

# LEGAL CIRCULAR - NAUTILUS FEDERATION

## Maritime Labour Convention, 2006 - Amendments

### Financial security

On the 18th January 2017, the MLC amendments on financial security came into force. From that date, all ships registered with MLC ratifying countries will be required to carry on board a certificate or other documentary evidence of financial security issued by a financial security provider. The final form of these amendments were agreed by the Special Tripartite Committee (STC) of the ILO in Geneva in February 2014.

The purpose of these amendments is to ensure that there is a guarantee that shipowners will be in a position to meet their obligations in respect of: (i) repatriation of abandoned seafarers [together with associated expenses]; (ii) shipowners' liability for seafarers' contractual claims for death or long-term disability due to an occupational injury, illness or hazard.

The amendments provide that a seafarer will be abandoned if the shipowner: (a) fails to cover the cost of the seafarer's repatriation; or (b) has left the seafarer without necessary maintenance and support; or (c) has otherwise unilaterally severed their ties with the seafarer including failure to pay contractual wages for a period of at least two months. This definition of abandonment is useful, as it will help to minimise disputes as to whether the circumstances amount to abandonment or not.

In respect of abandonment, the financial security must cover the costs of: repatriation, outstanding wages and contractual/statutory entitlements [minimum of four months], reasonable expenses and needs [such as food, clothing, accommodation, drinking water, essential fuel for survival on board], medical care and transport of personal belongings.

As regards contractual claims for death or long-term disability, the financial security must cover compensation as provided in the seafarer's contract [which will be the seafarer's employment agreement (SEA) and any applicable collective bargaining agreement (CBA)]. Such a claim may be brought directly by the seafarer, next of kin, representative or designated beneficiary.

It is a matter for the shipowner whether they engage one or more financial security providers in respect of these potential liabilities. In any case, the certificate or documentation must be displayed in a 'conspicuous place' on board the ship from the 18th January onwards. When new Maritime Labour Certificates are issued, their attached DMLC will list financial security certificates to cover abandonment and shipowners' liabilities as the 15th and 16th areas of inspection respectively. The certification will be a key document in MLC compliance, the absence of which may lead to withdrawal of a Maritime Labour Certificate by flag State, or detention by port State.

The certification must contain the following information:- name of the ship; port of registry; call sign; IMO number; name and address of the provider(s) of the financial security; contact details of the person(s) responsible for handling seafarers' claims; name of the shipowner; period of validity of the financial security; and an attestation from the financial security provider that the financial security meets the requirements of the MLC amendments.

Any vessel which is not carrying/displaying the appropriate certification from the 18th January onwards will be non-compliant with the MLC and the flag State's laws which implement the changes. There may also be criminal implications for the master of the vessel. For example, the UK draft Regulations make it a criminal offence for the master if the certification is not displayed on board in a conspicuous place. Federation unions may wish to check their own national provisions and warn their members accordingly.

It should be noted that assistance from the financial security provision is to be without prejudice to any other legal rights or remedies available to the seafarer. Examples of further claims would be for the balance of outstanding wages or for a personal injury claim where the compensation in negligence is greater than that provided for on a contractual basis.

### Future amendments – validity of Maritime Labour Certificate; recognition of the ICS/ITF Guidelines on bullying and harassment

The MLC STC meeting in February 2016 at the ILO considered further proposals for amendments.

The outcome was that an amendment proposed by shipowners was agreed under which the validity of Maritime Labour Certificates may be extended for up to five months in cases where, following a successful renewal inspection, the flag State is not able to issue a new certificate before the expiry date of the extant certificate. It is hoped that this will be used sparingly and only where the flag State genuinely cannot otherwise comply in the usual way by issuing the Certificate on time.

Furthermore, on other matters, the seafarers' group had proposed amendments to the mandatory Code A to the effect that ship-owners: -

- (i) should be required to pay seafarers' wages for the entire period in which they are held captive by pirates;
- (ii) take measures under the relevant ICS/ITF Guidelines to eliminate bullying and harassment on board.

The shipowners did not agree to commit to the seafarers' proposed amendments as presented. Instead it was agreed

that a tri-partite working party would be established to carry out further work on the wages issue – there is a STC meeting on this issue from 3rd to 5th April 2017. It was also agreed to recognise the ICS/ITF bullying and harassment guidelines by amending the non-mandatory Code B (instead of Code A), requiring that the guidelines are taken into account in a health and safety context.

The amendments facilitating the potential extension (where necessary) of Maritime Labour Certificates and recognition of the ICS/ITF Guidelines come into force on the 8th January 2019.