

J. Y. Interpretation No.102 (August 14, 1963) *

ISSUE: Under what circumstances should the president or general manager of a ship company be held criminally liable for professional negligence?

RELEVANT LAWS:

Article 40 of the Maritime Commercial Act (海商法第四十條) ; Article 28 of the Seamen Service Regulation (海員服務規則第二十八條) .

KEYWORDS:

shipwreck (船舶失事) , maritime accident (海上事故) , criminal liability (刑事責任) , departure notice or authorization (開航通知書) . **

HOLDING: When a shipwreck or other maritime accident occurs, the criminal liability does not per se rest on the chairman of the directors or the president of the relevant company for issuing a departure notice or authorization for the ship. However, he or she will be held criminally liable for wrongfully precipitating or hastening the ship's departure which results in a shipwreck or maritime

解釋文：船舶發生海難，輪船公司董事長、總經理，並不因頒發開航通知書，而當然負刑法上業務過失責任。但因其過失催促開航，致釀成災害者，不在此限。

* Translated by Wei-Feng Huang.

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accident.

REASONING: Article 40 of the Maritime Commercial Act states: “The captain is responsible for the ship’s operation at sea.” The captain is to subject him/herself to the employer company’s instruction and surveillance, provided that they fall within his/her scope of duty. Accordingly, Article 28 of the Seamen Service Regulation provides: “Departure or movement of the ship is only permissible with a departure or movement authorization notice.” This departure authorization notice authorizes the departure of the ship. Should the ship then be involved in a maritime accident or shipwreck, the chairman of the directors or the president is not to be held per se negligent under the Criminal Code for issuing the authorization notice. However, the foregoing does not apply to the situation where the accident occurred as a result of the chairman’s or the president’s wrongful precipitating or hastening of the ship’s departure.

解釋理由書：海商法第四十條規定：「船舶之指揮，僅由船長負其責任。」惟因船長受僱於輪船公司，在業務範圍內，自應受其指揮監督，故海員服務規則第二十八條規定：「船舶開航或移泊，必須取得所屬公司或代理處開航通知書或移泊通知書始可開航或移泊。」此項開航通知書係通知可以開航，輪船開航後，雖發生海難，輪船公司之董事長、總經理，並不因執行業務頒發開航通知書，而當然負刑法上業務過失責任。但因其過失催促開航，致釀成災害者，不在此限。