



## Guest Column

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# Seafarers' Employment Agreement & Collective Bargaining Agreement- Relevance And Importance

A seafarers Employment Agreement or an "SEA" as it is typically called, establishes the contractual relationship between the seafarer and the owner/employer. Both a seafarer and a ship owner or their representative must sign a Seafarers Employment Agreement (SEA). The Maritime Labour Convention 2006, states that the SEA is a clearly written legally enforceable agreement consistent with standards within the code.

Every seafarer has the right to sign an employment agreement specifying the terms and conditions of employment. The SEA is of vital importance to the seafarer and therefore a basic understanding of what one should look for in the agreement is important. In the case of a future dispute between the seafarer and the employer, the SEA can support the rights arising from the agreement in accordance with national and international maritime employment law. It should be remembered that while another person supplying a seafarer to a ship may have concluded an employment contract with the seafarer, the Ship owner or the co-assured in the P&I certificate of entry wherever relevant, will have the overall and ultimate responsibility for the seafarer that may include wages, repatriation, compensation or such other. As per Part VII (107) of the Merchant Shipping Act, 1958, a copy of the agreement is to be issued to the seafarer and he shall be informed of his rights and duties under the contract, prior to placement. Although it may be that, different national legislation deal with the SEA in various ways, the SEA is to include a minimum set of standards regarding the form and content and should comply with the applicable international law and the legislation of the country under which the contract is concluded.

The SEA cannot be spoken of in isolation without delving upon the Maritime Labour Convention the "MLC". The MLC encompasses and creates a standard for seafarers rights to decent conditions of work and provides a comprehensive set of global guidelines based on the International Labour conventions taking into account present requirements as reflected in the changing scenario of modern shipping. The MLC considers it desirable to have in place a Collective Bargaining Agreement "CBA" that may be broadly defined as a document that legally binds the employer to the employee, in that an agreement is executed between the shipowner and the relevant union acting as a representative of the seafarers those that may be covered under such agreement. The CBA may form a part or the whole of the SEA. The CBA covers the terms and conditions of work and regulates the

relations between the employer, the seafarers and their unions whilst adhering to the rules enshrined in the MLC. The Convention also states that nothing shall prevent the Member from having national laws or regulations or a procedure for the competent authority to authorize or register Collective bargaining agreement permitting exceptions to the limits set out. Such exceptions shall, as far as possible, follow the standards set out.

If both the SEA and the CBA define and incorporate the regulations with regard to the working conditions and social security benefits for a seafarer then one may well question the requirement for a CBA. Whilst the SEA defines the contractual relationship between the Employer or the shipowner and the seafarer, the CBA on the other hand goes a step beyond. The CBA endeavours to improve labour relations by providing a platform to encourage an institutionalised as well as an agreed manner of managing conflict or grievance procedure. It allows seafarers representatives to legally approach employers in a unified fashion and provides a level playing field. Having a CBA in place provides a vital positive tool for negotiations during meetings between the shipowner and the seafarers representatives. The SEA addresses all contractual obligations between the shipowner and the seafarer at an individual level whilst the CBA addresses it on a macro level in not only assist enforce obligations but also in negotiating periodical revision in wages and any changes required in working conditions or social security benefits. Another most important factor that may be missed is the certainty established with a CBA. It is seen that at several times the SEA may be somewhat vague when it comes to say, for example, death compensation. A CBA forming part of the SEA puts an end to this ambiguity and ensures that the seafarers next of kin is rightfully compensated.

This does not mean that an SEA by itself is totally inadequate. A well drafted SEA addressing all the MLC guidelines and the National regulations may serve the purpose. However, it is frequently noticed that this may not always be the case. In this scheme, a CBA fills in the gap and may be the answer to several unresolved issues between the shipowner and the seafarer. To conclude, it is to be understood that for proper implementation of the SEA and the SEA, it is to be ensured that the conditions agreed upon by the parties are clearly and unambiguously understood and that the parties are fully aware of their own responsibilities and obligations.