

## **Mandatory principles relating to financial security for the abandonment of seafarers: recommendations**

This information is addressed to all

- shipowners
- shipbuilders
- classification societies
- seafarers (including those on commercial yachts)

### **Overview**

This document gives advanced warning of the principles relating to financial security in cases of abandonment of seafarers. It was formulated by the joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers.

The Expert Working Group recommended to the IMO and ILO that the principles be considered as a basis for finalising a mandatory instrument or instruments and that this was best achieved by way of an amendment to the Maritime Labour Convention 2006 (MLC).

The recommendations have been approved by the IMO and ILO. IMO Resolution A930(22) and A391(22) are also relevant. These proposals are expected to form the basis of an amendment to the MLC in due course.

### **1. Introduction and Background**

1.1 The Maritime Labour Convention 2006 (MLC) places responsibility on shipowners to provide financial security in respect of liability for the repatriation of seafarers, including maintenance pending repatriation (Regulation 2.5) and compensation for death sickness or injury of seafarers in connection with their employment (Regulation 4.2).

1.2 Further to IMO Resolution A.930(22) and A.931(22) of 17 December 2001, the 9th meeting of the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers, held between 2-6 March 2009 in Geneva, formulated proposed mandatory principles in the form of text regarding the provision of financial security in the case of abandonment of seafarers. The principles are designed to amplify MLC Regulation 2.5 and Regulation 4.2 of the MLC.

1.3 The proposed Standard and Guideline formulated by the Expert Working Group are reproduced below for information. It should be noted that these are

only recommended principles at this stage and are subject to acceptance, amendment or rejection by the Special Tri-partite Committee of the International Labour Organization (ILO) which has ownership of the Maritime Labour Convention 2006 (MLC) (MLC Article XIII refers) and consideration by member states, seafarer and ship owner organisations. (The principles have been endorsed by the relevant IMO and ILO bodies.)

1.4 This document specifically covers abandonment. Other aspects of ship owner liability pertaining to MLC Title 4.2 will be outlined in a separate M Notice.

## 2. Recommendations

2.1 The recommendations are as follows:

### **“Standard – Provision of financial security in case of abandonment of seafarers**

1. This Standard establishes requirements to ensure the provision of a rapid and effective financial security system to assist seafarers in the event of abandonment.
2. The provisions of this Standard are not intended to be exclusive or to prejudice any other rights, claims or remedies that may also be available to compensate seafarers who are abandoned. National laws and regulations may provide that any amounts payable under the Standard can be offset against amounts received from other sources arising from any rights, claims or remedies that may be the subject of compensation under the standard.
3. Each Member shall ensure that a financial security system meeting the requirements of this Standard is in place for ships flying its flag. The financial security system may be in the form of a social security scheme or insurance or a national fund or other similar arrangements. Its form shall be determined by the member after consultation with the ship owners’ and seafarers’ organizations concerned.
4. The financial security system shall provide direct access, sufficient coverage and expedited financial assistance, in accordance with this Standard, to any abandoned seafarer who was employed or engaged or working in any capacity on a ship flying the flag of the Member.
5. For the purposes of this Standard, a seafarer shall be deemed to have been abandoned where, in violation of this Convention or the terms of the seafarer’s employment agreement, the ship owner:
  - a) fails to cover the cost of the seafarer’s repatriation; or
  - b) has left the seafarer without the 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.

6. For the purposes of this Standard, necessary maintenance and support of seafarers shall include: adequate food, clothing, accommodation, necessary medical care and other reasonable costs or charges arising from the abandonment.

7. [Each Member shall require that ships that fly its flag, and to which paragraph 1 or 2 of Regulation 5.1.3 applies, provide documentary evidence of financial security issued by the financial security provider. The documentary evidence shall be posted in a prominent position in the seafarers' accommodation. Where more than one financial security provider provides cover, the document provided by each provider shall be carried on board.]

8. [The documentary evidence of financial security shall contain the information required in Appendix XX. It shall be in English or accompanied by an English translation.]

9. Assistance provided by the financial security system shall be granted promptly upon request made by or on behalf of the seafarer concerned and supported by the necessary justification of entitlement in accordance with paragraph 3 above.

10. Assistance provided by the financial security system shall be sufficient to cover the following:

(a) outstanding wages and other entitlements due from the ship owner to the seafarer under their employment agreement, the relevant collective bargaining agreement or the national law of the flag State, limited to four months of any such outstanding wages and four months of any such outstanding entitlements;

(b) all expenses reasonably incurred by the seafarer, including the cost of repatriation in accordance with paragraph 11; and

(c) the cost of necessary maintenance and support from the act or omission constituting abandonment until the seafarer's arrival at home.

11. For the purposes of this Standard, the repatriation of the seafarers shall be provided by appropriate and expeditious means, normally by air, and include provision for food and accommodation of the seafarers from the time of leaving the ship until arrival at the seafarer's home, necessary medical care, passage and transport of personal effects and any other reasonable costs or charges arising from the abandonment.

12. If the provider of insurance or other financial security has made any payment to any seafarer in accordance with this Standard, such provider shall, up to the

amount it has paid, acquire, by subrogation, assignment or otherwise, the rights which the seafarer would have enjoyed.

13. Nothing in this Standard shall prejudice any right of recourse of the insurer or provider of financial security against third parties.

### **Guideline : provision of security in case of abandonment of seafarers**

1. In implementation of paragraph 9 of the Standard, if time is needed to check the validity of certain aspects of the seafarer's request, this should not prevent the seafarer or a representative from immediately receiving such part of the assistance requested as is recognised and justified.

#### Appendix XX

[The documentary evidence of financial security under Standard A2.5bis shall include the following information:

1. name of the ship;
2. port of registry of the ship;
3. call sign of the ship;
4. IMO number of the ship;
5. name and address of the provider of the financial security;
6. contact details of the persons or entity responsible for handing seafarers' requests for relief;
7. name of the ship owner;
8. period of validity of the financial security;
9. an attestation that the financial security meets the requirements of the Standard.]”

A footnote to the above states:

“The amendments would primarily consist of a new Standard and a new Guideline under Regulation 2.5 and following the present Standard and Guideline A2.5 and B2.5. The precise numbering and placement of the proposed text for Standards and Guidelines, and similar changes to transform the proposed instrument into an amendment of the MLC, 2006, would be addressed at a later stage.”