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## **INFORMATION BULLETIN No. 161**

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### **MLC 2006 - Financial Security**

#### **Guidance and Instructions for Bahamas Recognised Organisations, Bahamas Approved Nautical Inspectors, Ship Owners, Managers, Masters, Seafarers, Recruitment and Placement Providers, and Financial Security Providers**

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#### **1. Purpose**

1.1. This Bulletin provides all parties with guidance on the Bahamas' implementation of the amendments of 2014 to the International Labour Organisation (ILO) Maritime Labour Convention, 2006 (MLC 2006) requirements; particularly on financial security required with regards the following:

- .1 Repatriation of abandoned seafarers (Standard A2.5.2); and
- .2 Shipowners' liability for contractual claims (Standard A4.2.1)

1.2 This Bulletin should be read in conjunction with BMA Information Bulletin nos 127, 139, 142, 145, 148 and 154.

1.3 For the purpose of this Bulletin and unless otherwise stated, the definition of "shipowner" shall be as defined in the MLC 2006, i.e.

*"Shipowner means the owner of the ship or another organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with this Convention, regardless of whether any other organization or persons fulfil certain of the duties or responsibilities on behalf of the shipowner."*

## **2. Application and interpretation**

- 2.1 The amended MLC 2006 requirements are applicable from 18<sup>th</sup> January 2017 and apply to:
- .1 all Bahamian ships to which the MLC 2006 is applicable
  - .2 all persons who are deemed to be seafarers as determined by the Bahamas Maritime Authority (BMA) and outlined in BMA Information Bulletin no. 127
- 2.2 Where there is any doubt as to whether MLC 2006 applies to a ship or a seafarer, all parties should note that The BMA issues a *Statement of Interpretation* for any categories that fall outside those specifically referenced in Section 2 of BMA Information Bulletin no. 127.
- 2.3 Noting that the purpose of the repatriation requirements is to ensure that seafarers are able to return home, the seafarer's "home" is determined to be the repatriation place with which the seafarer has a substantial connection. This may include:
- .1 The place at which the seafarer entered the agreement; or
  - .2 The place stipulated in the collective agreement; or
  - .3 The seafarer's country of residence; or
  - .4 Such other place as mutually agreed at the time of engagement. In such cases, the Company should evidence that the seafarer was afforded options for the repatriation place.
- 2.4 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 per the SEA or other contractual agreement.

## **3. Financial Security for Repatriation**

- 3.1 Shipowners shall maintain financial security to ensure that seafarers are duly repatriated home.
- 3.2 The shipowner shall ensure that the financial security system provides for the expenses relating to the repatriation of the seafarer. The expenses and the entitlements are to be met without costs to the seafarer.
- 3.3 Additional guidance on repatriation is provided in Section 8 of BMA Information Bulletin no. 142.

#### **4. Financial Security for Abandoned Seafarers**

- 4.1 In the event of abandonment, shipowners remain responsible for maintaining financial security to ensure that seafarers are repatriated in accordance with MLC 200 Standard A.2.5.2, as amended.
- 4.2 A seafarer shall be deemed to have been abandoned, if the shipowner violates the requirements of either MLC 2006 or the SEA; and:
- .1 fails to cover the cost of the seafarer's repatriation; or
  - .2 has left the seafarer without the necessary maintenance and support. This includes provisions of adequate food, accommodation, drinking water supplies, essential fuel for survival on board the ship and necessary medical care); or
  - .3 has otherwise unilaterally severed their ties with the seafarer including failure to pay contractual wages for a period of at least two months.
- 4.3 Where there is any doubt as to whether a seafarer is covered by any of the above conditions, the seafarer may contact the BMA for clarification.
- 4.4 The financial security shall provide direct access, sufficient coverage and expedited financial assistance to any abandoned seafarer.
- 4.5 Any amount payable by a financial security system can be offset against amounts received by the seafarer from other sources following their abandonment.
- 4.6 Assistance provided by the system shall cover the following:
- .1 outstanding wages and other entitlements due from the shipowner to the seafarer under the Seafarers Employment Agreement (SEA), or a Collective Bargaining Agreement (CBA) or the national law of The Bahamas limited to four months of any such outstanding wages and four months of any outstanding entitlements;
  - .2 all expenses reasonably incurred by the seafarer, including the cost of repatriation. The cost of repatriation shall cover travel by appropriate and expeditious means, normally by air, and include provision for food and accommodation 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 arising from the abandonment.
  - .3 the essential needs of the seafarer including adequate food, clothing, accommodation, drinking water supplies, fuel for survival on board, medical care and other reasonable costs due to the abandonment until the seafarers arrival at home.

- 4.7 Where the seafarer nominates a person to represent them in the event of abandonment, such nomination should be in writing.
- 4.8 The financial security provider must notify the BMA at least thirty (30) days in advance if the financial security is to cease before the end of the period of validity.

**5. Financial security relating to ship-owners liability for contractual claims**

- 5.1 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.
- 5.2 The system of financial security shall provide for the payment of all contractual claims covered by it which arise during its validity period. It shall meet the following minimum requirements:
  - .1 the contractual compensation shall be paid in full and without delay;
  - .2 there shall be no pressure to accept a payment less than the contractual amount;
  - .3 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 ;
  - .4 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
  - .5 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.
- 5.3 The shipowner must notify the concerned seafarers in advance if a financial security is to be cancelled or terminated. This notice period should be at least 30 days.
- 5.4 The financial security provider must notify the BMA at least 30 days in advance of the financial security ceasing to be valid.

5.5 Where payment is made in relation to contractual claims, the parties to the payment should use the Model Receipt and Release Form as the basis for the agreement.

5.6 The shipowner shall implement a procedure to ensure that any contractual claims relating to compensation are addressed expeditiously in an impartial and fair manner.

## **6. Financial security certificate or other documentary evidence**

6.1 When applying for a DMLC Part I, the shipowner shall provide the BMA, with documentary evidence of the financial security in respect of MLC 2006 Standard 2.5.2 and Standard 4.2.1, as amended.

6.2 The BMA will accept the financial security system being in the form of insurance or other similar financial security arrangements.

6.3.1 The BMA may have to review the general rules, terms and conditions of coverage provided by a proposed financial security system in order to determine if the MLC 2006 Standard A.2.5.2 and Standard A.4.2.1 requirements are satisfied.

6.3.2 Where such a review is required, the BMA will take into consideration the ILO and International Maritime Organisation (IMO Resolutions A. 930(22) and A. 931(22) - *Guidelines on financial security provision*) and the IMO Legal Committee's *Guidelines for accepting documentation from Insurance Companies, Financial security provider and P&I Clubs*.

6.4 If the financial security provider and type of financial security is accepted, certificate(s) or other documentary evidence of financial security should be posted in a conspicuous place on board where it is available to the seafarers. If more than one provider provides financial security, the document provided by each provider shall be carried on board.

6.5.1 The certificate(s) or other documentary evidence(s) shall include the following information:

- Name of the ship;
- Port of registry of the ship;
- Call sign of the ship;
- IMO number of the ship;
- Name and address of the provider or providers of the financial security;
- Contact details of the persons or entity responsible for handling seafarers requests for relief and/or seafarer contractual claim ;
- Name of the shipowner on whose behalf financial security has been provided;
- Period of validity of the financial security;
- An attestation from the financial security provider that the financial security meets the requirements of MLC 2006 standard A 2.5.2 or A 4.2.1, as applicable

6.5.2 The BMA will accept the evidence of financial security in an electronic format provided that all seafarers have access to the electronic system on which the information is maintained.

6.6 Where there is a change of financial security provider or financial security system after the Maritime Labour Certificate has been issued, the shipowner shall notify the BMA and the body that issued the Maritime Labour Certificate. The notification to the BMA shall be made by submitting a completed R109.

6.7 Subsequent to issuing the DMLC Part I and on an annual basis thereafter, the shipowner shall provide the BMA with documentary evidence of valid financial security.

6.8 The BMA will review the submitted financial security information for MLC 2006 compliance and issue a *Statement of Verification* if the financial security complies with the MLC 2006 provisions. The issued Statement should be maintained with the DMLC and Maritime Labour Certificate.

## **7. Revision History**

Rev.0 (13 Oct 2016) – First issue

**Appendix I:**

**Model Receipt and Release Form:**

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

Incident (Date and place): .....

Seafarer/legal heir and/or dependent: .....

Shipowner: .....

I, (Seafarer) [Seafarer's legal heir and/or dependent]\* 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 dependent's]\* right to pursue any claim in 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 dependent: .....

Signed: .....

For acknowledgement:

Shipowner/Shipowner representative:

Signed: .....

Financial security provider:

Signed: .....