

MASS Regulation & Liability: *the role of UK legislation*

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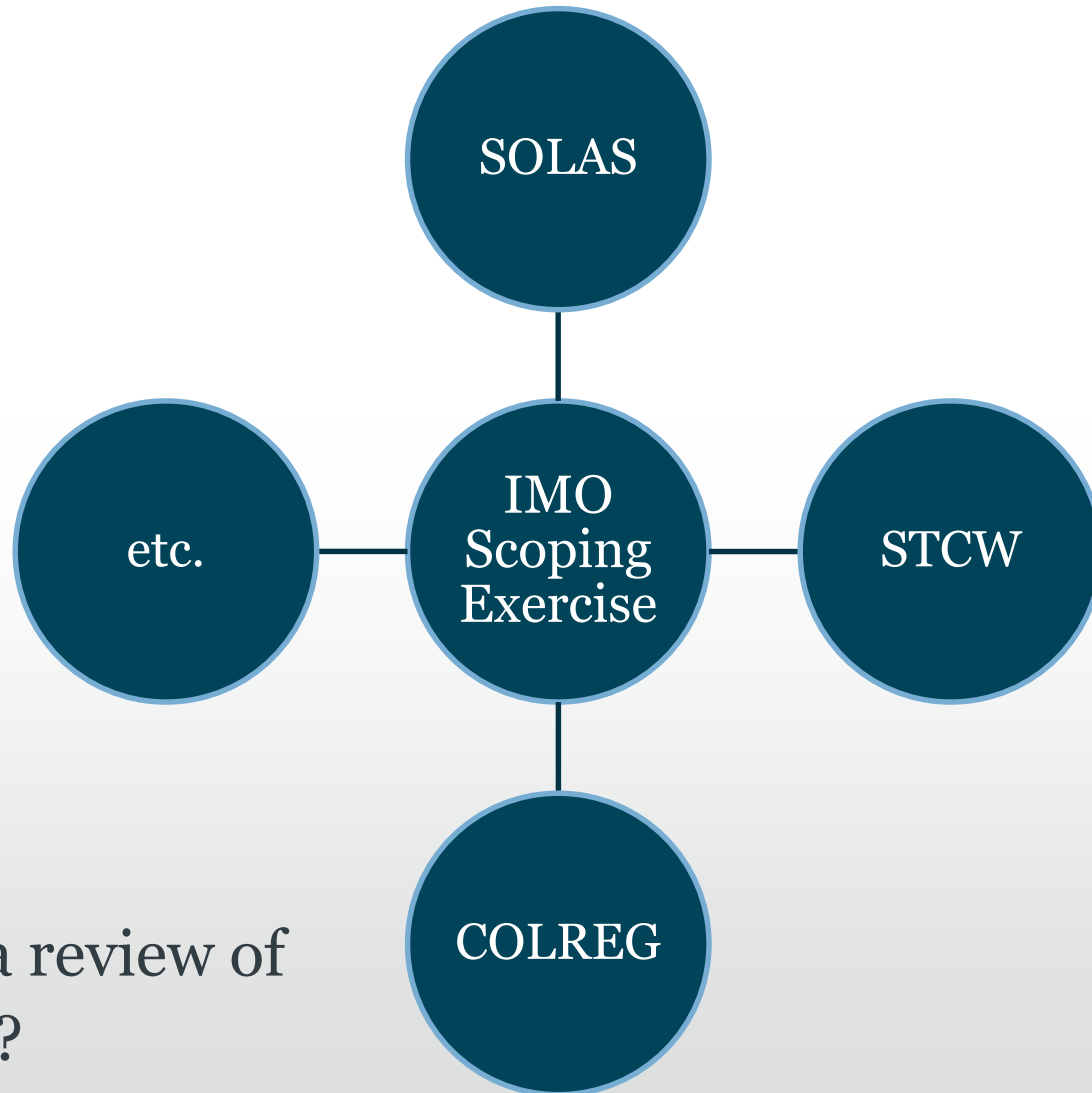
Institute of Maritime Law, University of Southampton

Today

- **Role and importance of UK shipping legislation**
- **Suitability of UK shipping legislation for MASS trials / operations?**
- Acknowledgement:
 - MARLab (regulatory workstream)



The international framework



Do we need a review of
national law?

The role and importance of UK statute

- ✓ Brings international regulation into national law
- ✓ Specifies and localises international regulation
- ✓ Fills gaps in international regulation
- ✓ Regulates shipping in areas outside of IMO remit

Merchant Shipping Act 1995

Status: This version of this Act contains provisions that are prospective.
Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Merchant Shipping Act 1995. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes



Merchant Shipping Act 1995

1995 CHAPTER 21

An Act to consolidate the Merchant Shipping Acts 1894 to 1994 and other enactments relating to merchant shipping. [19th July 1995]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Extent Information

E1 Act extends to U.K. except for ss. 18, 193(5), 68, 208 and 210; see ss. 315(1), 68(5), 208(5) and 210(11) respectively

Commencement Information

II Act not in force at Royal Assent; Act in force on 1.6.1996 see s. 316(2) (subject as mentioned in ss. 182, 314, Sch. 14 para. 5)

PART I

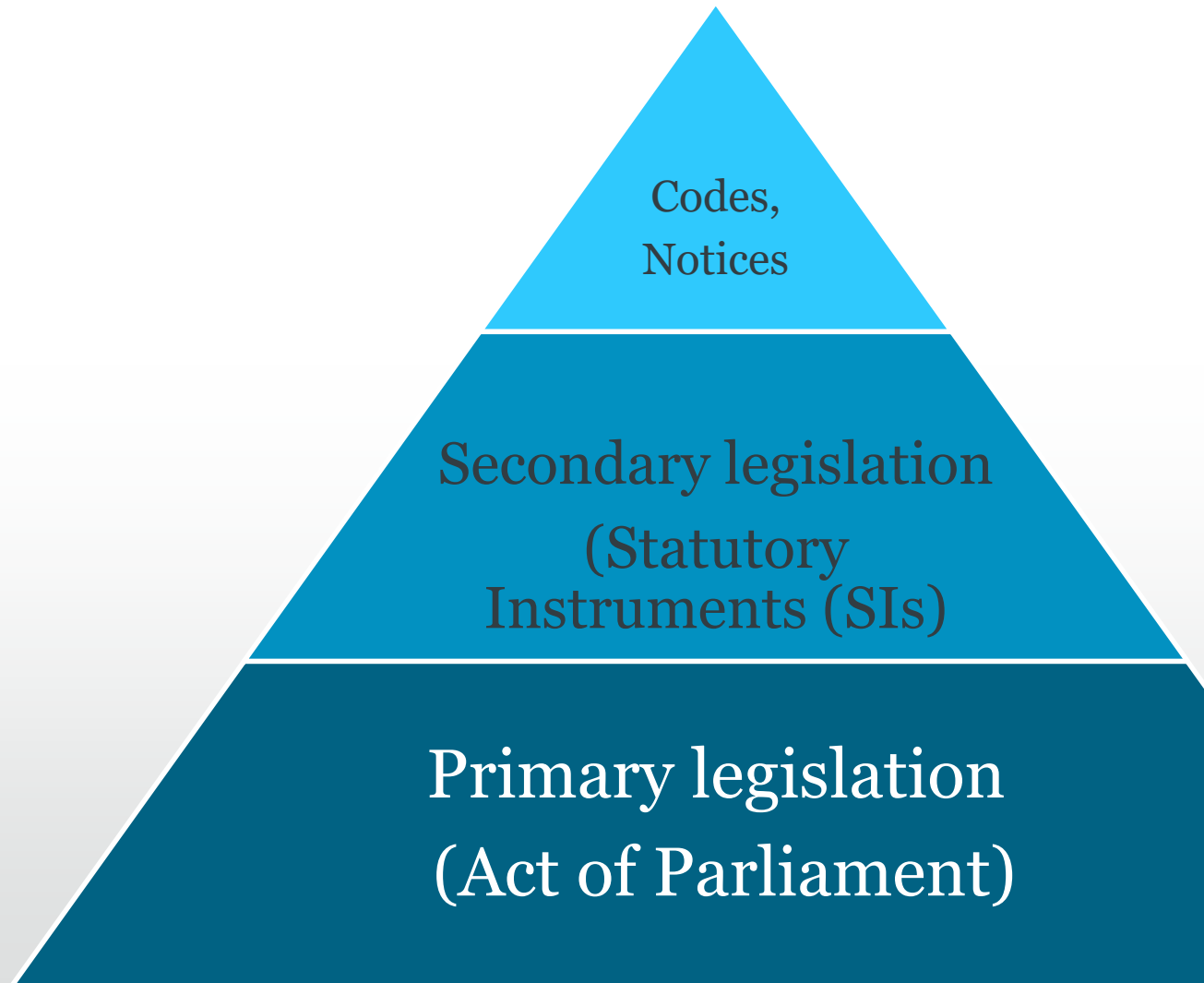
BRITISH SHIPS

1 British ships and United Kingdom ships.

- (1) A ship is a British ship if—
- (a) the ship is registered in the United Kingdom under Part II; or
 - (b) the ship is, as a Government ship, registered in the United Kingdom in pursuance of an Order in Council under section 308; or
 - (c) the ship is registered under the law of a relevant British possession; or
 - (d) the ship is a small ship other than a fishing vessel and—
 - (i) is not registered under Part II, but
 - (ii) is wholly owned by qualified owners, and

- I. British ships
- II. Registration
- III. Masters and seamen
- IV. Safety
- V. Fishing vessels
- VI. Prevention of pollution
- VII. Liability of shipowners and others
- VIII. Lighthouses
- IX. Salvage and Wreck
- IXA. Wreck Removal Convention
- X. Enforcement Officers and Powers
- XI. Accident investigation and inquiries
- XII. Legal proceedings
- XIII. Supplemental

UK legislative structure



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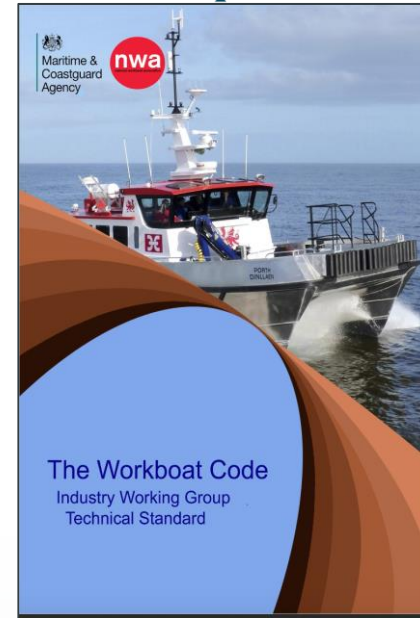
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 - (i) is not registered under Part II, but
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MSA 1995 & secondary legislation

s.85 Safety and health on ships

- (1) The Secretary of State may by regulations ... make such provision as he considers appropriate for all or any of the following purposes—
 - (a) for securing the safety of United Kingdom ships and persons on them, and for protecting the health of persons on United Kingdom ships;
 - (b) for securing the safety of other ships and persons on them while they are within United Kingdom waters ...

UK legislative structure



SI 1998/1609 Page 1

1998 No. 1609
MERCHANT SHIPPING

The Merchant Shipping (Small Workboats and Pilot Boats) Regulations 1998

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<i>Made</i>	<i>2nd July 1998</i>
<i>Laid before Parliament</i>	<i>13th July 1998</i>
<i>Coming into force</i>	<i>3rd August 1998</i>

The Secretary of State for the Environment, Transport and the Regions, after consulting the persons referred to in section 86(4) of the Merchant Shipping Act 1995, in exercise of the powers conferred by—

(i) sections 85(1)(a) and (b), (3), (5) to (7), and 86(1) of the said Act¹; and

(ii) sections 302(1) of the said Act,

and of all other powers enabling him in that behalf, with the consent of the Treasury in so far as the Regulations are made under the said section 302(1), hereby makes the following Regulations:

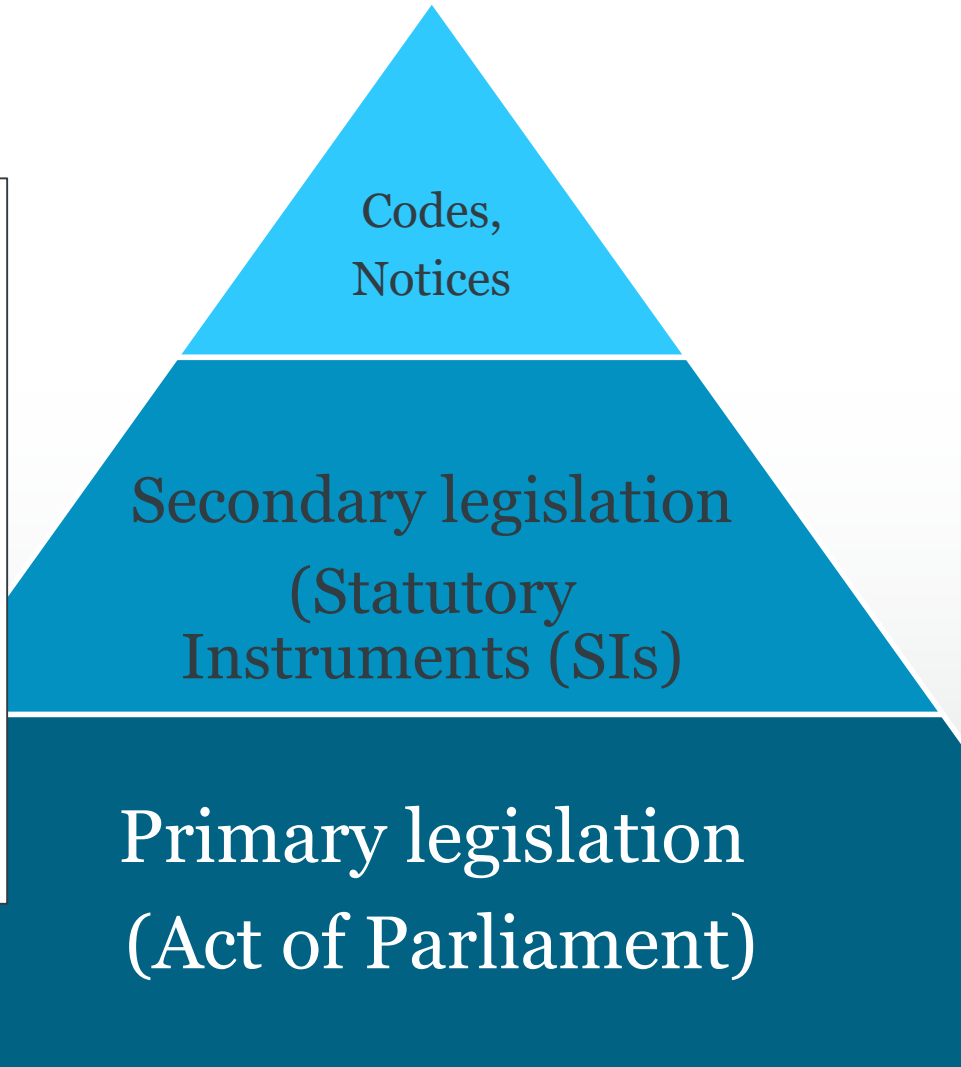
Notes

¹ Sections 85 and 86 were amended by the Merchant Shipping and Maritime Security Act 1997 (c. 28), section 8.


Extent

Preamble: United Kingdom

PART I
PRELIMINARY



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Merchant Shipping Act 1995

1995 CHAPTER 21

An Act to consolidate the Merchant Shipping Acts 1894 to 1994 and other enactments relating to merchant shipping.
[19th July 1995]

Enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Extent Information

E1 Act extends to U.K. except for ss. 18, 19(5), 68, 208 and 210; see ss. 315(1), 68(5), 208(5) and 210(1) respectively

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PART I
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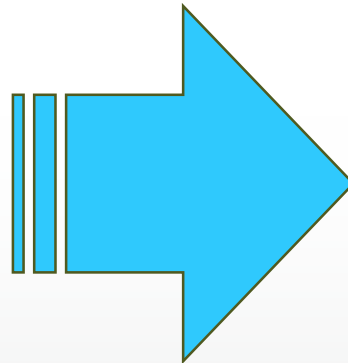
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- (c) the ship is registered under the law of a relevant British possession; or
- (d) the ship is a small ship other than a fishing vessel and—
 - (i) is not registered under Part II, but
 - (ii) is wholly owned by qualified owners, and

MSA 1995: issues (selection)

MASS / autonomy

- Reticence / gaps
- Outdated assumptions
- Lack of clarity



- 1. Manning**
- 2. Roles & responsibilities**
- 3. Documentation**
- 4. Law enforcement**

Manning

- **MSA 1995 s.49 (prohibition of going to sea undermanned)**
- (1) Subject to [section 48](#), if a ship to which this section applies goes to sea or attempts to go to sea without carrying such officers and other seamen as it is required to carry under [section 47](#), the owner or master shall be liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine;and the ship, if in the United Kingdom, may be detained.
- NB: MSA 1995 s.48 (power to exempt from manning requirements)

Manning

- MSA 1995 s.47 (manning)
 - **Reg 46 MS** (Standards for Training, Certification and Watchkeeping for Seafarers) Regulations (**SI 2015/782**)
 - **MSN 1868 (M) STCW: UK Requirements for Safe Manning and Watchkeeping**

2015 No. 782
MERCHANT SHIPPING

The Merchant Shipping (Standards of Training, Certification and Watchkeeping) Regulations 2015

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<i>Made</i>	23rd March 2015
<i>Laid before Parliament</i>	26th March 2015
<i>Coming into force</i>	9th June 2015

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to maritime transport¹, measures relating to the safety of ships and the health and safety of persons on them² and measures relating to the recognition of higher-education diplomas, formal qualifications, or experience in the occupation, required for the pursuit of professions or occupations³.

The Secretary of State is satisfied, for the purposes of section 47(2) of the Merchant Shipping Act 1995⁴, that it is necessary or expedient, in the interests of safety to make the Regulations in so far as they require ships to carry qualified seamen.

The Secretary of State has consulted such persons as are required to be consulted by sections 86(4) and 306(4) of the Merchant Shipping Act 1995.

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972⁵ and by sections 47(1), (4A) and (4B), 85(1), (3), (5) to (7), 86(1) and (2) and 307(1) of the Merchant Shipping Act 1995⁶.

Notes

¹ S.I. 1994/757.
² S.I. 1993/956.
³ S.I. 2002/248.
⁴ Section 47 was amended by the Marine Navigation Act 2013 (c. 23), section 10.
⁵ Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7).
⁶ Section 47 was amended by section 10 of the Marine Navigation Act 2013 (c. 23). Sections 85 and 86 were amended by sections 8 of, and Part 1 of Schedule 7 to, the Merchant Shipping and Maritime Security Act 1997 (c. 28). Sections 85 and 86 are applied to hovercraft by article 4 of the Hovercraft (Application of Enactments) Order 1989 (S.I. 1989/1350) (sections 85 and 86 re-enact sections 21 and 22 of the Merchant Shipping Act 1979 (c. 39) which are referred to in that article).

MERCHANT SHIPPING NOTICE



MSN 1868 (M)

Standards of Training, Certification & Watchkeeping Convention: UK Requirements for Safe Manning and Watchkeeping

Notice to all Shipowners, Companies, Managers, Masters, Deck and Engineering Officers and all seafarers on Merchant Ships

This MSN should be read with the Merchant Shipping (Standards of Training, Certification and Watchkeeping) Regulations 2015 (M), MSN 1856 (M), MSN 1857(M) and MSN 1842. It replaces MSN 1767 (M).

4.3 The tables at Annex A and B provide guidance on the numbers of certified deck and engineer officers appropriate to different sizes of ships, tonnages and trading areas. As the watchkeeping arrangements for the engineering department and the demands placed on personnel vary significantly according to the level of automation, these tables only provide guidance; owners and operators must take all relevant factors into account before finalising their manning proposals.



Roles and responsibilities

- **MSA 1995 terminology:**
 - “master”; “seaman”
 - **s.313 MSA 1995**
 - “**master**”: includes every person (except a pilot) having command or charge of a ship
 - “**seaman**”: includes every person (except masters and pilots) employed or engaged in any capacity on board any ship
 - **Shore-based MASS personnel must be integrated:**
 - International obligations
 - Art 94 UNCLOS (ships generally need masters)
 - Art 98 UNCLOS (duty to render assistance)

Roles and responsibilities

- **Should MSA crewing provisions apply to shore-based personnel?**
 - No?:
 - s.43 (crew accommodation)
 - s.53 (medical treatment on board ship)
 - Yes?:
 - s.51 (crew's knowledge of English)
 - **s.58 (conduct endangering ships, structures or individuals)**
 - master / seafarer liability for acts causing damage to ships etc.
- **Gaps: qualification and training standards of shore-based personnel**

Documentation

- Some provision call for onboard carriage of documents:
- **S.77 (Official log books)**
 - (1) Except as provided by regulations under this section an official log book in a form approved by the Secretary of State shall be kept in every United Kingdom ship.
- **S.257 (powers to require production of ship's documents)**

Law enforcement: UK as coastal / port state

- Basic enforcement means include boarding, inspection, arrest / detention of vessel
 - s.258 (powers to inspect ships and their equipment etc.)
 - s.259 (inspectors' powers to board ship)
 - s.95 (power to detain dangerously unsafe ship)
 - s.284 (enforcing detention of ships)
- Conventional enforcement measures may not be viable for MASS
 - Alternative means / solutions ?

MSA 1995: exemptions, flexibility, reform

- **s.294 MSA 1995 (general power to dispense)**
- (1) The Secretary of State may, if he thinks fit, and upon such conditions (if any) as he thinks fit to impose, exempt any ship from any specified requirement of, or prescribed under, this Act ... if he is satisfied ... of the matters specified in subsection (2) below.
- (2) Those matters are—
 - (a) that the requirement has been **substantially complied** with in the case of that ship or that compliance with it is **unnecessary** in the circumstances; and
 - (b) that the action taken or provision made as respects the subject matter of the requirement in the case of the ship is **as effective as**, or more effective than, actual compliance with the requirement.

Concluding remarks

- National law has important role to play in regulation of MASS
 - within and outside of IMO remit
 - source of potential barriers
 - opportunity to facilitate MASS operations optimally
- MSA 1995
 - domestic statute must recognise MASS reality
 - supplementation and clarifications required
- **Holistic and integrated approach to regulation required**

Thank you

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