



SOLAS Legislation

Customer Advisory

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Section One

Introduction and Background

The International Convention for the Safety of Life at Sea, or SOLAS, is a long-standing international maritime treaty which directly relates to the enforcement of health and safety regulations in the construction, equipment and operation of vessels and other sea-faring modes of transport. Signatory flag states are expected to comply with these standards for any vessels or equipment bearing their flag. As of March 2016, SOLAS has 162 contracting states, which allows for approximately 99% of merchant vessels globally in terms of gross tonnage.

The SOLAS Convention was actually first introduced over a century ago in 1914, and was drafted in response to the sinking of the RMS Titanic. There have been numerous updates to the legislation over the course of its existence; this advisory looks specifically at SOLAS Container Weight Verification Regulation VI/2. This amendment was adopted by the International Maritime Organization (IMO) in November 2014 and will become mandatory on the **1st of July 2016**.

This legislative update has been introduced in an attempt to curtail potential disasters at sea, and will allow for closer management of the weight of containers and cargo on board a given vessel. This in turn will allow vessel operators and their planning teams to ensure that stowage plans are formulated in a safe and secure manner. From the 1st of July 2016, it will be necessary to provide the Verified Gross Mass (**VGM**) of any laden shipping container, **prior to loading on board a vessel**.

It should be noted that this advisory is intended to provide a brief overview of the impending legislative changes, and should be not considered exhaustive. As ever, the KMB Shipping team will be happy to assist with any questions that you may have, so please do not hesitate to get in touch.

Section Two

Methodology

Without a Verified Gross Mass the packed container shall not be loaded aboard a vessel. The rules prescribe two methods by which the shipper may obtain the verified gross mass of a packed container:

- Method 1, upon the conclusion of packing and sealing a container, the shipper may weigh, or have arranged that a third party (**such as KMB for a nominal fee**) weigh, the packed container. This could be done by utilising a weighbridge, for example.
- Method 2, the shipper or, by arrangement of the shipper, a third party may weigh all packages and cargo items, including the mass of pallets, dunnage and other packing and securing material to be packed in the container, and add the tare mass of the container to the sum of the single masses of the container's contents.
- In respect of both Method 1 and 2, the weighing equipment used must meet the applicable accuracy standards and requirements of the State in which the equipment is being used. To elaborate, the equipment must be certified and calibrated in line with the guidelines of the country of shipment.

The IMO Guidelines state that Method 2 “would be inappropriate and impractical” for “certain types of cargo items (e.g., scrap metal, un-bagged grain, and other cargo in bulk)” that “do not easily lend themselves to individual weighing of the items to be packed in the container”.

Some shippers may have facility to weigh containers or cargo at their load point. Again, it must be noted that this will not be deemed acceptable in

the event that said equipment is not certified and calibrated. Details of these expectations can be found from your local Trading Standards Office. Furthermore, the party packing the container cannot use the weight somebody else has provided, except in one specific set of defined circumstances. The one exception is as follows: “Individual, original sealed packages that have the accurate mass of the packages and cargo items (including any other material such as packing material and refrigerants inside the packages) clearly and permanently marked on their surfaces, do not need to be weighed again when they are packed into the container.

This does not permit estimating the cargo weight, but permits using accurate weights that have been clearly and permanently marked on individual, original sealed packages (e.g., flat-screen TVs that have their weight (e.g. X kg.) marked by the manufacturer on the box containing the TV).”

It is not acceptable under any circumstances to estimate the VGM of a container. The shipper (or by arrangement of the shipper, a third party **such as KMB for a nominal fee**) has a responsibility to weigh the packed container or to weigh its contents.

In the case of LCL cargo, the employed consolidator will weigh the total laden container upon completion of loading. Each shipper still has a responsibility to supply an accurate weight at the time of booking, however.

Section Three

Responsibility

Under the SOLAS requirements, the shipper named on the ocean bill of lading is the party responsible for providing the maritime (ocean) carrier ('master') and the terminal operator ('terminal representative') with the VGM of a packed container. The carrier and the terminal operator must not load a packed container aboard a ship unless they have the verified gross mass for that container.

MSC 1 / Circ. 14753 defines 'the shipper' as "a legal entity or person named on the bill of lading or sea waybill or equivalent multimodal transport document as shipper, and/or who (or in whose name or on whose behalf) a contract of carriage has been concluded with a shipping company." Due to the complexity of the international supply chain, the entity identified as the 'shipper' on the bill of lading may not have direct or physical control over key elements of the process by which verified gross mass is determined. A 'shipper' in such circumstances should be aware of their responsibilities and ensure that arrangements are in place to obtain and provide a verified gross mass in compliance with these international and national regulations.

It should be noted that the SOLAS requirements are distinct from INCOTERMS, which govern the sale of the goods, not the transport of the goods. The parties to the sales contract/contract of sale under INCOTERMS need to determine how verified gross mass will be obtained, i.e. whether by Method 1 or Method 2 (as permitted by the CA of the

State in which the packing of the container is completed) and how this information can be provided to the carrier by the shipper as identified in the bill of lading.

A carrier may rely on a shipper's signed weight verification to be accurate. The carrier or freight forwarder does not need to be "verifier" of the shipper's weight verification. Nor do the SOLAS amendments require a carrier to verify that a shipper providing a verified weight according to Method 2 has used a method which has been certified and approved by the competent authority of the jurisdiction in which the packing and sealing of the container was completed.

However, it is important to note that, for the shipper's weight verification to be compliant with the SOLAS requirement it must be "signed", meaning a specific person representing the shipper is named and identified as having verified the accuracy of the weight calculation on behalf of the shipper.

Section Four

FAQ's

If goods are put onto a feeder ship from, for example, Felixstowe (UK) that proceeds to Rotterdam (Netherlands), will verified gross mass have to be established in Felixstowe, Rotterdam or both places?

Verified gross mass is required before loading the packed container on board a ship covered by the SOLAS requirements at its initial port of loading, unless driven onto a ro-ro ship on a chassis or trailer. Therefore, the verified gross mass must be determined prior to loading aboard ship at Felixstowe.

The requirement is for accurate gross mass; is there a margin of error defined for this 'accuracy'?

As an International issue, the SOLAS regulations provide that verified gross mass shall be obtained under both Method 1 and 2 by using weighing equipment that meets the applicable accuracy standards and requirements in the country in which the equipment is being used. Those national standards and requirements will determine the acceptable level of accuracy of the weighing equipment used. There is no provision in SOLAS for any margin of error; this is a physical weighing requirement, not a system of estimation. Gross mass derived using compliant equipment and procedures will meet the legal requirements. There is no single international weighing equipment accuracy standard at present although the International Organization of Legal Metrology has issued recommendations for various types of weighing equipment. Accuracy refers to the precision with which a measurement (in this case mass) is made. Accuracy is the only concept with which the shipper need be concerned. National enforcement agents may exercise discretion or tolerance in deciding when to initiate further investigations or penalty action.

Current indications suggest that the UK may introduce a tolerance of either 5% or 500KGS per container, but this is as yet unsubstantiated. However, shippers using compliant weighing devices and processes will obtain values that are well within any tolerances adopted nationally for enforcement purposes. Shippers not using compliant weighing devices and processes may be found in violation even if the gross masses that they provide fall within government enforcement tolerances. If a shipper is merely estimating the gross mass and hoping to fall within government enforcement tolerances, it is violating the SOLAS requirements and could incur sanctions or delays pursuant to applicable national legislation. There are no exemptions from the requirement.

The relevant UK bodies are yet to declare an allowed tolerance.

How will this be enforced and what will be the level of penalties imposed by an Administration if a container is delivered by a shipper to

a carrier with an incorrectly declared gross mass or if a shipper does not provide the verified gross mass for a packed container?

As a National issue, fines and other penalties will be imposed under national legislation. Enforcement agencies may implement measures to satisfy themselves that compliance is achieved, which might be expected to include documentation checks, auditing or random weighing. As a Commercial issue, the penalties may involve repacking costs, administration fees for amending documents, demurrage charges, delayed or cancelled shipments etc. It should be noted that SOLAS imposes an obligation on the carrier and the terminal operator not to load a packed container aboard ship for which no verified gross mass has been provided or obtained. Compliance with this obligation by the carrier and terminal operator may result in commercial and operational penalties, such as delayed shipment and additional costs if the shipper has not provided the verified gross mass for the packed container. (Note: The new SOLAS requirements apply equally to both under and overweight containers.)

The SOLAS requirement derives from safety aspects. Cargo mass information may also be required for Customs purposes. If the verified gross mass declared for SOLAS purposes subsequently is amended, for example after actual weighing of the packed container, do Customs need to be informed?

SOLAS does not regulate Customs matters. Provision of the gross and net mass of goods in declarations to Customs is regulated according to national Customs legislation. The mass required under SOLAS versus Customs requirements may be different; e.g., Customs may require cargo mass, while SOLAS requires the total, verified gross mass of the packed container.

Our company only ever provides part loads/less than container load (LCL), never a full container load (FCL) so what is our position?

This will depend on your contractual arrangement with the co-loading freight forwarder that enters into the contract of carriage with the carrier and thus becomes the shipper to the carrier (see A1 above). If permitted under the terms of the contract with the 'master' forwarder, your company may use Method 2 to verify the actual mass of the goods being shipped and pass that information on to the party completing the packing of the container. However, responsibility for providing the accurate, verified gross mass of a co-loaded container remains with the shipper named on the maritime carrier's bill of lading, i.e. the 'master' freight forwarder.

If Method 2 is chosen and intercompany transactions take place (e.g. the producing / dispatching entity is based in UK while bill of lading is drawn up for export at a consolidation port such as Antwerp (Belgium) and a different legal entity within a group of companies is the exporter of record) which legal entity should comply with any national rules and regulations regarding Method 2, the exporter of record or local UK entity actually packing the container and physically able to determine the relevant mass information?

The entity that would need to comply with any national rules and regulations regarding Method 2 is the one in the State in which the packing and sealing of the container is completed.

What happens if the shipper hasn't provided the required verified gross mass of the container?

Notwithstanding that a shipper is responsible for obtaining and documenting the verified gross mass of a packed container, situations may occur where a packed container is delivered to a port terminal facility without the shipper having provided the required verified gross mass of the container. Such a container will not be loaded onto the ship until its gross mass has been obtained.

What happens if there is any discrepancy?

Any discrepancy between a verified gross mass of a packed container obtained prior to the container's delivery to the port terminal facility and a verified gross mass of that container obtained by that port facility's weighing of the container, will result in the container not being loaded on board the vessel.

What are the consequences or penalties when a VGM (verified gross mass) is not available?

A container without a VGM should not be loaded onto the vessel until its VGM has been obtained. In order to allow the continued efficient onward movement of such containers, the master or his representative and the terminal representative may obtain the VGM of the packed container on behalf of the shipper. This may be done by weighing the packed container in the terminal or elsewhere.

The shipper will be responsible for any costs that arise (e.g. weighing costs, repacking and administrative costs). Regulatory penalties will be defined by the individual national legislations.

Section Five -

What KMB can do to Help!

As your employed logistics partner, KMB are keen to help make this transition as smooth as possible for our clients. As such, we have established links with all UK ports for the submission of the declared VGM on your behalf via our port portals.

- If your organisation does not have facility to establish the VGM by either method, KMB can provide this service on your behalf and remove the complications for you. KMB can weigh the laden container and submit the VGM to the port of loading utilising our portal for a fee of £25.00.
- If you are able to establish the VGM in line with the regulatory requirements, but do not have facility to submit this to the port of loading, KMB can arrange this for an administration fee of £5.00 via our portal.
- In the case of LCL cargo, the employed consolidator (by KMB) will weigh the total laden container upon completion of loading. Each shipper still has a responsibility to supply an accurate weight at the time of booking to us in writing. KMB will charge between £2-5 towards the weighing charge and pass this onto relevant booking party

Alternatively, if your organisation has the requisite equipment and facility to submit the VGM of any given container, you are of course free to submit this information to the port of loading of your own accord please make a note of the required times scales in order to allow yourselves correct time to submit.

There are some important considerations to be taken:

- It must be stated at booking stage (on your booking confirmation to KMB) whether you require KMB to weigh and declare the VGM of your container to the port / declare the VGM only to the port, or if you will handle all aspects of the submission yourselves.
 - For our customers where this aspect of the operation becomes a long-standing solution, we will ask you to confirm this in writing, and we will in turn update our operating procedures accordingly so all our team are aware of your ongoing requirements .
- There will still be a requirement for you to provide a gross weight to KMB at the time of booking, regardless of whether KMB will be providing the precise final VGM figure or not. This is important for many aspects of the export process as we will still need a gross weight in order to book a container with the shipping line.
- For any instance where you are providing the VGM to KMB, this is required in writing and will be required a minimum of 72 hours prior to vessel departure so we can submit through the portal in sufficient time.
- From a legal perspective, please note that the accuracy of the provided VGM will remain the responsibility of the named Shipper on the bill of lading (or alternative transport document), regardless of who has submitted the information.
- As the VGM is calculated by adding the gross weight of the cargo, packaging and securing to the tare weight of the container, we strongly recommend that your distribution/warehouse team take photographic evidence of the tare weight printed on the container when loading, make a note of it and send to KMB along with your shipping instructions.
- If your organisation will not be requesting that KMB weigh the laden container on your behalf, it is a requirement that you will need to provide both the VGM and the appropriate supporting evidence of the VGM (e.g. weighbridge ticket or system output dependent upon the methodology utilised). Again, this will be

required a minimum of 72 hours prior to the scheduled vessel departure. (PLEASE NOTE FAILURE TO DO SO WOULD RESULT IN LADEN CONTAINER NOT BEING ABLE TO SHIP THEREFORE MISSING SAILING AND INCURRING ADDITIONAL COSTS)

- All submissions, be they by your organisation or by KMB, will be required a minimum of 72 hours prior to scheduled vessel departure.

Section Six

Summary

In conclusion, below are the main points of consideration in anticipation of the impending amendments to the legislation:

- The amendment is effective 01/07/2016.
- This is global legislation, and will apply to all container shipments, regardless of the port of loading.
- It is the responsibility of the name shipped on the carrier bill of lading to provide a Verified Gross Mass.
- The named Shipper on the carrier Bill of Lading (or appropriate alternative proof of export) will be responsible for any commercial implications incurred as a result of late or inaccurate submission of a Verified Gross Mass.
- The cut off for submission of the Verified Gross Mass will vary from port to port, vessel to vessel, and shipping line to shipping line. If in doubt, please refer to your usual KMB contact.
- Whether Method 1 or Method 2 is utilised, any and all equipment utilised for the calculation of the Verified Gross Mass must be certified and calibrated to national standards.
- There is not currently an agreed tolerance for the submission of the VGM in the UK. This may be updated in the coming months.
- If you are unable to provide the VGM, KMB can establish this and submit on your behalf for a fee of £25.00.
- If you are able **to** establish the VGM, but do not have functionality to submit this, KMB can do so for £5.00.

Additional Resources

The following websites may be of use:

<http://www.worldshipping.org/industry-issues/safety/cargo-weight>
<http://www.bifa.org/media/3820206/mca-container-verification-mgn534-16-june.pdf>

http://www.fiata.com/fileadmin/user_upload/documents/recent_views/MTI/Guideline_SOLAS.pdf

<http://www.imo.org/en/MediaCentre/PressBriefings/Pages/14-VGM.aspx>

The following sources have been in used in the production of this advisory:

<http://www.ttclub.com/>
<http://www.lloydsloadinglist.com/>
<http://www.imo.org/en>
<http://www.bifa.org/>