

# SOLAS VERIFIED GROSS MASS

CONTRACTUAL IMPLICATIONS – ARE YOU READY?

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- IMO Guidelines (MSC1/Circ.1475, Annex) identify, among others, the following principal considerations:
  - **Overriding purpose:** *safety* of the ship, seafarers and onshore workers, cargo and safety at sea
  - **Shipper responsibility:** for VGM and *communicating* the VGM sufficiently in advance of loading for use in stowage plan
  - **Carrier responsibility:** container should not be loaded without a VGM





- **10 March 2016:** draft circulated to stakeholders
- **30 April 2016:** consultation period closes
- **1 July 2016:** new Marine Order 42 (whether in current form or amended following consultation) will come into force



- gives force to SOLAS Regulation 2; and
- prescribes standards for "certified equipment" for the purposes of compliance with Method 1 and Method 2.



- (1) The Shipper of a packed container must ensure that the verified gross mass (VGM):
  - (a) is stated in the shipping document for the container; and
  - (b) is obtained in accordance with this Order.
- Penalty: 50 penalty units.
- (2) An offence against subsection (1) is a strict liability offence.
- (3) A person is liable to a civil penalty if the person contravenes subsection (1).
  - Civil penalty: 50 penalty units (currently \$180 per penalty unit = \$9,000)

- (1) A person may load a packed container on a vessel **only** if the shipping document for the container states the container's verified gross mass.
  - Penalty: 50 penalty units.
  
- (2) An offence against subsection (1) is a strict liability offence.
  
- (3) A person is liable to a civil penalty if the person contravenes subsection (1).
  - Civil penalty: 50 penalty units.

- All Carriers will require, at some stage during the booking process, a Shipper to provide the VGM or risk breaching s 12.
- Likely to amend Bill of Lading terms (and/or Tariff) to ensure express *contractual* responsibility (in addition to legislative requirement) for VGM and any consequences of failing to do so, is placed onto the Merchant (ordinarily defined to include the Shipper and Consignee).
- Presently, what is usually covered in Carriers' terms?

- incorporate tariffs;
- place responsibility for accuracy of weight, quantity, quality, measure, condition etc of goods on the Shipper;
- place responsibility for compliance with all applicable laws, regulations and requirements including for paying any fines, expenses, duties etc. on the Shipper;
- place responsibility for damage to/contamination of other cargo caused by the shipper and its cargo on the Shipper;
- place responsibility for all expenses and charges on the Shipper and setting out how those charges are calculated;
- contain an indemnity.



- *The description and particulars of the Goods set out on the face hereof are furnished by the Merchant and the **Merchant warrants to the Carrier that the description and particulars including, but not limited to, of weight...are correct***



.....

- *The Merchant shall comply with all applicable **laws, regulations** and requirements of customs, port and other authorities and **shall bear and pay all duties, taxes, fines** imposts, expenses and losses incurred or suffered by reason thereof ...*
- *The **Merchant shall defend, indemnify and hold harmless the Carrier** against any loss, damage, claim, liability or expense whatsoever arising from any breach...*

- *Merchant further warrants that: (i) the particulars relating to the Goods as set out on the reverse hereof have been checked and that such particulars, and any other particulars furnished by or on behalf of Merchant are adequate and correct, and (ii) it has complied with all statutes, ordinances, regulations and requirements of whatsoever nature relative to the Goods, Containers or other packages, its/their documentation or in any other way relating thereto.*
- *When a Container is stuffed by or on behalf of Merchant, such Container shall be deemed shipped as “Shipper’s weight, load, stow, count and seal” and Carrier shall not be liable for loss of or damage to the Goods caused by the: (i) manner in which Container has been stuffed; (ii) unsuitability of Goods for Carriage in Containers, or (iii) Merchant’s failure to seal the Container at the commencement of Carriage.*

- *The Merchant warrants to the Carrier that the particulars relating to the Goods as set out on the front hereof have been checked by or on behalf of the Merchant on receipt of this Bill of Lading and that such particulars, and any other particulars furnished by or on behalf of the Merchant, are adequate and correct. The Merchant warrants that the Goods are safely and securely packed in the Container.*

....

- *The Merchant shall comply with all regulations or requirements of customs, port and other authorities, and shall bear and pay all duties, taxes, fines, imposts, expenses or losses (including, without prejudice to the generality of the foregoing Freight for any additional carriage undertaken), incurred or suffered by reason thereof... and shall indemnify the Carrier in respect thereof, including reasonable legal expenses and costs.*

# Possible cost consequences of failure to comply

- removing box from vessel if VGM subsequently discovered to be incorrect;
- stevedoring and/or transport costs to move to lay down area or holding yard;
- inspection and survey costs;
- storage fees;
- weighing costs if the carrier weighs;
- container demurrage;
- additional freight costs for higher weight;
- stuffing/de-stuffing required to obtain VGM;
- any additional steps required to obtain VGM;
- penalties;
- additional charges if found to be overweight upon arrival.

- It will be important for **Shippers to review Carrier's T&Cs** to ensure they comply with the Carrier's terms.
- **Review own T&Cs** to ensure that any costs arising out of any breach of SOLAS are transferred to your customer where applicable.



- Typically, freight forwarders terms and conditions will:
  - include a warranty from the Shipper as to the description and weight of the goods;
  - include a warranty of compliance with all relevant legislation, regulations, applicable laws etc;
  - disclaim any responsibility for making declarations in accordance with legislative requirements;
  - contain an indemnity for the Forwarder acting on instructions of the Shipper;
  - disclaim any responsibility for packing or stuffing of containers (depending upon who stuffed the container) and the details provided to the carrier in relation to the container;
  - contain an indemnity for costs incurred for delay or demurrage or any fines;
  - require the Shipper to pay any additional freight if goods are re-weighed.

- *Except in accordance with express instructions ...the Company shall not be obliged to make any declaration for the purposes of any statute, convention or contract as to the nature of value of any Goods or as to any special interest in delivery.*
- *The Customer and Owner shall defend, indemnify and hold harmless the Company against all liability, loss, damage, costs and expenses arising*
  - *(i) from the nature of the goods unless caused by the Company's negligence,*
  - *(ii) out of the Company acting in accordance with the Customer's or Owner's instructions, or*
  - *(iii) arising from a breach of warranty or obligation by the Customer or arising from the negligence of the Customer or Owner*

- *Except to the extent caused by the Company's negligence, the **Customer and Owner shall be liable for and shall defend, indemnify and hold harmless the Company in respect of all duties, taxes, imposts, levies, deposits and outlays of whatsoever nature levied by any Authority and for all payments, fines, costs, expenses, loss and damage whatsoever incurred** or sustained by the Company in connection therewith*

- *The Sender warrants :*
- *.....it has fully and adequately **described the Goods, their nature, weight and measurements and complied with all applicable laws** and regulations ..... about the notification, classification, description, labelling, transport and packaging of the Goods...*
- *The Sender must....:*
- *pay [Company's] expenses and charges to comply with any law or regulation or any order or requirement made under them or with the requirement of any market, harbour, dock, railway, shipping, customs, excise, or warehouse authority or other Person*

# FF Clauses: adequate?

- Many arguably broad enough
- Consider express reference to SOLAS and MO42
- When freight forwarder or logistics provider appears as Shipper on bill of lading ensure you obtain VGM as per MO42 from person authorised by your customer
- Suitable liability and indemnity provisions
- Review insurance arrangements across supply chain



So.....

- REVIEW, REVIEW, REVIEW and of course WEIGH, WEIGH, WEIGH!

*Questions?*