

Newsletter No 3 - Seafarers Employment Agreements

Revised September 2011

Newsletter No 3 has been revised to advise of developments in Isle of Man Ship Registry (IOMSR) policy for the implementation of the Maritime Labour Convention 2006 (MLC 2006).

The developments to original policy have been necessary due to consultation with shipowners following on from our seminar in February 2011, the consultation paper on Title 2 of MLC and through the IOMSR participation at the tripartite working group (TWG). The TWG is hosted by the MCA as chairperson and consists of shipowner and union representation.

The largest change to IOMSR policy regards collective bargaining agreements:

Seafarer's Employment and Social Rights Article IV.5 of MLC 2006

*"Each Member shall ensure, within the limits of its jurisdiction, that the seafarers' employment and social rights set out in the preceding paragraphs of this Article are fully implemented in accordance with the requirements of this Convention. Unless specified otherwise in the Convention, such implementation may be achieved through national laws or regulations, **through applicable collective bargaining agreements** or through other measures or in practice".*

In effect, where MLC 2006, Title 2 - Conditions of Employment allows collective bargaining agreements to prescribe the terms and conditions of employment of seafarers, this will be reflected in Isle of Man (IOM) MLC regulations.

For example: Standard A2.5.2 and A2.5.3 - Repatriation

*"2. Each Member shall ensure that there are appropriate provisions in its laws and regulations or other measures **or in collective bargaining agreements**, prescribing:*

(a) the circumstances in which seafarers are entitled to repatriation in accordance with paragraph 1(b) and (c) of this Standard;

(b) the maximum duration of service periods on board following which a seafarer is entitled to repatriation – such periods to be less than 12 months; and

(c) the precise entitlements to be accorded by shipowners for repatriation, including those relating to the destinations of repatriation, the mode of transport, the items of expense to be covered and other arrangements to be made by shipowners.

*3. Each Member shall prohibit shipowners from requiring that seafarers make an advance payment towards the cost of repatriation at the beginning of their employment, and also from recovering the cost of repatriation from the seafarers' wages or other entitlements except where the seafarer has been found, in accordance with national laws or regulations or other measures **or applicable collective bargaining agreements**, to be in serious default of the seafarer's employment obligations".*

This will mean that where a seafarer's SEA incorporates a CBA and the CBA includes terms and conditions for repatriation as set out A2.5.2 (a) to (c) and A2.5.3 then those terms and conditions will apply to their employment. However if a seafarer's SEA does not incorporate a CBA, then the IOM terms and conditions for repatriation as prescribed in IOM MLC regulations will apply to that seafarer.

Every seafarer working on an Isle of Man registered ship or commercial yacht who is employed by the shipowner (MLC definition) will need to have an SEA between themselves and the shipowner, or a representative of the shipowner. This is one major change and will also mean there is no longer a requirement for crew agreements and signing on articles, as the SEA will replace both of these documents.

A collective bargaining agreement (CBA) may form all or part of a Seafarers' employment agreement (SEA).

A seafarer who is not an employee of the shipowner will require contractual or similar arrangements providing them with decent working and living conditions as required by the MLC 2006.

The definition of seafarer has to be taken into account and this is defined in MLC as:-

'A seafarer means any person, including the master, who is employed or engaged or works in any capacity on board a seagoing ship to which MLC 2006 applies'.

The definition of seafarer does not apply to those persons whose work is not part of the routine business of the ship and whose principal place of work is ashore, for example, marine professionals such as harbour pilots, inspectors, or superintendents, scientists, researchers, divers and specialist offshore technicians. Also those persons working on a

seagoing ship on an occasional and short-term basis for example fitters, guest lecturers and entertainers, repair technicians, surveyors or port workers.

The requirements for SEA's are in MLC 2006 under Regulation 2.1 and Standard A2.1. The minimum particulars to be included in an SEA are contained in Standard A2.1.4 as shown in Annex 1 to this newsletter. When you read these requirements they do not appear too onerous and are what you would expect to have in any reasonable contract of employment. However, there are references to the SEA in other MLC titles (5.1.5 Onboard complaints procedure and 2.5 repatriation, for example) so it can grow to be a substantial document.

For a shipowner with a multi flag fleet there could be a danger in each flag having differing requirements of what should be in an SEA and we have kept the requirements to only cover the requirements of MLC.

SEA's will generate some interesting challenges to the shipowner and the seafarer namely:-

1. The terms and conditions for employment of a seafarer shall be set out or referred to in a clear written legally enforceable agreement.
2. the shipowner and the seafarer shall each have a signed original of the SEA.
3. that the shipowner has given the seafarer the opportunity to review and seek advice on the terms and conditions of the agreement before the seafarer signs the SEA;
4. that the shipowner has informed the seafarer of their rights and duties under their employment agreement prior to or in the process of engagement; (see MLC Standard A1.4.(c)(ii))
5. the seafarer enters the agreement freely having a sufficient understanding of their rights and responsibilities. (MLC A2.1(b))

The SEA is one of the 14 areas included in the shipboard inspection and certification so a shipowner will have to be able to demonstrate how they comply with 1-5 above.

In order to assist with this process a model format of an SEA has been produced by the IOMSR (see Annex 2). This model SEA will be contained within IOMSR MLC 2006 guidelines and in line with Newsletter No. 10 would be one form of evidence of compliance with our new MLC regulations.

SEA's will replace the IOMSR crew agreements and the list of crew, traditionally used when a seafarer signs on to the crew agreement. We are proposing a new crew list to be

adopted and all seafarers who are employed, engaged or work on board the ship will be required to be entered onto it. The new crew list will contain the following information, which is the same as required by the IMO FAL Form 5, so the FAL form can be used to avoid duplication.

- Name and type of ship, IMO Number and call sign
- Port of arrival/departure (ship)
- Date of arrival/departure (ship)
- Flag state of ship
- Last port of call
- Nature and No. of Identity document. (seaman's passport)
- Number in the list. (sequential numbering) 1,2,3.....
- Family and given names
- Rank or rating
- Nationality
- Date and place of birth
- Date and signature by Master, authorised agent or officer.

It will also be a requirement for the shipowner to maintain an up to date copy of this crew list and it will be the duty of the Master to notify the shipowner of any changes to this crew list. Also the shipowner will have to supply a copy of the crew list to the Ship Registry if requested to do so.

One area that will not be changing is MLC standard A2.1.1 (e). This requires a seafarer to be "given a document containing a record of their employment on board the ship" which may be a seafarer's discharge book. If for any reason a discharge book is not used or is used but is not in English then the shipowner must provide the seafarer a record of their employment on board containing the following information a copy of which shall be in English.

- Name, port of registry, gross tonnage and IMO number of the ship
- Description of voyage
- Capacity in which seafarer is employed
- Date on which employment started
- Date of discharge

As can be seen in this news letter there are some changes that will be required by both the shipowner and the seafarers on the vessel, for example the introduction of the SEA and the removal of articles of agreement. However most shipowners already have contracts of

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employment with their seafarers which cover most of the areas in the SEA so only minor changes may be required. Also the FAL form 5 crew list is already in use, and most seafarers use a discharge book in order to record their record of employment. In order to comply with MLC the Ship Registry is currently in the process of creating new Isle of Man legislation.

The rest of this newsletter is made up with;

Annex 1 – The 11 points that are required to be in an SEA. If you currently have contracts of employment that address all of these points then you will have cleared one of the biggest tasks for shipowners in MLC.

Annex 2 - Is a model format of an SEA, it's use is not compulsory but it would be deemed to be evidence of compliance with new IOMSR MLC 2006 regulations.

You can contact the MLC team by e-mail at: marine.mlc@gov.im

Annex 1

Provision to be included in a Seafarers' Employment Agreement

- 1.** The full name, date of birth or age and birthplace of the seafarer;
- 2.** Shipowner's name and address;
- 3.** place where and date when the SEA is entered into;
- 4.** the capacity in which the seafarer is to be employed;
- 5.** amount of the seafarer's wages or where applicable, the formula used for calculating them;
- 6.** amount of paid annual leave or where applicable, the formula used for calculating it;
- 7.** the termination of the agreement and the conditions thereof, including-
 - (1) if the agreement is made for an indefinite period, the conditions entitling either party to terminate it, as well as the required notice period which shall not be less for the shipowner than for the seafarer;
 - (2) if the agreement has been made for an definite period the date fixed for it's expiry;
 - (3) if the agreement has been made for a voyage, the port of destination and the time which has to expire after arrival before the seafarer should be discharged;
- 8.** The health and social security protection benefits to be provided to the seafarer by the shipowner.
- 9.** The seafarer's entitlement to repatriation;
- 10.** Reference to any applicable Collective Bargaining Agreement; and
- 11.** Information about the shipowners complaint procedure.

Annex 2 – MODEL FOR A SEAFARER EMPLOYMENT AGREEMENT

1 . Parties to the Employment Agreement

This agreement is made between:

[Seafarer's full name].....
[Seafarer's Date of Birth]
[Seafarer's Place of Birth].....

And

[Shipowner's or shipowners representatives Name]
.....

of [Shipowner's or shipowners representatives address]
.....

2. Capacity in which seafarer is to be employed

The capacity in which you are employed is.....
[insert details of rank/position].

3. Period of employment

#You will be employed for a voyage from.....[insert place]
to.....[insert place]

OR

#you will be employed for a period of.....weeks/months# commencing on
.....[insert date] and ending on.....[insert date]#

OR

#you will be employed without time limit until such time as the agreement is terminated by either party in accordance with this agreement.

(# delete whichever is inapplicable)

4. Place of work

Your place of work will be on[ship name]#
or [any vessel owned, managed, bareboat chartered or Operated by]#:

[Shipowner's name]

.....

[Shipowner's address]

.....

(#delete whichever is inapplicable)

5. Wages and Account of Wages

Your wages on commencement will be..... [amount]..... [currency] per
[week/month/year#] payable by..... [method of payment] at [weekly/monthly#]
intervals on the[number] day of each [week/month#].

(#delete whichever is inapplicable)

[Overtime hours if applicable i.e. hours worked outside of normal working hours will be
paid at a rate of..... [rate] per hour]

You will be provided with a monthly account of all payments due to you and the amounts
paid, including wages, additional payments, permitted/statuary deductions and the rate of
exchange used where payment has been made in a currency which is different from that
agreed above.

6. Paid annual leave

You are entitled to take..... [insert number] days paid annual leave(a minimum of 30 days) in each year of employment. You will be paid your normal basic remuneration during such leave.

If your employment commenced or terminates part way through the year, your entitlement to paid annual leave during that year will be assessed on a pro rata basis.

7. Notice of termination of employment – Indefinite Agreement

The length of notice which you are obliged to give to terminate your employment is[insert period which shall be not less than seven days].

The length of notice which you are entitled to receive from the shipowner to terminate your employment is[insert period which shall be not less than seven days].

The above notice period shall not be less for the shipowner than for the seafarer.

OR

Notice and Termination of Employment - Defined Period Agreement

Your employment is for the length of the voyage of[name of ship] commencing on..... [date] from the port of..... [name of port] until[date] #/ [arrival in the port of..... [name of port] and the time.....[hrs] after arrival at which point it will terminate.

The length of notice which you are obliged to give to terminate your employment is[insert period which shall be not less than seven days].

The length of notice which you are entitled to receive from the shipowner to terminate your employment is[insert period which shall be not less than seven days].

The above notice period shall not be less for the shipowner than for the seafarer.

(# delete whichever is inapplicable)

8. Termination of Employment at shorter notice periods or without notice.

Your employment under this agreement may be terminated in the following circumstances without penalty to you:-

- (a) by mutual consent;
- (b) Your misconduct as prescribed in the Code of Conduct for the Merchant Navy;
- (c) By you when the shipowner can no longer meet his obligations under this agreement.
- (d) Your need to terminate the agreement for compassionate or other urgent reasons.
- (e) If in the opinion of the Master your continued employment would be likely to endanger the vessel or any person onboard;

On termination of this agreement all remuneration due to you will be paid without undue delay. This includes any accrued and untaken annual leave with pay.

9. Health and Social Security Benefits

If you are on a voyage at the time that you become sick or injured, you will be paid your normal basic remuneration as stated or calculated within this agreement until you have been repatriated in accordance with section 11 below. After you have been repatriated, you will be paid your normal basic remuneration up to a minimum of[16 or above] weeks or until your recovery, if earlier. This will be less the amount of any Statutory Sick Pay or social security sickness benefit to which you may be entitled.

You will be provided with any medical care on-board that should become necessary, free of charge, including access to necessary medicines, medical equipment and facilities for diagnosis and treatment and medical information and expertise. Where practicable and appropriate, you will be given leave to visit a qualified medical doctor or dentist in ports of call for the purpose of obtaining treatment.

In the event of sickness or incapacity, you will be provided with medical care, including medical treatment and the supply of necessary medicines and therapeutic devices and board and lodging away from home until your recovery or until your sickness or incapacity has been declared of a permanent character, subject to a minimum period of..... [16 or above] weeks. In addition the shipowner will meet the cost of the return of your property left on board to you or your next of kin.

In the event of your death occurring from the date on which you leave home to join the vessel to the date on which you are duly repatriated and in the event of long term disability due to an occupational injury, illness or hazard you will be entitled to compensation, the levels of which will be attached as an annex to this agreement.

In the event of your death the shipowner will also meet the cost of burial expenses or cremation and the return of your property left on board to your next of kin.

10. Repatriation

You will be entitled to repatriation at the shipowners expense when;

- This agreement expires;
- This agreement is terminated;
- In the event of illness or injury or other medical condition you require repatriation, (when medically fit to do so);
- The ship is proceeding to a Warlike Operations Area/war zone and you do not consent to go;
- In the event of termination or interruption of employment in accordance with an industrial award or collective agreement;
- In the event of shipwreck;
- In the event of the shipowner not being able to continue to fulfil their legal or contractual obligations as an employer of seafarers by reason of insolvency, sale of the ship or change in ships registration; and
- The maximum period of service on board following which you are entitled to repatriation will always be less than 12 months.

The entitlement to repatriation entails transport to the place where you signed this agreement, your country of residence, such other place as mutually agreed with the shipowner when you sign this agreement.

Your agreed repatriation destination is.....

The Isle of Man Regulations on repatriation shall be made available to you on board the ship.

11. Applicable Collective Bargaining Agreement(s)(delete if not applicable)

Your employment will also be subject to the Collective Bargaining Agreement(s) entered into on.....(insert date(s)) between the shipowner and(insert details of the other parties to the collective bargaining agreement(s))

12. Shipowners Complaint Procedure

If you have a complaint regarding your employment you should follow the shipowner's seafarer's complaint procedure. The procedure will be made available to you, if so requested, before you sign this agreement. The shipowner's seafarer's complaint procedure will also be provided to you when you join your ship.

13. Disciplinary Rules and Procedure

The disciplinary rules applicable to you shall meet the standards as set out in the Code of Conduct for the Merchant Navy or if your employment is covered by an applicable collective bargaining Agreement the disciplinary rules contained therein.

The relevant disciplinary rules which are applicable to your employment will be made available to you, if so requested, before you sign this agreement.

14. Shipowners Additional Provisions (if applicable)(delete if not applicable)

Your employment will also be subject to the following additional provisions except that where any such provision(s) conflicts with Isle of Man law such provision(s) shall not apply to your employment under this Agreement.

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I confirm that I have freely entered this agreement with a sufficient understanding of my rights and responsibilities, and I have been given an opportunity to review and seek advice on the agreement before signing.

Signed.....

(seafarer)

Date.....

I confirm that the seafarer has been informed of their rights and duties under this agreement prior to or in the process of the seafarer's engagement onto the vessel.

Signed.....

(Shipowner or Shipowner's Representative)

[Place where this Agreement is entered into].....

[Date where this Agreement is entered into].....