

Circular Ref: 2014/0037**Date: 13 August 2014**

MLC 2006 The next phase

Background

Shipowners have learned to live with the Maritime Labour Convention (MLC) 2006 which entered into force on 23 August 2013. It has now been ratified by over sixty states representing 80% of the world gross tonnage and is by any measure a major piece of legislation affecting the entire industry.

The MLC is important in setting basic minimum standards which the great majority of shipowners are able to meet without introducing far reaching changes to their employment practices.

New developments - Financial security requirements

However, further changes are on the way. On 13 June 2014, the International Labour Organisation adopted amendments which will extend the scope of financial security requirements. These new requirements will need to be implemented by individual states and, according to ILO, are likely to enter into force by early 2017.

This leads to the question of how shipowners can meet the financial security requirements. Security can take the form of a scheme established by the vessels' flag state. However most shipowners do not have the benefit of such schemes and will need to look elsewhere.

The International Group clubs will be considering whether clubs should extend the scope of cover to include all the new financial security requirements. Various sectors of the industry have already indicated that they favour a club solution but this is a decision for club boards.

Many of the financial security requirements are for liabilities which fall comfortably within the traditional scope of club cover, in particular compensation for death and disability. However security for up to four months wages in the event of abandonment is more controversial. Owners will need to decide whether they wish to shoulder the financial consequences of insolvency of a member of their club who has abandoned his crew and left their wages unpaid

Abandonment by owners entered in International Group clubs is rare even in the difficult financial climate since 2008.

However boards will need to make a careful evaluation of the arguments for and against. One of the factors to be taken in to account will no doubt be that if clubs do not provide security alternative providers will be able to do so but at a cost.

Fortunately with the changes not taking effect for two years or more, there is enough time to weigh the issues carefully before making a decision. If boards opt for a club solution, a way needs to be found to deal with this in club rules which will not be straightforward. There will also be a consultation process with states which will take time given the large number of states which are party to MLC and that their approaches to implementation are not always identical.

Summary of changes

The main effect of the amendments is that financial security will be required for the following:

Repatriation and related costs (Regulation 2.5)

- up to four months wages and entitlements
- repatriation costs
- essential needs such as food, accommodation and medical care

Shipowners' liability for contractual payments for death or long-term disability due to an occupational injury, illness or hazard set out in the employment agreement or collective agreement (Regulation 4.2)

The security should meet the following standards:

- contractual compensation must be paid in full and without delay
- if the extent of disability is unclear, an interim payment must be made
- payment is without prejudice to other rights
- there must be no pressure to accept a less than the contractual amount
- the seafarer shall have a right of direct action
- the security must remain in force throughout the period of insurance unless brought to an end by at least 30 days' notice to the flag state

The insurance or other security must be evidenced by a certificate or other document posted in a conspicuous place on board containing required information including:

- contact details for security provided
- period of validity
- attestation by provider that the security meets requirements of MLC Standard A2.5.2 and Standard A4.2.1

The Declaration of Maritime Labour Compliance (DMLC) must include a declaration by the flag state that the requirements for financial security under Regulations 2.5 and 4.2. have been met.

The Association will publish further updates on MLC 2006 developments in due course. Members are also referred to the detailed “Insight” section on the Association’s website.

Should members have further queries, they are asked to contact their Skuld Business unit.

Source of Information: Andrew Liu & Co., Ltd www.andrewliu.com.hk
Skuld P&I Club

Andrew Liu & Co. Ltd