high maintenance costs and budgetary constraints.
- (15) MARINA has weak marketing strategies. Good marketing strategies would mean a good image built in the eyes of local stakeholders as well as in the international community.

Despite this, the efforts raised by MARINA provide for new opportunities to further upgrade and advance the Philippine maritime industry. Some of these are the following:

- (1) The membership in the IMO will bring an opportunity for the Flag State to voice out its concerns on every aspect of the maritime industry, and a chance to participate in the processes of making rules and regulations that may have an impact on the affairs of the Flag State.
- (2) The recent Association of Southeast Asian Nations (ASEAN) integration provides a chance to consolidate the strategies of ASEAN nations to exert pressure to, and be heard collectively by, the international community.
- (3) The supportive working relation with the Philippine Coast Guard or the Port State is beneficial given that the Coast Guard has the competent manpower and equipment to complement what the Flag State has in the implementation of maritime rules and regulations.
- (4) The candidacy of Dr. Maximo Q. Mejia, Jr.,<sup>132</sup> the former Administrator of MARINA in the last election of IMO, opened

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132. The Manila Times, *Marina's Mejia candidate for IMO chief*, MANILA TIMES, June 29, 2015, available at <http://www.manilatimes.net/marinas-mejia-candidate-for-imo-chief/196207> (last accessed Jan. 31, 2017).

an opportunity for the Philippines to gain respect from other countries.

- (5) The high cost of living in other countries is a factor in choosing the flag of choice by the ship owners.
- (6) The initial favorable decision of the Permanent Court of Arbitration on the Philippine claim on the West Philippine Sea<sup>133</sup> has a collateral positive effect on the reputation of our Flag State.
- (7) The wide pool of competent Filipino seafarers, especially those who have technical knowledge to help run the ship organization, makes it easier for the Flag State to improve its services. The distinction of Filipinos as competent seafarers will constantly give the Flag State the opportunity to be respected by other Flag States.
- (8) The good support of the public to the maritime industry will translate to full public support to maritime legislations and policies.
- (9) The existence of an MOU with other countries is an indication of the confidence of other Flag States. This will expand the pool of technical personnel of the Flag State. This is also a factor in building up confidence with other Flag States.
- (10) The trainings and seminars offered by other countries and international bodies provide avenues to update the competence and skills of Flag State personnel.
- (11) There are provisions of United Nations Convention on the Law of the Sea, which somehow protect the interest of the Flag State and the country as a whole.<sup>134</sup>
- (12) The support of LGUs in enforcing maritime laws provides an extension of the arm of the Flag State in enforcing safety of life and property at sea and maritime environment protection.
- (13) The upbeat economy and political stability of the country serve as an image to other Flag States that our country is a force to contend with.

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133. In the Matter of the South China Sea Arbitration (Phil. v. China), P.C.A. Case No. 2013-19, Award on Jurisdiction and Admissibility.

134. United Nations Convention on the Law of the Sea, art. 94, 217 & 231, *adopted* Dec. 10, 1982, 1833 U.N.T.S. 3.

But there are still threats that the Flag State must be aware of such as:

- (1) Its overlapping and conflicting jurisdiction with other government agencies such as the POEA, Commission on Higher Education (CHED), LGUs, and the Philippine National Police, which results to the weakening of the image and function of the Flag State.
- (2) MARINA suffers collateral damage as a consequence of the competition among local maritime business stakeholders.
- (3) The policies of other government agencies are not consistent with some of the policies of MARINA, such as those on tax incentives.<sup>135</sup>
- (4) Too much bureaucracy in the government in the release of budget slows down the implementation of plans, programs, policies, and hiring of personnel.<sup>136</sup>
- (5) The Flag State is a collateral casualty as its image in the eyes of the international community is tarnished by the perception that the country is a corrupt State.<sup>137</sup>
- (6) The good reputation of other Flag States competes with that of our Flag State.<sup>138</sup>
- (7) The formulation of plans, programs, and policies is somehow influenced by the interests and economic agenda of big maritime business owners.<sup>139</sup> Other Flag States offering second registration

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135. *See, e.g.*, Providing for Incentives for the Shipbuilding and Ship Repair Industry, Presidential Decree No. 666, § 1 (a) & (c) (1975).

136. *See generally* Department of Budget and Management, THE BUDGETING PROCESS, available at <http://www.dbm.gov.ph/wp-content/uploads/2012/03/PGB-B2.pdf> (last accessed Jan. 31, 2017).

137. *See* PH ranking in global corruption index worsens, available at <http://www.rappler.com/move-ph/issues/corruption/159439-philippines-corruption-perceptions-index-2016-rank> (last accessed Jan. 31, 2017).

138. *See generally* International Chamber of Shipping, Shipping Industry Flag State Performance Table 2015/2016, available at <http://www.ics-shipping.org/docs/flag-state-performance-table> (last accessed Jan. 31, 2017).

139. Maritime Industry Authority, The Philippine Maritime Industry: Prospects and Challenges in 2013 and Beyond (Report Published Online by the Maritime Industry Authority) at 5 & 7, available at [http://marina.gov.ph/reports/other\\_reports/Philippine%20Maritime%20Industry.Prospects%20and%20Challenges.pdf](http://marina.gov.ph/reports/other_reports/Philippine%20Maritime%20Industry.Prospects%20and%20Challenges.pdf) (last accessed Jan. 31, 2017).



may create conflict with the local rules and regulations being implemented by our Flag State.

- (8) The advancement of technology in e-commerce/transactions is a threat to our Flag State if it cannot catch up with the latest technology.<sup>140</sup>
- (9) Some local laws are not aligned with international law, such as Zambales' ordinance on the charging of a passage fee on international vessels,<sup>141</sup> and will cause the weakening of confidence by other Flag States.

#### IX. AN OUTLINE OF HOW LOCAL MARITIME RULES AND REGULATIONS ARE CREATED

A ship manager should know very well how maritime rules and regulations are made, as much as he or she should learn the four pillars of international conventions of the maritime industry.<sup>142</sup> The Article shifts the focus to the process of making a policy related to the maritime industry, which, presently, in the view of the Author, are somewhat complex and heavily laden with bureaucratic requirements and procedures.

The rigid bureaucratic requisites and steps in the formulation of maritime policies become the cause of slow promulgation of Philippine maritime rules, strategies, and programs. The government, therefore, has a difficult time catching up with the fast changing polices in the international arena.

Ideally, the MARINA, which is the Flag State, should be the single body responsible for the crafting and issuance of all maritime rules and regulations.<sup>143</sup> Ordinarily, the public would think that this is so under the current set-up because all that they can see is just the final form of a

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140. See generally DICKIE, *supra* note 1, at 9-10.

141. Ordinance 2015-08, *Sangguniang Panlalawigan* of Zambales, An Ordinance for the Provincial Coast Watch Surveillance and Environment Monitoring System in the Province of Zambales, § 9 (June 8, 2015).

142. DICKIE, *supra* note 1, at 11. The four pillars include the International Convention for the Safety of Life at Sea, the International Convention for the Prevention of Pollution from Ships, the Standards of Training, Certification and Watchkeeping for Seafarers, and the Maritime Labour Convention. *Id.*

143. Providing for the Reorganization of Maritime Functions in the Philippines, Creating the Maritime Industry Authority, and for Other Purposes, Presidential Decree No. 474, § 6 (b) (1974).

MARINA Circular, which contains the rules and regulations pertaining to a particular maritime subject.<sup>144</sup>

However, unknown to the public is a complex layer of bureaucratic processes before a final MARINA circular is issued and becomes effective. Under the present set-up of maritime rule-making process, MARINA does not solely call the shots. There are other government agencies involved in this process which makes it complicated and slow, to the disadvantage of maritime stakeholders.

By definition, a Flag State is “the [S]tate in which a vessel is registered.”<sup>145</sup> It is required to “ensure compliance ... with applicable international rules and standards”<sup>146</sup> by vessels registered under it and to provide for “effective enforcement” no matter where violations occur.<sup>147</sup>

The MARINA is the Philippine Flag State Administrator.<sup>148</sup> This authority of MARINA was bestowed by virtue of P.D. No. 474, otherwise known as the “Maritime Industry Decree of 1974.”<sup>149</sup>

P.D. No. 474 provides —

Section 4. Maritime Industry Authority, Creation[,] and Organization. There is hereby created a Maritime Industry Authority, hereinafter referred to as the “Authority[,]” under the Office of the President. It shall be composed of a governing board of directors to be known as Maritime Industry Board and Management [(Board)].

The Authority shall have general jurisdiction and control over all persons, corporations, firms[,] or entities in the maritime industry of the Philippines and shall supervise[ and] regulate [them] in accordance with this Decree.<sup>150</sup>

Furthermore, it is provided by this Decree that —

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144. See, e.g., Maritime Industry Authority, Rules on the Accreditation of Instructors, Supervisors and Assessors of Approved Training Programs (ATPs) Conducted by Maritime Training Institutions (MTIs), or as Otherwise Approved by the Administration [STCW Circular No. 2014-04] (Sep. 9, 2014).

145. Université Libre de Bruxelles, Flag state, available at [http://dev.ulb.ac.be/ceese/ABC\\_Impacts/glossary/flag.php](http://dev.ulb.ac.be/ceese/ABC_Impacts/glossary/flag.php) (last accessed Jan. 31, 2017).

146. United Nations Convention on the Law of the Sea art. 271 ¶ 1, opened for signature Dec. 10, 1982, 1833 U.N.T.S. 3 (entered into force Nov. 16, 1994).

147. *Id.*

148. Maritime Industry Authority, *supra* note 144, at 2.

149. Maritime Industry Decree of 1974, § 6. This law was issued on 1 June 1974. *Id.* § 22.

150. *Id.* § 4.

Section 6. Powers and Function of the Board. The [Board] shall have the following powers, functions[,] and duties, among others:

- (a) To provide comprehensive policy guidance for the promotion and development of the maritime industry as provided for in this Decree;
- (b) To promulgate and prescribe such promotional and developmental rules and regulations, standards, guidelines[,] and procedures and recommend laws or measures as may be necessary for the growth and effective regulation of shipping enterprises;
- (c) To formulate a comprehensive and practicable Maritime Industry Development Program for a [t]en-[y]ear period and review and update the same annually;
- (d) To prescribe specific policies in the determination of just and reasonable passenger fares, freight rates[,] and other charges relative to the operation of inter[-]island vessels. Accordingly, the Board of Transportation shall exercise its rate fixing functions in accordance with such policies;
- (e) To recommend to the President that the State, through such agency or agencies as the President may designate, purchase, lease, manage, operate[,] or requisition any vessel, ship[,] or shipping enterprise, for national security purposes, to meet emergency situations or when the national interest so requires;
- (f) To approve contracts;
- (g) To approve the organizational structure, staffing pattern, and budget of the Authority upon the recommendation of the Administrator;
- (h) To appoint, discipline[,] [ ] remove, and determine the composition of the Authority technical staff and other personnel: Provided, That all regular professional and technical personnel in the Authority shall be permanent and career in status, but exempt from [Wage and Position Classification Office] [(WAPCO)] and Civil Service rules and regulations: Provided, further, That the personnel shall be entitled to the benefits normally accorded to government employees, such as retirement, Government Service Insurance System [(GSIS)] insurance, leave[,] and similar matters: Provided, furthermore, That appointments of personnel in the management below the rank of Section [C]hief shall be made by the Administrator, in accordance with the approved budget and staffing pattern and shall be noted by the Board: [Provided], finally, That the Board or the Administrator may engage on contractual basis or other arrangements for the temporary services, and fix the compensation of highly qualified professionals, experts, technical advisers[,] or consulting firms;

- (i) To adopt a common seal for the Authority which shall be juridically noticed, determine the exact location of its office[,] and prescribe the rules and regulations to govern its proceedings;
- (j) To recommend to the [President,] through the National Economic and Development Authority, the grant of necessary incentives for the development of shipping and other related maritime enterprises; and
- (k) To perform such acts as are proper and necessary to implement this Decree.<sup>151</sup>

A closer look at this law shows that the power to promulgate rules and regulations affecting the maritime industry is, in reality, vested with the Board.<sup>152</sup> Therefore, the MARINA is just an executive office that executes the policies, rules, and regulations promulgated by the Board. There were, however, subsequent issuances, which amended the structural set-up and administrative functions of MARINA.

Among them is E.O. No. 125, otherwise known as the “Reorganization Act of the Ministry of Transportation and Communication.”<sup>153</sup> It is provided under Section 18 of this Executive Order —

SECTION 18. Attached Agencies and Corporation. The following agencies and corporation[s] are attached to the Ministry[:] the Philippine National Railways, the Maritime Industry Authority, the Philippine National Lines, the Philippine Aerospace Development Corporation, the Metro Manila Transit Corporation, the Office of Transportation Cooperatives, the Philippine Ports Authority, the Philippine Merchant Marine Academy, the Toll Regulator[y] Board, the Light Rail Transit Authority, the Transport Training Center, the Civil Aeronautics Board, the National Telecommunications Commission[,] and the Manila International Airport Authority.<sup>154</sup>

One can see here that MARINA became an attached agency of the Ministry of Transportation and Communication (now DOTr), which was formerly under the Office of the President (OP).<sup>155</sup>

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151. *Id.* § 6.

152. *Id.* § 6 (b).

153. Office of the President, Reorganizing the Ministry of Transportation and Communications Defining Its Powers and Functions and for Other Purpose, Executive Order No. 125, Series of 1987 [E.O. No. 125, s. 1987] (Jan. 30, 1987).

154. *Id.* § 18.

155. *Id.*

Under E.O. No. 125, MARINA's functions were generally expanded and detailed, as compared to the basic functions it was given by virtue of P.D. No. 474. Thus, it further provides —

SECTION 14. Maritime Industry Authority. The [MARINA] is hereby retained and shall have the following functions[:]

- (a) Develop and formulate, plans, policies, programs, project[s], standards, specifications[,] and guidelines geared towards the promotion and development of the [m]aritime [i]ndustry, the growth and effective regulation of shipping enterprises, for the national security objectives of the country;
- (b) Establish, prescribe[,] and regulate routes, zones[,] and /[ ]or areas of operation of particular operators of public water services;
- (c) Issue certificates of public convenience for the operation of domestic and overseas water carriers;
- (d) Register vessels as well as issue certificates, licenses[,] or documents necessary or incident thereto;
- (e) Undertake the safety regulatory functions pertaining to [vessel] construction and [operation,] including the determination of manning levels and issuance of certificates [of] competency to seamen;
- (f) Enforce laws[ and] prescribe and enforce rules and regulation[s], including penalties for violation thereof, governing water transportation and the Philippine merchant marine [sic] with the aid of other law enforcement agencies;
- (g) Undertake the issuance of licenses to qualified seamen and harbor, bay[,] and river pilots;
- (h) Determine, fix[,] and[ ]/[ ]or prescribe charges and[ ]/[ ]or rates pertinent to the operation of public water transport utilities, [and] facilitate all services except in cases where charges or rates are established by international bodies or association[s] of which the [Philippines] is a participating member or by bodies or association[s] recognized by the Philippine Government as the proper arbiter of such charges or rates;
- (i) Accredite marine surveyors and maritime enterprises engaged in shipbuilding, ship repair, ship breaking, domestic and overseas shipping, [and] ship management and agency;
- (j) Supervise the Philippine Merchant Marine Academy [(PMMA)] as recognized herein in accordance with its charter, the provision hereof and applicable laws, rules[,] and regulation[s] under the chairmanship of the maritime administrator;

- (k) Issue and register the [c]ontinuous [d]ischarge [b]ook of Filipino [s]eamen;
- (l) Establish and prescribe rules and regulation[s], standards[,] and procedures for the efficient and effective discharge of the above functions; [and]
- (m) Perform such other [functions] as may now or hereafter be provided by the law.<sup>156</sup>

E.O. No. 125 was amended by Executive Order No. 125-A<sup>157</sup> (E.O. No. 125-A). Generally, the functions of MARINA under E.O. No. 125-A are the same as that of E.O. No. 125, except for the taking away of jurisdiction and supervision over PMMA.<sup>158</sup> Thus, it is provided —

Section 3. Section 14 of said Executive Order is hereby renumbered as Section 12 and amended to read as follows:

“Section 12. Maritime Industry Authority. The [MARINA] is hereby retained and shall have the following functions:

- (a) Develop and formulate plans, policies, programs, projects, [and] standards, [for the] promotion and development of the maritime industry, the growth and effective regulation of shipping enterprises, and [ ] the national security objective of the country;
- (b) Establish, prescribe[,] and regulate routes, zones[,] and[ ]/[ ]or areas of operation of particular operators of public water services;
- (c) Issue certificate[s] of [p]ublic [c]onvenience for the operation of domestic and overseas water carriers;
- (d) Register vessels as well as issue certificates, licenses[,] or document[s] necessary or incident thereto;
- (e) Undertake the safety regulatory functions pertaining to vessel construction and operation including the determination of manning levels and issuance of certificates of competency to seamen;

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156. Office of the President, Reorganizing the Ministry of Transportation and Communication, Defining its Powers and Functions and for Other Purposes, Executive Order No. 125, [Reorganization Act of the Ministry of Transportation and Communication], § 14 (Jan. 30, 1987).

157. Office of the President, Amending Executive Order No. 125, Entitled “Reorganizing the Ministry of Transportation and Communications, Defining its Powers and Functions, and for Other Purposes,” Executive Order No. 125-A, Series of 1987 [E.O. No. 125-A, s. 1987] (Apr. 13, 1987).

158. See Reorganization Act of the Ministry of Transportation and Communication, § 14 (j).

- (f) Enforce laws[;] prescribe and enforce rules and regulations, including penalties for violations thereof, governing water transportation and the Philippine merchant marine[;] [sic] and [deputize] the Philippine Coast Guard and other law enforcement agencies to effectively discharge these functions;
- (g) Undertake the issuance of [licenses] to qualified seamen and harbour[, bay[, and] river pilots;
- (h) Determine, fix[, and] ]/[ ]or prescribe charges and[ ]/[ ]or rates pertinent to the operation of public water transport utilities, facilities[, and services[,] except in cases where charges or rates are established by international bodies or associations of which the Philippines is a participating member or by bodies or associations recognized by the Philippine Government as the proper arbiter of such charges or rates[;]
- (i) Accredite marine surveyors and maritime enterprises engaged in shipbuilding, ship repair, shipbreaking, domestic and overseas shipping, [and] ship management and agency;
- (j) Issue and register the continuous discharge book of Filipino seamen;
- (k) Establish and [prescribe] rules and regulations, standards[, and] procedures for the different [sic] and effective discharge of the above functions; [and]
- (l) Perform such other functions as may now or hereafter be provided by law.”<sup>159</sup>

From the foregoing basic laws, the two main roles of MARINA in our society can be categorized as follows:

- (1) The regulation and promotion of the maritime industry, such as granting of certificates of public convenience, promotion of maritime safety, regulation of boat and ship building, shipyard regulation, etc.; and
- (2) The regulation and promotion of the maritime profession, such as regulation of maritime training schools and centers, STCW matters, etc.

The function of MARINA to promote and regulate the shipping industry was further enhanced by the enactment of Republic Act No. 9295 in 2004, otherwise known as the “Domestic Shipping Development Act of 2004.”<sup>160</sup>

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<sup>159</sup>. *Id.* § 3.

<sup>160</sup>. An Act Promoting the Development of Philippine Domestic Shipping, Shipbuilding, Ship Repair and Ship Breaking, Ordaining Reforms in

On the other hand, all matters pertaining to STCW, accreditation and monitoring of training schools and centers, etc., are also within the jurisdiction of MARINA by virtue of Republic Act No. 10635,<sup>161</sup> approved in March 2014, which established MARINA as the single maritime body mandated to ensure complete and effective implementation of the STCW Convention.”<sup>162</sup>

This means that the implementation of the provisions of the STCW Convention and Code is transferred to MARINA.<sup>163</sup> Formerly, the STCW was fragmentally implemented by the Professional Regulation Commission, CHED, Technical Education and Skills Development Authority, and POEA. With the enactment of Republic Act No. 10635, the functions of these agencies were transferred and consolidated to MARINA.<sup>164</sup>

#### X. HOW IS A MARITIME POLICY CREATED?

Under these laws, therefore, the process of making a maritime policy can be summarized as follows.

The policy making body, which is also the highest body, in the maritime industry is the MARINA.<sup>165</sup> Its mandate is found in Section 4 of P.D. No. 474.<sup>166</sup> Loosely speaking, the MARINA is the body that executes the policy approved by the Board.

The MARINA is headed by the Secretary of the DOTr as Chairman.<sup>167</sup> The members include a representative from the OP,<sup>168</sup> the General Manager or a representative of the Philippine Ports Authority,<sup>169</sup> the Commandant or

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Government Policies Towards Shipping in the Philippines, and for other Purposes, Republic Act No. 9295 (2003).

161. An Act Establishing the Maritime Industry Authority (MARINA) as the Single Maritime Administration Responsible for the Implementation and Enforcement of the 1978 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, as Amended, and International Agreements or Covenants Related Thereto, Republic Act No. 10635 (2014).

162. *Id.* § 3.

163. *Id.*

164. *Id.*

165. Maritime Industry Decree of 1974, § 4, para. 1 & 2.

166. *Id.* § 4.

167. *Id.* § 7.

168. *Id.* § 4.

169. E.O. No. 125-A, s. 1987, § 18.



a representative of the Philippine Coast Guard,<sup>170</sup> a representative from the Development Bank of the Philippines,<sup>171</sup> a representative from the Department of Trade and Industry,<sup>172</sup> a representative from the Naval Architect Society of the Philippines, the latest addition to the MARINA Board,<sup>173</sup> the Administrator of MARINA,<sup>174</sup> and two representatives from the private sector, such as associations of shipping industry.<sup>175</sup>

All members, except for the two representatives from the private sector who only have observer status, are entitled to vote during deliberations and approval of a particular memorandum circular.<sup>176</sup>

The meeting of the Board is supposedly held once every month,<sup>177</sup> but the present practice is that the Board meets only whenever there are circulars or advisories that need to be approved. The meeting is held at the head office of MARINA and is presided by the representative from the DOTr.<sup>178</sup>

During the meetings of the MARINA, its Legal Service (LS) Department acts as the Corporate or Board Secretariat and renders administrative support.<sup>179</sup> The Chief of the LS acts as the Corporate or Board Secretary.

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170. Republic Act No. 10635, § 5.

171. Maritime Industry Decree of 1974, § 7.

172. *Id.* § 16.

173. An Act to Regulate and Modernize the Practice of Naval Architecture in the Philippines, Republic Act No. 10698 (2015).

174. Maritime Industry Decree of 1974, § 7.

175. *Id.*

176. *Id.*

177. *Id.* § 7.

178. Under the Maritime Industry Decree of 1974, the Chairman of the Board should be appointed by the President. However, the practice has been the Secretary of the Department of Transportation and Communication (now the Department of Transportation (DOTr)) is the default Chairman of the Board. This is because MARINA is an attached agency of the DOTr.

179. Maritime Industry Authority, The Legal Services, *available at* [http://www.marina.gov.ph/services/mlao\\_docreq.html](http://www.marina.gov.ph/services/mlao_docreq.html) (last accessed Jan. 31, 2017).

MARINA Administrative Order No. 02-14<sup>180</sup> streamlines and rationalizes the procedures in crafting a MARINA circular or advisory. It is hereunder outlined.

There is a body called the MARINA Management Committee (MANCOM).<sup>181</sup> It is responsible for policy proposals/revisions, policy issues/interpretations, and any issue/concern/project/proposal/activity/plan program that the MANCOM deems important.<sup>182</sup>

The MANCOM is divided into the two general groups: the (i) Executive Committee (EXECOM) and the (ii) Sectoral Technical Working Groups (STWGs).<sup>183</sup> The EXECOM is chaired by the MARINA Administrator.<sup>184</sup>

The vice-chairpersons are the Deputy Administrator for Operations, Deputy Administrator for Planning, and the Executive Director III for STCW.<sup>185</sup> The Members are all unit Directors of the Central Office and the Deputy Executive Director of STCW.<sup>186</sup>

The STWG, on the other hand, is composed of the following:

- (1) Domestic shipping;
- (2) Overseas shipping;
- (3) Shipbuilding and ship repair;
- (4) Maritime manpower;
- (5) Maritime safety; and
- (6) Support.<sup>187</sup>

The STWG is headed by the concerned Director of a particular unit in the Central Office (CO) which proposes a policy/activity/program/project

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180. Maritime Industry Authority, Administrative Order No. 02-14 (Feb. 17, 2014).

181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.*

185. Maritime Industry Authority, MARINA Organizational Chart, *supra* note 136.

186. MARINA, Administrative Order No. 02-14.

187. See Maritime Industry Authority, Sectoral Maritime Directory, *available at* [http://www.marina.gov.ph/directory/sectoral\\_dir\\_domestic.html](http://www.marina.gov.ph/directory/sectoral_dir_domestic.html) (last accessed Jan. 31, 2017).

interpretation.<sup>188</sup> The units in the CO are Franchising Service; Maritime Safety Service (MSS); LS; Domestic Shipping Service (DSS); Overseas Shipping Service; MDS; Management, Financial, and Administrative Service; Planning and Policy Service; Management Information Systems Service, Enforcement Service, STCW Office, and Maritime Regional Office designated by the Deputy Administrator for Regional Concerns.<sup>189</sup>

A policy issuance, such as a MARINA circular, advisory, or interpretation normally emanates from a particular unit. For example, a MARINA circular about the installation of an Automatic Identification System for ships emanates from the MSS; a circular concerning the registration of wooden-hulled ships emanates from the DSS; and a Circular on the accreditation of maritime training centers emanates from the STCW Office.

A particular unit can propose a policy or issuance, i.e., circulars, within its competence, bearing in mind the need of the public/stakeholders and the promotion of maritime industry. That particular unit drafts the proposed circular or advisory. The proponent unit also coordinates with Regional Offices and conducts public consultations in the crafting of the draft circular or advisory.

The proponent unit then calls for a Technical Working Group (TWG)<sup>190</sup> meeting, composed of the Sectoral TWG members, to discuss and deliberate line by line the proposed circular or advisory.<sup>191</sup> Prior to the meeting of the TWG, advance copies of the proposed circular or advisory are circulated to the members for study and input.<sup>192</sup> During the meeting, the proposed circular or advisory is thoroughly deliberated upon by the members. The proponent unit then revises and finalizes the proposed circular or advisory based on the inputs during the TWG meeting.

When the proposed circular or advisory has been passed upon or approved by the TWG, it is presented by the proponent before the EXECOM.<sup>193</sup> Ideally, the EXECOM should meet every last Wednesday of

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188. MARINA, Administrative Order No. 02-14.

189. Maritime Industry Authority, Directory — MARINA Central Office, *available at* [http://www.marina.gov.ph/directory\\_co.html](http://www.marina.gov.ph/directory_co.html) (last accessed Jan. 31, 2017).

190. MARINA, Administrative Order No. 02-14.

191. *Id.*

192. *Id.*

193. *Id.*

the month.<sup>194</sup> However, currently, the EXECOM meets only when there is a circular or advisory that has to be approved. The EXECOM members study and deliberate upon the proposed circular, advisory, or policy.

The EXECOM may either immediately approve amend, modify, or disapprove the proposed circular, advisory, or policy.<sup>195</sup> Oftentimes, the EXECOM immediately approves the proposed circular, advisory, or policy because once it has passed the TWG, the EXECOM presupposes that it has gone through strict and comprehensive deliberation among the members of the TWG and consultation with the stakeholders. Hence, normally, the EXECOM approves the proposed circular, advisory, or policy as it is.

Once the proposed circular, advisory, or policy is approved by the EXECOM, it is again subjected to public consultations with stakeholders in Metro Manila and in the Regional Office concerned.<sup>196</sup>

After public consultation, the proponent unit makes the final adjustments or fine tuning of the proposed circular, advisory, or policy, duly noting the comments of the stakeholders during the consultations.

After adjustment, the proponent unit resubmits the circular, advisory, or policy to the EXECOM for final review and approval.<sup>197</sup> Once a proposed circular, advisory, or policy is approved by the EXECOM, it is included in the agenda for the meeting of the Board. During the Board meeting, the Administrator of MARINA acts as the sponsor of the proposed circular, advisory, or policy.<sup>198</sup> He is assisted by the concerned Director of Office from where the proposed circular, advisory, or policy originated.<sup>199</sup>

The Board deliberates on the proposed circular, advisory, or policy. Members of the Board may either: (a) approve *in toto* the proposed circular, advisory, or policy; (b) disapprove the proposed circular, advisory, or policy; or (c) require amendments or revisions on the proposed circular, advisory, or policy.<sup>200</sup>

Once the proposed circular, advisory, or policy is finally approved by the Board, it is published once in a newspaper of general circulation and a copy

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194. *Id.*

195. *Id.*

196. MARINA, Administrative Order No. 02-14.

197. *Id.*

198. *Id.*

199. *Id.*

200. *Id.*

is deposited at the University of the Philippines Law Center.<sup>201</sup> After the circular, advisory, or policy is published, it becomes effective.<sup>202</sup>

A MARINA policy, even if approved by the Board, may be overturned by the Secretary of the DOTr or by the OP.<sup>203</sup> The legal basis for this is the Administrative Code of the Philippines<sup>204</sup> granting the President of the Philippines — or the Department Secretaries acting as the alter ego of the President — general administrative control and supervision over all the departments under the Executive branch.<sup>205</sup>

From the discussions above, we can see that there are several entities involved when a maritime policy is crafted. It all starts from the drafting made by the TWG.<sup>206</sup> The draft policy is then reviewed by the MANCOM.<sup>207</sup> If it passes the MANCOM, it is subjected to public consultations.<sup>208</sup>

After passing the public consultations, the draft policy is presented to the EXECOM which again reviews the proposed policy.<sup>209</sup> The EXECOM may approve, reject, or modify the proposed policy.<sup>210</sup>

If approved by the EXECOM, the draft policy is then presented to the Board which, again, may approve, reject, or modify it.<sup>211</sup>

With the present set-up, it would take at least six months before a maritime policy is finally approved. Sometimes, it even takes several years.

Obviously, the direct result is delay in the issuance of the needed maritime policy. This delay exposes the maritime industry to danger and prejudice. For instance, there is a serious concern on the safety of people and cargo onboard a double decker wooden-hulled vessel. This could have been

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201. *Id.*

202. MARINA, Administrative Order No. 02-14.

203. Instituting the Administrative Code of 1987 [ADMIN. CODE of 1987], Executive Order No. 292, tit. II, ch. 8, § 39 (1987).

204. *Id.*

205. *Id.*

206. MARINA, Administrative Order No. 02-14.

207. *Id.*

208. *Id.*

209. *Id.*

210. *Id.*

211. *Id.*

easily addressed by a policy of not allowing double decker wooden-hulled boats to sail.

But since the process of making a policy is very slow because of the heavy bureaucratic process in the policy making process, marine accidents or environmental disasters could overtake the issuance of an appropriate policy. In other words, marine accidents or environmental disasters could have been prevented if a maritime policy had been swiftly issued, that is, if there were not many bureaucratic processes to be observed.

#### XI. SOLUTIONS

This slow process of making a maritime policy brought about by heavy bureaucratic requirements can be addressed by the following measures:

- (1) Amend or modify P.D. No. 474 such that the policy making authority will be taken away from the Board and be vested to a single body only, which is the MARINA; and
- (2) Amend or modify MARINA Administrative Order No. 02-14 to do away with the process of subjecting the proposed policy to the scrutiny and approval of the EXECOM.

A simple bureaucratic structure and process will be more effective in delivering swift and timely maritime policies. Under the present set-up, it is observed that the Board is not up to speed with the present times as the policy making body of the maritime industry. This function can be done by MARINA alone because, in any case, all the proposed policies to be introduced by MARINA passes through public scrutiny by way of a series of public consultations with the concerned stakeholders.

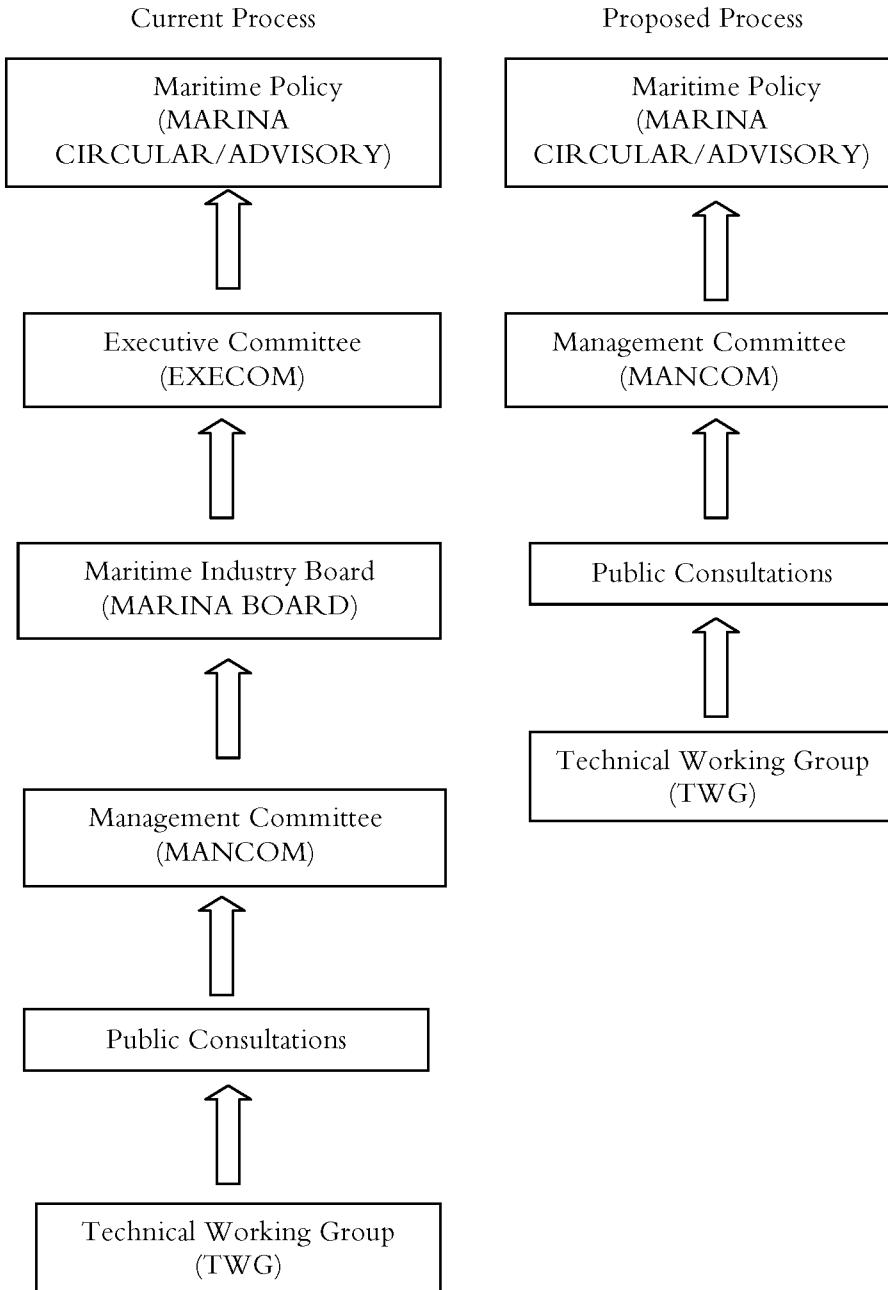
Subjecting the proposed policy to the approval of the Board adds a layer of bureaucracy which only delays the issuance of a policy. The same is true with the EXECOM.

The key element in the process of making a maritime policy is the stage where it is subjected to public consultations. In this stage, all the concerns directly and indirectly affecting the stakeholders are properly debated and addressed. Hence, it is the humble view of the Author that the Board and the EXECOM are just redundancies which cause the delay in the process of crafting a maritime policy.

MARINA alone can craft an effective policy, subject of course to proper public consultations. In other words, even if the Board and EXECOM are dispensed with, a better maritime policy can still be crafted by MARINA.

Dispensing with the bureaucratic requirements of the Board and EXECOM will easily take away two strata which contribute to the slowing down of the process. It can never be said that eliminating the process of EXECOM and Board deliberations will affect the quality of maritime policy that may be issued by MARINA because the draft policy will still be subjected to the extensive review of the TWG, the MANCOM, and the stakeholders through a series of public consultations.

FLOWCHART REPRESENTATION





## XII. CONCLUSION

Ship management, as a profession, is as complicated as operating a ship itself. However, these complexities can be addressed by constant pursuit for knowledge through engaging in continuing education, whether formal or informal, reading relevant literature, and attending different fora, meetings, and conferences in order to obtain the advanced skills and competence in shipping management.<sup>212</sup>

Shipping management is as dynamic as the international rules and regulations in the shipping industry. Thus, it is important for a ship manager to continually improve oneself so that he or she remains to be a competent, relevant, and valued asset and partner of the ship owner.<sup>213</sup>

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212. See DICKIE, *supra* note 1, at 55-62.

213. *Id.*