

Newsletter No 6 – Shipowners Liability

Purpose: To ensure that seafarers are protected from any financial consequences of repatriation, sickness, injury or death occurring in connection with their employment or for unemployment arising from the ships loss or foundering.

Whilst MLC regulation 4.2 seeks to deal with the shipowners responsibilities and liability for the economic consequences of sickness, injury or death suffered by seafarers during their engagement, the liability issue actually extends to MLC regulations 2.5 (Repatriation) 'Each member shall require ships that fly its flag to provide financial security to ensure that seafarers are duly repatriated in accordance with the code' and 2.6 (Seafarers compensation for the ships loss or foundering) 'Each member shall make rules ensuring that, in every case of loss or foundering, that the ship owner shall pay to each seafarer on board an indemnity against unemployment resulting from such loss or foundering'.

Under the above regulations shipowner's liability should,

- Provide coverage for the costs of seafarers sickness or injury occurring during their engagement until the date when they are duly repatriated.
- Provide compensation in the event of death in service or long term disability caused by an occupational injury, illness or hazard occurring during their engagement.
- Defray expenses of medical care and board and lodging until the seafarer has recovered or the sickness/incapacity declared permanent. Such liability will be limited to not less than 16 weeks.
- Pay the costs of burial expenses for death occurring on board or ashore during the period of engagement.
- Pay wages in whole or in part where the sickness or injury results in seafarers incapacity to work. Again, such liability will be limited to not less than 16 weeks.
- Pay to each seafarer on board an indemnity against unemployment arising from the ships loss or foundering. The total indemnity payable to any one seafarer will be limited to 2 months wages.
- Provide financial security to ensure that seafarers are repatriated.

The Isle of Man already has much of this incorporated in its existing maritime laws and many standard employment contracts and CBA's currently provide for such contingencies.

Our regulations will exclude shipowners from certain liability, for example in respect of:

Injury or sickness due to the wilful misconduct of the seafarer or;
Sickness or infirmity intentionally concealed when the SEA is entered into

and will exempt shipowners from defraying the costs of medical care, board and lodgings or burial expenses in so far as such liability is assumed by the public authorities. We propose that shipowners liability shall cease from the time at which the seafarer can claim medical benefits under another scheme i.e. compulsory sickness insurance, compulsory accident insurance or workers compensation for accidents.

Notwithstanding that the ship owner already has self financing means or insurance cover (for example through the P&I Clubs) that assumes adequate coverage for all the above events, the MLC requires Members to ensure that there is effective insurance cover or other financial security.

In order for Isle of Man Ship Registry to verify that adequate provision has been made we propose to create regulations that each ship will have on board a certificate issued by the insurer or provider as documentary evidence that effective arrangements are in place. As a minimum, the certificate will include:

- Name of the vessel
- Port of registry of the vessel
- Call sign of the vessel
- IMO number of the vessel
- Name of the provider of the financial security
- Place of business of the provider of the financial security
- Name of the ship owner
- Period of validity of the financial security
- An attestation that the financial security meets the recommended standards as set out in regulation

If more than one insurer provides cover, a certificate from each insurer is required.

Shipowners who do not use the services of P&I Clubs or other insurance providers but are self insuring will still be required to have the certificate and an attestation as providers of the financial security.

Certificates shall be posted in a prominent position in the seafarers' accommodation.

The provisions of the MLC are not intended to affect liability under civil or private law for negligence or fault. The liabilities concerned here, which seek only to cover the costs of care and payment of wages, are not related to any kind of fault on the part of the ship owner.

For your further information the following key points form part of a proposal to amend the text of the Maritime Labour Convention 2006:

- 1) Compensation, where set out in the seafarers SEA and without prejudice to 3) below, shall be paid in full and without delay
- 2) There shall be no pressure to accept a payment less than the contractual amount
- 3) Where the nature of the long term disability of a seafarer makes it difficult to assess the full compensation to which the seafarer may be entitled, an interim payment or payments shall be made to the seafarer so as to avoid undue hardship
- 4) The seafarer shall receive payment without prejudice to other legal rights, but such payment may be offset against any damages resulting from any other claim made by the seafarer against the ship owner and arising from the same incident
- 5) Any claim for compensation may be brought directly by the seafarer concerned , or their next of kin, or a representative of the seafarer or designated beneficiary

Although these proposals are unlikely to be introduced as amendments to the MLC any time before 2015 (at best) it makes sense to include them in this current policy review and give consideration to their inclusion in any forthcoming changes to Isle of Man regulations.