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THÔNG BÁO KỸ THUẬT TÀU BIỂN
TECHNICAL INFORMATION ON SEA-GOING SHIPS

Ngày 31 tháng 8 năm 2016

Số thông báo: 029TI/16TB

Nội dung: Sửa đổi, bổ sung năm 2014 của Công ước Lao động hàng hải (MLC, 2006) về an ninh tài chính sẽ có hiệu lực từ ngày 18/01/2017.

Kính gửi: Các chủ tàu/ công ty quản tàu biển
Các đơn vị đăng kiểm tàu biển

Sửa đổi, bổ sung năm 2014 của Công ước Lao động hàng hải (MLC, 2006) về an ninh tài chính sẽ có hiệu lực từ ngày 18/01/2017. Nội dung chính của sửa đổi, bổ sung này được tóm tắt như sau:

Tiêu chuẩn A2.5.2 - An ninh tài chính

Tiêu chuẩn này yêu cầu phải có hệ thống an ninh tài chính để trợ giúp thuyền viên trong trường hợp thuyền viên bị bỏ rơi. “Bỏ rơi” được định nghĩa là:

1. Khi chủ tàu không thanh toán chi phí hồi hương cho thuyền viên; hoặc
2. Khi chủ tàu để thuyền viên trong tình trạng không được chăm sóc hoặc hỗ trợ cần thiết; và
3. Khi chủ tàu, dưới những hình thức khác, đơn phương chấm dứt quan hệ với thuyền viên, bao gồm cả việc không trả lương cho thuyền viên trong khoảng thời gian ít nhất là 02 tháng.

Chủ tàu phải cung cấp cho tàu giấy chứng nhận hoặc bằng chứng được lập thành tài liệu khác về an ninh tài chính được cấp bởi nhà cung cấp an ninh tài chính. Phụ lục A2-1 mới liệt kê chi tiết các thông tin phải có trong giấy chứng nhận hoặc bằng chứng được lập thành tài liệu này.

Tiêu chuẩn A4.2.1 - Trách nhiệm của chủ tàu

Tiêu chuẩn này đưa ra các yêu cầu tối thiểu đối với hệ thống an ninh tài chính nhằm đảm bảo bồi thường trong các trường hợp yêu cầu bồi thường theo hợp đồng (xem định nghĩa trong Tiêu chuẩn A4.2.2 dưới đây). Trên tàu cũng yêu cầu phải có giấy chứng nhận hoặc bằng chứng được lập thành tài liệu khác về an ninh tài chính được cấp bởi nhà cung cấp an ninh tài chính.

Tiêu chuẩn A4.2.2 - Xử lý yêu cầu bồi thường theo hợp đồng

Tiêu chuẩn này định nghĩa “Yêu cầu bồi thường theo hợp đồng” là “Bất kỳ yêu cầu bồi thường nào liên quan đến tổn thất sinh mạng hoặc thương tật kéo dài đối với thuyền viên do bị tổn thương, ốm đau hoặc rủi ro nghề nghiệp được quy định trong pháp luật quốc gia, hợp đồng lao động thuyền viên hoặc thỏa ước lao động tập thể.”

Tiêu chuẩn này cũng yêu cầu phải có biện pháp hữu hiệu để xử lý và giải quyết các yêu cầu bồi thường theo hợp đồng.

Phụ lục A4-1 và B4-1

Phụ lục A4-1 liệt kê chi tiết bằng chứng về an ninh tài chính theo yêu cầu.

Phụ lục B4-1 đưa ra mẫu giấy biên nhận chi trả (Receipt and Release Form).

Trong trường hợp có nhiều hơn một nhà cung cấp an ninh tài chính cho việc bồi thường thuyền viên hoặc trách nhiệm của chủ tàu, trên tàu phải có bằng chứng được lập thành tài liệu được cấp bởi từng nhà cung cấp an ninh tài chính.

Thay đổi đối với Bản công bố phù hợp lao động hàng hải (DMLC)

An ninh tài chính cho việc bồi thường thuyền viên và an ninh tài chính đối với trách nhiệm của chủ tàu là hai nội dung được kiểm tra và phê chuẩn khi tàu được chứng nhận theo mục 1 của Tiêu chuẩn A5.1.3. Bản công bố phù hợp lao động hàng hải Phần I (DMLC Part I) được cơ quan có thẩm quyền của quốc gia tàu mang cờ quốc tịch cấp lại và Bản công bố phù hợp lao động hàng hải Phần II (DMLC Part II) phải được chủ tàu cập nhật phù hợp với sửa đổi, bổ sung năm 2014 của MLC, 2006.

Quốc gia tàu mang cờ quốc tịch quy định hình thức an ninh tài chính để đáp ứng yêu cầu của sửa đổi, bổ sung năm 2014 đối với MLC, 2006. Rất nhiều khả năng là các quốc gia sẽ chấp nhận dịch vụ do các tổ chức bảo hiểm P&I quốc tế cung cấp.

Chúng tôi xin gửi kèm theo Thông báo kỹ thuật tàu biển này Sửa đổi, bổ sung năm 2014 của MLC, 2006 để các Quý Đơn vị lưu ý thực hiện theo đúng quy định.

Thông báo kỹ thuật này được nêu trong mục: *Thông báo của VR/ Thông báo kỹ thuật TB* của trang tin điện tử của Cục Đăng kiểm Việt Nam: <http://www.vr.org.vn>.

Nếu Quý Đơn vị cần thêm thông tin về vấn đề nêu trên, đề nghị vui lòng liên hệ:

Cục Đăng kiểm Việt Nam

Trung tâm Chứng nhận hệ thống quản lý chất lượng và an toàn

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Xin gửi đến các Quý Đơn vị lời chào trân trọng./.

Nơi nhận:

- Như trên;
- Phòng QP, TB, CN, HTQT;
- Trung tâm VRQC, TH;
- Các chi cục đăng kiểm;
- Lưu TB./.

International Labour Conference Conférence internationale du Travail

AMENDMENTS OF 2014
TO THE MARITIME LABOUR CONVENTION, 2006,
APPROVED BY THE CONFERENCE
AT ITS ONE HUNDRED AND THIRD SESSION,
GENEVA, 11 JUNE 2014

AMENDEMENTS DE 2014 À LA CONVENTION
DU TRAVAIL MARITIME, 2006,
APPROUVÉS PAR LA CONFÉRENCE
À SA CENT TROISIÈME SESSION,
GENÈVE, 11 JUIN 2014

AUTHENTIC TEXT
TEXTE AUTHENTIQUE

**TEXT OF THE AMENDMENTS OF 2014
TO THE MARITIME LABOUR CONVENTION, 2006**

Amendments to the Code implementing Regulations 2.5 and 4.2 and appendices of the Maritime Labour Convention, 2006 (MLC, 2006), adopted by the Special Tripartite Committee on 11 April 2014

I. Amendments to the Code implementing Regulation 2.5 – Repatriation of the MLC, 2006 (and appendices)

A. Amendments relating to Standard A2.5

In the present heading, “Standard A2.5 – Repatriation”, replace “A2.5” by “A2.5.1”.

Following paragraph 9 of the present Standard A2.5, add the following heading and text:

Standard A2.5.2 – Financial security

1. In implementation of Regulation 2.5, paragraph 2, this Standard establishes requirements to ensure the provision of an expeditious and effective financial security system to assist seafarers in the event of their abandonment.

2. For the purposes of this Standard, a seafarer shall be deemed to have been abandoned where, in violation of the requirements of this Convention or the terms of the seafarers’ employment agreement, the shipowner:

- (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.

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 shipowners’ 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 on a ship flying the flag of the Member.

5. For the purposes of paragraph 2(b) of this Standard, necessary maintenance and support of seafarers shall include: adequate food, accommodation, drinking water supplies, essential fuel for survival on board the ship and necessary medical care.

6. Each Member shall require that ships that fly its flag, and to which paragraph 1 or 2 of Regulation 5.1.3 applies, carry on board a certificate or other documentary evidence of financial security issued by the financial security provider. A copy shall be posted in a conspicuous place on board where it is available to the seafarers. Where more than one financial security provider provides cover, the document provided by each provider shall be carried on board.

7. The certificate or other documentary evidence of financial security shall contain the information required in Appendix A2-I. It shall be in English or accompanied by an English translation.

8. Assistance provided by the financial security system shall be granted promptly upon request made by the seafarer or the seafarer's nominated representative and supported by the necessary justification of entitlement in accordance with paragraph 2 above.

9. Having regard to Regulations 2.2 and 2.5, assistance provided by the financial security system shall be sufficient to cover the following:

- (a) outstanding wages and other entitlements due from the shipowner 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 referred to in paragraph 10; and
- (c) the essential needs of the seafarer including such items as: adequate food, clothing where necessary, accommodation, drinking water supplies, essential fuel for survival on board the ship, necessary medical care and any other reasonable costs or charges from the act or omission constituting the abandonment until the seafarer's arrival at home.

10. The cost of repatriation shall cover travel by appropriate and expeditious means, normally by air, and include provision for food and accommodation of the seafarer 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.

11. The financial security shall not cease before the end of the period of validity of the financial security unless the financial security provider has given prior notification of at least 30 days to the competent authority of the flag State.

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 and in accordance with the applicable law, 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.

14. The provisions in 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 this 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 present Standard.

B. Amendments relating to Guideline B2.5

At the end of the present Guideline B2.5, add the following heading and text:

Guideline B2.5.3 – Financial security

1. In implementation of paragraph 8 of Standard A2.5.2, if time is needed to check the validity of certain aspects of the request of the seafarer or the seafarer's nominated representative, this should not prevent the seafarer from immediately receiving such part of the assistance requested as is recognized as justified.

C. Amendment to include a new appendix

Before Appendix A5-I, add the following appendix:

APPENDIX A2-I

Evidence of financial security under Regulation 2.5, paragraph 2

The certificate or other documentary evidence referred to in Standard A2.5.2, paragraph 7, shall include the following information:

- (a) name of the ship;
- (b) port of registry of the ship;
- (c) call sign of the ship;
- (d) IMO number of the ship;
- (e) name and address of the provider or providers of the financial security;
- (f) contact details of the persons or entity responsible for handling seafarers' requests for relief;
- (g) name of the shipowner;
- (h) period of validity of the financial security; and
- (i) an attestation from the financial security provider that the financial security meets the requirements of Standard A2.5.2.

D. Amendments relating to Appendices A5-I, A5-II and A5-III

At the end of Appendix A5-I, add the following item:

Financial security for repatriation

In Appendix A5-II, after item 14 under the heading Declaration of Maritime Labour Compliance – Part I, add the following item:

15. Financial security for repatriation (Regulation 2.5)

In Appendix A5-II, after item 14 under the heading Declaration of Maritime Labour Compliance – Part II, add the following item:

15. Financial security for repatriation (Regulation 2.5)

At the end of Appendix A5-III, add the following area:

Financial security for repatriation

**II. Amendments to the Code implementing Regulation 4.2
– Shipowners' liability of the MLC, 2006
(and appendices)**

A. Amendments relating to Standard A4.2

In the present heading, "Standard A4.2 – Shipowners' liability", replace "A4.2" by "A4.2.1".

Following paragraph 7 of the present Standard A4.2, add the following text:

8. National laws and regulations shall provide that the system of financial security to assure compensation as provided by paragraph 1(b) of this Standard for contractual claims, as defined in Standard A4.2.2, meet the following minimum requirements:

- (a) the contractual compensation, where set out in the seafarer's employment agreement and without prejudice to subparagraph (c) of this paragraph, shall be paid in full and without delay;

- (b) there shall be no pressure to accept a payment less than the contractual amount;
- (c) 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;
- (d) in accordance with Regulation 4.2, paragraph 2, the seafarer shall receive payment without prejudice to other legal rights, but such payment may be offset by the shipowner against any damages resulting from any other claim made by the seafarer against the shipowner and arising from the same incident; and
- (e) the claim for contractual compensation may be brought directly by the seafarer concerned, or their next of kin, or a representative of the seafarer or designated beneficiary.

9. National laws and regulations shall ensure that seafarers receive prior notification if a shipowner's financial security is to be cancelled or terminated.

10. National laws and regulations shall ensure that the competent authority of the flag State is notified by the provider of the financial security if a shipowner's financial security is cancelled or terminated.

11. Each Member shall require that ships that fly its flag carry on board a certificate or other documentary evidence of financial security issued by the financial security provider. A copy shall be posted in a conspicuous place on board where it is available to the seafarers. Where more than one financial security provider provides cover, the document provided by each provider shall be carried on board.

12. The financial security shall not cease before the end of the period of validity of the financial security unless the financial security provider has given prior notification of at least 30 days to the competent authority of the flag State.

13. The financial security shall provide for the payment of all contractual claims covered by it which arise during the period for which the document is valid.

14. The certificate or other documentary evidence of financial security shall contain the information required in Appendix A4-I. It shall be in English or accompanied by an English translation.

Add the following heading and text following the present Standard A4.2:

Standard A4.2.2 – Treatment of contractual claims

1. For the purposes of Standard A4.2.1, paragraph 8, and the present Standard, the term "contractual claim" means any claim which relates to death or long-term disability of seafarers due to an occupational injury, illness or hazard as set out in national law, the seafarers' employment agreement or collective agreement.

2. The system of financial security, as provided for in Standard A4.2.1, paragraph 1(b), may be in the form of a social security scheme or insurance or fund or other similar arrangements. Its form shall be determined by the Member after consultation with the shipowners' and seafarers' organizations concerned.

3. National laws and regulations shall ensure that effective arrangements are in place to receive, deal with and impartially settle contractual claims relating to compensation referred to in Standard A4.2.1, paragraph 8, through expeditious and fair procedures.

B. Amendments relating to Guideline B4.2

In the present heading, "Guideline B4.2 – Shipowners' liability", replace "B4.2" by "B4.2.1".

In paragraph 1 of the present Guideline B4.2, replace "Standard A4.2" by "Standard A4.2.1".

Following paragraph 3 of the present Guideline B4.2, add the following heading and text:

Guideline B4.2.2 – Treatment of contractual claims

1. National laws or regulations should provide that the parties to the payment of a contractual claim may use the Model Receipt and Release Form set out in Appendix B4-I.

C. Amendment to include new appendices

After Appendix A2-I, add the following appendix:

APPENDIX A4-I

Evidence of financial security under Regulation 4.2

The certificate or other documentary evidence of financial security required under Standard A4.2.1, paragraph 14, shall include the following information:

- (a) name of the ship;
- (b) port of registry of the ship;
- (c) call sign of the ship;
- (d) IMO number of the ship;
- (e) name and address of the provider or providers of the financial security;
- (f) contact details of the persons or entity responsible for handling seafarers' contractual claims;
- (g) name of the shipowner;
- (h) period of validity of the financial security; and
- (i) an attestation from the financial security provider that the financial security meets the requirements of Standard A4.2.1.

After Appendix A4-I, add the following appendix:

APPENDIX B4-I

Model Receipt and Release Form
referred to in Guideline B4.2.2

Ship (name, port of registry and IMO number):

Incident (date and place):

Seafarer/legal heir and/or dependant:

Shipowner:

I, [Seafarer] [Seafarer's legal heir and/or dependant]* hereby acknowledge receipt of the sum of [currency and amount] in satisfaction of the Shipowner's obligation to pay contractual compensation for personal injury and/or death under the terms and conditions of [my] [the Seafarer's]* employment and I hereby release the Shipowner from their obligations under the said terms and conditions.

The payment is made without admission of liability of any claims and is accepted without prejudice to [my] [the Seafarer's legal heir and/or dependant's]* right to pursue any claim at law in respect of negligence, tort, breach of statutory duty or any other legal redress available and arising out of the above incident.

Dated:

Seafarer/legal heir and/or dependant:

Signed:

For acknowledgement:

Shipowner/Shipowner representative:

Signed:

Financial security provider:

Signed:

* Delete as appropriate.

D. Amendments relating to Appendices A5-I, A5-II and A5-III

At the end of Appendix A5-I, add the following item:

Financial security relating to shipowners' liability

In Appendix A5-II, as the last item under the heading Declaration of Maritime Labour Compliance – Part I, add the following item:

16. Financial security relating to shipowners' liability (Regulation 4.2)

In Appendix A5-II, as the last item under the heading Declaration of Maritime Labour Compliance – Part II, add the following item:

16. Financial security relating to shipowners' liability (Regulation 4.2)

At the end of Appendix A5-III, add the following area:

Financial security relating to shipowners' liability

The foregoing is the authentic text of the Amendments duly approved by the General Conference of the International Labour Organization during its One hundred and third Session which was held at Geneva and declared closed the twelfth day of June 2014.

IN FAITH WHEREOF we have appended our signatures this twelfth day of June 2014.

The text of the Amendments as here presented is a true copy of the text authenticated by the signatures of the President of the International Labour Conference and of the Director-General of the International Labour Office.

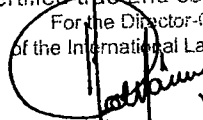
Le texte des amendements présenté ici est une copie exacte du texte authentiqué par les signatures du Président de la Conférence internationale du Travail et du Directeur général du Bureau international du Travail.

Certified true and complete copy,
Copie certifiée conforme et complète,

*For the Director-General of the International Labour Office:
Pour le Directeur général du Bureau international du Travail:*

Certified true and complete copy.

For the Director-General
of the International Labour Office:



Georges POLITAKIS
Deputy Legal Adviser
of the International Labour Office