



Guest Column

Mrs. Sandhya Pillai
- Shipping Professional & Marine Lawyer



Ensuring Seafarer's Rights - Certificate of Financial Security

Seafaring as a profession has always been more vulnerable in that the seafarers employed on board vessels may be subject to non-payment of wages which could arise due to various factors such as insolvency of owners, disputes resulting in owners abandoning vessels and several such. With the primary intention of protecting the basic right of the seafarer for food, accommodation, medical care, right to repatriation and wages, the certificate of financial security was introduced.

The Maritime Labour Conventions security requirements mandated the necessity for shipowners to have in place two certificates confirming financial security. These were to be compulsorily carried and displayed on board. The said certificates were for:

- (a) Under Regulation 2.5, Standard A2.5.2 it covered shipowners' liability towards repatriation of the crew, essential supplies of food, medical care, accommodation and up to four months of outstanding wages and entitlements as per the contractual obligations.
- (b) Under Regulation 4.2, Standard A4.2.1 paragraph 1(b) the certificate covered contractual payments for death or disability due to an occupational injury, illness or hazard set out in the seafarers' employment agreement or the collective bargaining agreement.

National laws are mandated to incorporate the system of financial security to assure compensation. The minimum requirements to be kept in mind and ensure compliance are that the seafarers be paid the salary without delay, in full and without the seafarer being subjected to any pressure tactics to accept a lesser amount than that specified under the contract. However, the shipowner is well within his rights to offset such payment against any damages resulting from any other claim made by the seafarer against the shipowner, arising from the same incident. If a shipowner's financial security is cancelled or terminated it is obligatory that the Flag State as well as the seafarers receive prior notice of such cancellation.

This is one of the ways vide which the MLC has attempted to protect seafarers. However, then does it mean that the seafarers can totally rely upon the certificates of financial security in case of default by the shipowner? To answer this question one needs to look at the MLC Extension Clause 2016 against which the P&I Club issues MLC certificates. The MLC extension clause provides that the P&I Club will discharge and pay claims made by the seafarers pursuant to the

certificates. However, the Clause imposes upon the shipowner to reimburse the Club if the claims paid by the Club to seafarers fall outside the scope of cover as provided under the Club Rules. Further, one needs to separate out the two categories of unpaid wages of seafarers, one being the case wherein the seafarer is serving on board under the contract but remains unpaid, the second one being wherein the seafarer is abandoned by the shipowner without payment of wages. In the first case, the seafarer is not entitled to claim against financial security for unpaid wages whilst they continue to fulfil their contract. In the second scenario, the seafarer is entitled for four months of unpaid wages. Although seafarers' entitlement is directly linked a seafarers' entitlement to be repatriated or to repatriation actually taking place. The seafarer even if repatriated by a third party or having made the arrangement himself is entitled to unpaid wages as long as he has been abandoned whilst serving on board. In certain circumstances the financial security may be invoked even where the seafarer has not been repatriated. Further, the certificate of financial security may be ineffective where it is not valid and notice of termination has been conveyed by the P&I Club giving at least 30 days' notice.

What recourse do seafarers have under the certificates? Seafarers themselves or in the alternative through their representatives may contact the P&I Club providing all information and documentation in support of their claim whilst at all times co-operating with the repatriation arrangements. The Club will acknowledge and investigate the claim vide its local Club correspondents. It has been seen that in some cases although the shipowner is already under liquidation, the Clubs have gone out of their way to ensure repatriation and payment of wages up to four months, that is, the extent of their liability.

The standard format of the certificate of financial security as followed by the IG Clubs mentions the regulation under which the certificate has been issued. The other information on the certificate has the ship details, member/shipowner details, period of validity of the certificate, cancellation policy as also a reference to the conditions and limitations under the maritime labour extension clause. Insurance exclusions may relate to war, nuclear, bio-chem, cyber risks and sanctions.