

No. 9 - IMO/ILO - Resolutions and Guidelines

December 2001

Dear Sirs

IMO / ILO - Resolutions and Guidelines

Members are advised that at the 83rd Session of the IMO Legal Committee it was agreed that two separate Resolutions and associated Guidelines relating to:

- The Provision of Financial Security in the case of Abandonment of Seafarers; and
- Shipowners' Responsibilities in respect of Contractual Claims for Personal Injury to or Death of Seafarers

should be recommended for adoption by the IMO Assembly and approval by the Governing Body of the ILO. Both organisations meet in November of this year when it is almost certain that the Resolutions and Guidelines will be adopted and approved.

The drive to consider these issues in an international context and to formulate Resolutions and Guidelines has been led by the International Transport Workers Federation.

The Resolutions and Guidelines were drafted by a Joint IMO / ILO Expert Working Group which was established for the purpose of:

- assessing and evaluating the extent of the potential problems relating to liability and compensation in connection with seafarers' claims for death, personal injury and abandonment
- formulating suitable recommendations.

The main elements of the two sets of Guidelines are as follows.

1. Draft Resolution and Guidelines on Provision of Financial Security in case of Abandonment of Seafarers.

- Shipowners should arrange financial security for seafarers in the event of abandonment
- and carry a certificate on board vessels attesting to the existence of such security.
- Seafarers should have a direct right of action against the security.
- The security should extend to:
 - costs of repatriation
 - maintenance of and expenses incurred by seafarers during abandonment
 - payment of outstanding remuneration
- The minimum information to be included in the certificate.

It was made plain in discussions relating to this issue that Group Clubs do not provide cover for crew maintenance, repatriation expenses or other risks arising out of abandonment by reason of insolvency. However, Clubs are investigating what alternative sources of financial security might be available to enable shipowners to comply with the Guidelines, if this proves necessary.

2. Draft Resolution and Guidelines on Shipowners' Responsibilities in respect of Contractual Claims for Personal Injury to or Death of Seafarers.

- Shipowners should arrange effective insurance or other financial security in respect of their obligation to pay contractual compensation for death to and personal injury suffered by seafarers and carry a certificate on board vessels attesting to the existence of that security.
- Valid claims should be paid promptly and in full.
- The insurance should provide for:
 - prior notification to seafarers if the insurance is to be cancelled and immediate notification if it is not to be renewed
 - payment of all claims during the period for which the certificate is valid.
- The minimum information to be included in the certificate.

At meetings of various working groups in the past two years representatives of the Group Clubs and the ISF have argued that:

- A dispassionate assessment of seafarers' claims for death and personal injury, based on statistics provided by Group Clubs, clearly indicated that such claims do not give rise to significant problems.
- Group Clubs handle seafarers' claims fairly, efficiently and expeditiously.
- IMO Resolution A.898 (21) and the accompanying Guidelines which had recently been adopted by the IMO (which provides that vessels should carry evidence of liability insurance) extended to seafarers' claims.
- There was therefore no need to develop additional Resolutions or Guidelines in relation to this issue.

These arguments were not accepted.

Representatives of Group Clubs stated both at these meetings and in the paper submitted to the Legal Committee that Clubs could not attest to certificates that stated that the insurance would provide for:

- Notification to seafarers of cancellation or non-renewal of insurance.
 - It was pointed out that it was not practically possible for Clubs to notify individual seafarers as they do not have crew lists or details of individuals employed by their Members, which are in any event changing on a day to day basis. It was suggested that it would effectively be impossible for any insurer to comply with such an obligation.
- Payment of all claims arising during the period for which the certificate is valid.
- It was pointed out that since payment of claims is always subject to Club Rules and Members' terms of entry, Clubs could not comply with this requirement.

It was made clear that if these conditions were retained, Group Clubs would not be in a position to issue appropriate certificates.

The two Resolutions and Guidelines will take effect from 1st January 2002. Members are however reminded that IMO Resolutions and Guidelines are not mandatory and therefore do not have legal effect until they are implemented in domestic law. States would normally consult interested parties before implementing Resolutions and Guidelines and if contact is made with Clubs at that stage it will be explained that it is not possible to comply with the terms of the Guidelines as currently drafted

Accordingly there are no steps for Members to take unless the Resolutions and Guidelines are implemented by individual States or States commence the consultation process. Members are requested to keep the Club advised of any steps taken by States in relation to the Resolutions and Guidelines.

Yours faithfully

**The West of England Ship Owners
Insurance Services Limited**
(As Managers)

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