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Regulations on financial security related to the entitlements of abandoned employees on Norwegian ships, amendments to the Regulations on guarantees for social security entitlements for employees on Norwegian ships, and amendments to the NIS Guarantee Regulations as a result of amendments to the MLC (2014)

Introduction

The Norwegian Maritime Authority (NMA) has laid down:

- Regulations on financial security related to the entitlements of abandoned employees on Norwegian ships;
- amendments to the Regulations on guarantees for social security entitlements for employees on Norwegian ships¹;
- amendments to the NIS Guarantee Regulations².

These new and amended provisions implement amendments to the Maritime Labour Convention (ILO Convention No. 186) of 23 February 2006 (MLC, 2006). The amendments to the Convention entered into force on 18 January 2017, and the regulatory amendments enter into force now. The amendments involve new requirements for financial security for abandoned employees, cf. new Standard A.2.5.2, and for financial security to assure compensation in the event of death or long-term disability, cf. new Standard A.4.2.1.8.

About the consultations

The proposed new provisions have been circulated for review twice. The first consultation took place in the period from 11 November 2016 to 2 January 2017 and included proposed Regulations on financial security related to the entitlements of abandoned employees on Norwegian ships as well as proposals for amendments to the Regulations on guarantees for social security entitlements for employees on Norwegian ships. Several of the consultative bodies pointed to an overlap between the MLC guarantee and matters covered by the NIS guarantee. The consultative bodies were otherwise positive to the proposals. The NMA has also received feedback from parts of the industry later on, that after the obligation to keep MLC guarantees on board came into force, the NIS guarantee is no longer necessary. Additionally, the entry into force of the

¹ Regulations of 18 February 2005 No. 145

² Regulations of 18 February 2005 No. 146 on guarantee of remuneration for work and of repatriation for employees on ships registered in the Norwegian International Ship Register

regulations had to be put on hold pending a necessary amendment to section 4-7 of the Ship Labour Act.

As a result of the comments from the first consultation, proposed amendments to the NIS Guarantee Regulations and an updated proposal for new Regulations on financial security related to the entitlements of abandoned employees on Norwegian ships were circulated for review by the NMA in the period from 31 October 2017 to 15 December 2017. The consultative bodies supported the proposals, and only a few minor comments were made. An overview of the comments from the consultative bodies and the NMA's comments thereon is included in the attached matrix (in Norwegian only).

Details on the Regulations on financial security related to the entitlements of abandoned employees on Norwegian ships

All Norwegian passenger and cargo ships engaged on foreign voyages shall now carry on board a document attesting that the company provides financial security in respect of liability for payment of wages to the employees, costs of repatriation, etc. in the event of abandonment of the employees. In the regulations issued under the Ship Safety and Security Act and the Ship Labour Act, the term "cargo ship" is normally not defined, and the users of the legislation know that a "cargo ship" means a vessel which is certified as a cargo ship (or a possible subcategory) and which is not a passenger ship or a fishing vessel. The Regulations apply to both ships registered in the Norwegian Ordinary Ship Register (NOR) and ships registered in the Norwegian International Ship Register (NIS).

The Regulations entail that the company is required to ensure that financial security is in place in the form of insurance or other similar financial security covering assistance for abandoned employees. An employee shall be deemed to have been abandoned when the company has initiated bankruptcy proceedings, or when the company in violation of Norwegian law or the employee's employment agreement fails to cover the cost of the employee's repatriation, has abandoned the employee without the necessary maintenance and support, or has otherwise unilaterally and unwarranted severed the ties with the employee, including failure to pay contractual wages for a period of at least two months.

The Regulations specify the payment cut-off point and which expenses are payable to employees, that the employees may bring claims directly against the financial security provider, and that documentation of financial security shall be readily accessible on board.

The coverage requirements for the financial security are stated in section 2 third paragraph of the Regulations. The financial security shall cover four months of outstanding wages and other possible entitlements as a result of the employment. Furthermore, it shall cover all essential expenses reasonably incurred by the employee as a result of being abandoned, including the cost of repatriation. Finally, the financial security shall cover the essential needs of the employee until the employee has arrived at home, including food and drinking water, essential clothing, fuel for survival on board the ship, necessary medical care and other reasonable costs.

Financial security according to these Regulations is currently for the most part covered by the ships' P&I Insurance, where the P&I clubs have, as far as we understand, made MLC guarantees a mandatory part of the insurance.

Details on the amendments to the Regulations on guarantees for social security entitlements for employees on Norwegian ships

The Regulations of 18 February 2005 No. 145 on guarantees for social security entitlements for employees on Norwegian ships apply to any employee who is not covered by Norwegian social security schemes. The amendments to the Convention have been implemented by amending these

Regulations to specify that the employees may bring claims for compensation directly against the guarantor (section 4 new second paragraph). Furthermore, provisions have been included regarding payment of compensation under the guarantee (section 4 new second paragraph), termination of the guarantee (new section 8) as well as further provisions on documentation of such a guarantee, including that this documentation must be available to the employees on board the ship (section 7 new second and third paragraphs).

The amendments to the NIS Guarantee Regulations

Passenger ships and cargo ships have been excluded from the scope of the Regulations and instead, it is specified that the Regulations apply to mobile offshore units registered in the Norwegian International Ship Register.

Administrative and financial implications

The amendment is a simplification of the legislation and repeals of a requirement considered a Norwegian special requirement, while protecting the rights of the employees are protected. The simplification implies cost savings for the companies and also for the NMA, which will no longer require a NIS guarantee when such ships are registered in the NIS. Whether MLC guarantees are in place is being checked during both MLC inspections, port State controls and other inspections. The employees' rights that were protected by the NIS guarantee are being continued under the MLC guarantee.

The existing guarantees will be deleted automatically and, for ships having a bank guarantee, returned to the guarantor. For ships with a guarantee from the Norwegian Shipowner's Association or the Norwegian Coastal Shipowners' Association, the NMA will send a letter informing that the guarantee has ceased to be valid.

Returning the guarantee document and informing the companies will generate additional work for the NMA for a period after the entry into force of the Regulations. At present, this applies to about 590 ships. For the companies, the proposal nevertheless implies a long-term advantage, as it will no longer be required to furnish two guarantees with the same coverage. The seafarers' rights are protected as before. As per today, there is one mobile offshore unit registered in the NIS which has also furnished a guarantee under these Regulations. This will not be affected by the regulatory amendments.

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Attachments:

Regulations on financial security related to the entitlements of abandoned employees on Norwegian ships

Regulation concerning amendments to the Regulations on guarantees for social security entitlements for employees on Norwegian ships

Regulation concerning amendments to the Regulations on guarantee of remuneration of work and of repatriation for employees on mobile offshore units registered in the Norwegian International Ship Register