

LEGAL COMMITTEE  
105th session  
Agenda item 4

LEG 105/4/3  
6 February 2018  
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**PROVISION OF FINANCIAL SECURITY IN CASE OF ABANDONMENT OF SEAFARERS,  
AND SHIPOWNERS' RESPONSIBILITIES IN RESPECT OF CONTRACTUAL CLAIMS  
FOR PERSONAL INJURY TO, OR DEATH OF SEAFARERS, IN LIGHT OF THE  
PROGRESS OF AMENDMENTS TO THE ILO MARITIME LABOUR CONVENTION, 2006**

**Implementation of the financial security requirement under MLC, 2006, as amended,  
for the period 18 January 2017-17 January 2018**

**Submitted by the International Transport Workers' Federation (ITF)**

**SUMMARY**

*Executive summary:* This document focuses on the implementation of the requirement for financial security in respect of seafarer repatriation costs and liabilities as required under Regulation 2.5.2, Standard A2.5.2 of MLC, 2006, as amended, during the first year following its entry into force

*Strategic direction, if applicable* Other work

*Output:* OW 45

*Action to be taken:* Paragraph 14

*Related documents:* LEG 105/4/2

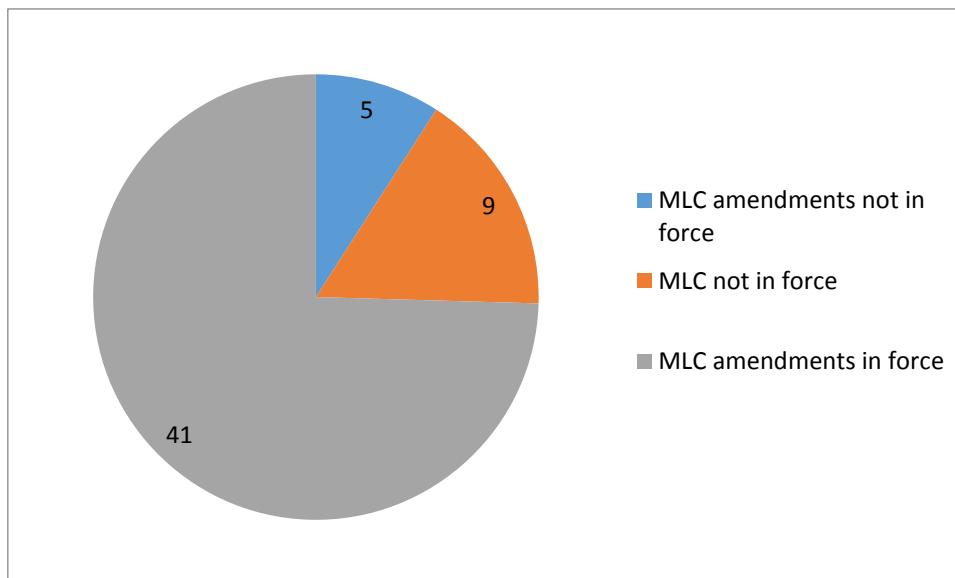
**Introduction**

1 During its 104th session, the Legal Committee committed to consider reports on the issue 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, in light of the progress of the amendments to MLC, 2006.

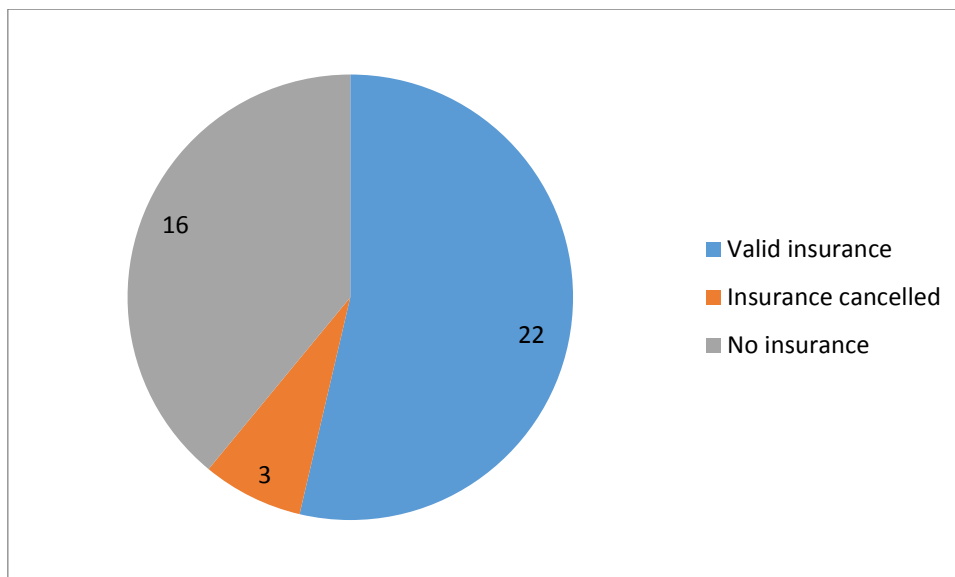
2 As the organization responsible for reporting more than 85% of cases to the IMO/ILO joint database of abandonment of seafarers, ITF offers this analysis of the experience of the first year since the financial security requirements have been in force.

**Maritime Labour Convention, 2006**

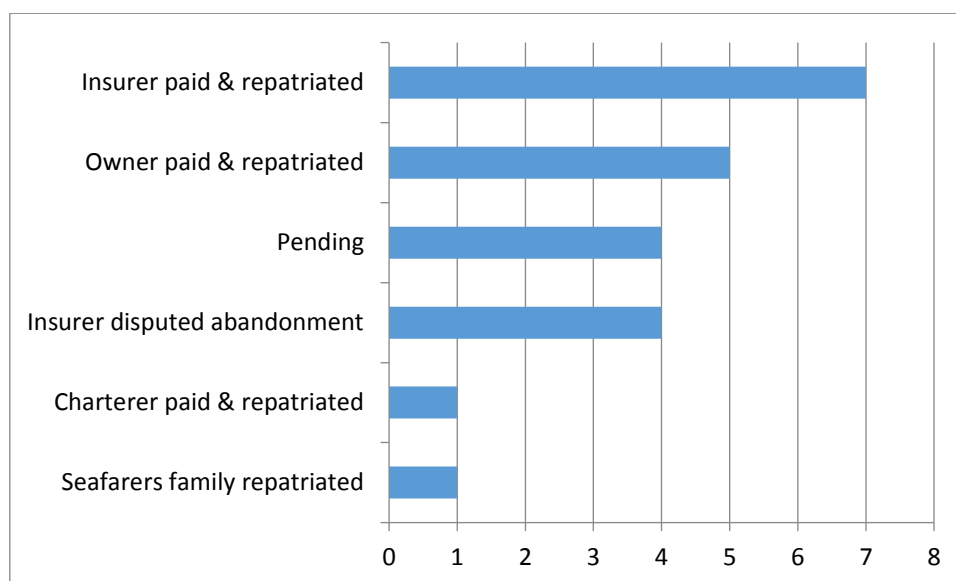
3 Of the 55 abandonment cases reported by ITF during the period, 75% (41) were flying flags of vessels that have ratified MLC, 2006 and have accepted the entry into force of the 2014 amendments. Five were flying flags that have ratified MLC, 2006 but have not yet indicated acceptance of the amendments, and nine were flying flags that have not ratified MLC, 2006.



4 Of the 41 cases where insurance was required under MLC, 2006 as amended, 22 had valid cover.



### Cases with valid insurance



5 In seven of these cases, the insurer paid the four months outstanding wages and repatriation as per the requirements of regulation 2.5.2. Four cases are still pending. In five cases, the seafarers were eventually repatriated and/or paid by owners. In a number of cases, the insurer either disputed the definition of abandonment or their responsibility for the seafarers, taking the position that the owners were responsible.

### Insurer paid and crew were repatriated

Vessel	Flag State	IMO No.	Insurer
<b>MGI One</b>	Liberia	9538309	London Club
<b>Varada Maresias</b>	Singapore	9468657	Gard
<b>Pomor trader</b>	Saint Kitts and Nevis	9005326	Raets Marine
<b>Geo Star</b>	Togo	7833107	Rosgosstrakh*
<b>Asian Warrior</b>	Saint Kitts and Nevis	6714847	Shipowners' Mutual P&I Association (Luxembourg)
<b>Lord</b>	Panama	9290244	West of England P&I
<b>Theoxenia</b>	Panama	9142980	West of England P&I

\* Although Rosgosstrakh did eventually pay for repatriation and four months wages, it took eight months for the insurer to accept liability and pay the seafarers.

6 An additional four cases did have abandonment insurance although flying flags that have not yet accepted the 2014 amendments or ratified MLC, 2006. In two of these cases (**PFS Supply** and **PFS Brave**), the insurer (British Marine P&I) has paid outstanding wages to the seafarers. In one case, the vessel was sold and the crew were paid and repatriated by the new owner (**Liberty Prudencia**), and one case (**Sanad**) is ongoing without positive intervention of the insurer (**Raets Marine**).

**Insurer contacted but did not pay or repatriate crew**

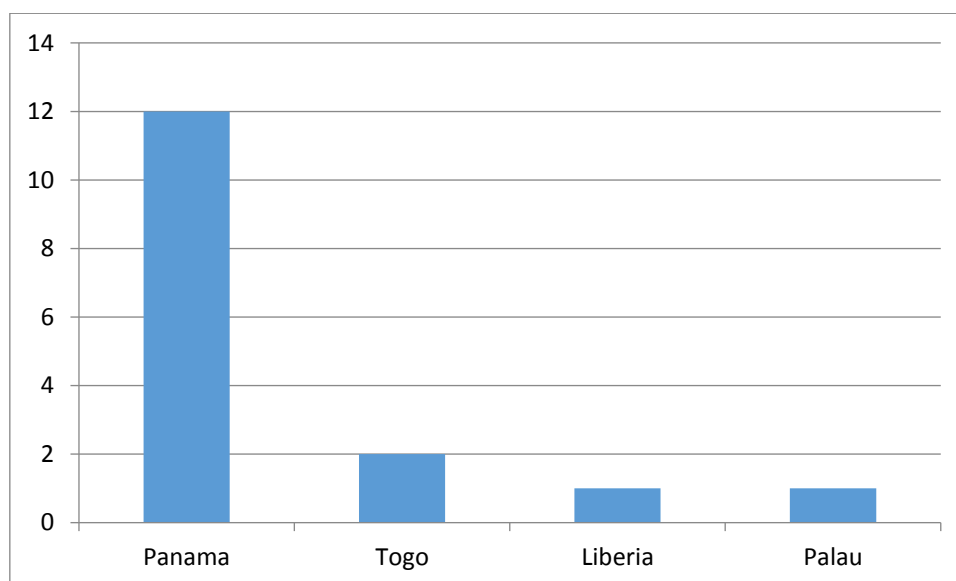
Vessel	Flag State	IMO No.	Insurer
<b>Star of Sea</b>	Panama	9120736	British Marine P&I
<b>Mamola Defender</b>	Malta	9714159	Gard
<b>Mamola Champion</b>	Marshall Islands	9511492	Gard
<b>Mamola Serenity</b>	Marshall Islands	9562647	Gard
<b>Reggae</b>	Panama	8500408	Lodestar
<b>Seccadi</b>	Panama	9123295	Lodestar
<b>Tahsin</b>	Panama	9055187	Lodestar
<b>Palanga Spirit</b>	Saint Vincent and the Grenadines	9133733	Swedish Club
<b>Union Demeter</b>	Saint Vincent and the Grenadines	8412558	West of England P&I

7 The three **Mamola** cases involved a dispute between the company and the crewing agent resulting in seafarers being stranded without pay. The insurer was involved in the case but did not pay outstanding wages or repatriation. The flag State considered the owner to be a victim in the dispute. Finally, the owner did pay some wages and repatriation but full wages have yet to be recovered.

8 The **Reggae**, **Tahsin** and **Seccadi** which were all abandoned in the United Kingdom, belonged to one owner who had ceased paying and supplying the crew. The insurer, Lodestar, declined to accept responsibility. Eventually, the company paid and repatriated the crew following the intervention of the Maritime and Coastguard Agency, UK Immigration and UK agencies investigating cases of modern slavery.

**Cases without valid insurance**

9 In three cases, the insurance had been cancelled, and in 16 cases, there was either no insurance or no available information regarding insurance.

**Vessels without abandonment insurance by flag**

10 Seventy-five per cent (12) of cases concerned vessels flying the Panama flag. All of these vessels were located in ports where MLC, 2006 has not yet been ratified.

## **Conclusions**

11 This is the first year of a new requirement and there have clearly been problems in fully implementing the regulation. It would appear that there are insufficient mechanisms in place to ensure that vessels cannot trade without valid abandonment insurance. Whilst the definition of abandonment is quite clear, the circumstances surrounding abandonment and the relationships between flag States, shipowners, their insurers and other entities with a commercial interest in the vessel, are extremely varied.

12 In a number of cases, P&I Clubs have responded promptly to applications and discharged their obligations as intended. In some cases, the intervention of the insurer has resulted in the shipowner finding the resources to pay and repatriate seafarers. In other cases, insurers have appeared unaware of their responsibilities, in spite of having issued certificates referencing regulation 2.5.2, and have either disputed the agreed definition of abandonment or deferred to the shipowner.

13 Seafarers should not be expected to endure the impoverishment and indignity of repeated non-payment of wages whilst stranded in a foreign port. In all cases of abandonment, the protection of seafarers should come first. Whilst there are some positive examples of the insurance facilitating a resolution to cases of abandonment, overall the lengths of time involved are wholly unacceptable.

## **Action requested of the Committee**

14 The Legal Committee is invited to take note of the information provided and to use its influence to encourage Member States to ratify and effectively implement the relevant regulation.

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