

21 June 2010

TO ALL MEMBERS

Dear Sirs

The Migrant Workers and Overseas Filipinos Act of 1995, as Amended by Republic Act No. 10022

Background

On 8 March 2010 amendments to the Filipino Migrant Workers Act of 1995 (Republic Act No. 8042) (MWA) passed into law. The amendments took effect fifteen days after publication in at least two newspapers of general circulation, which occurred in April. However, for the effective implementation of the amended MWA the relevant government departments and agencies are required within sixty days after its publication, to formulate the necessary rules and regulations for the law's implementation. The International Group (IG) understands that the administration intends to finalise the necessary implementing rules and regulations (IRR) before the term of the current administration ends on 30 June 2010.

The IG has been closely monitoring the development of the amendments to the MWA in the Philippines and has highlighted areas of concern to key parties involved in the negotiations since the IG does not qualify as an interested stakeholder and has not therefore directly participated in the consultation process. The Joint Manning Group (JMG), composed of manning industry associations, represented the sea based sector in the negotiations with the Philippine government on the amendments to the MWA and was informed of the IG's concerns throughout the process.

The major areas of concern to the IG arising out of the amendments related to provisions that it would be unlawful to impose a compulsory and exclusive arrangement whereby seafarers are required to undergo health examinations from specifically designated clinics; or undergo training, seminars, instruction or schooling of any kind, only from specifically designated institutions, entities or persons; and most importantly requirements for minimum compulsory insurance cover to be obtained for seafarers for benefits additional to those available under the provisions of the POEA standard employment contract (SEC) and collective bargaining agreements (CBAs).

Implications for Members

The final text of the amendments to the MWA does reflect the concerns highlighted by the IG in respect of the proposed provisions on health examinations and training institutions, and provides that seafarers whose employers pay for such services are exempted from the "compulsory and exclusive arrangement" provisions of the Act.

However, the IG's concerns in relation to the insurance provisions have not been addressed in the final text of the amendments to the MWA, not least since there are inconsistencies with both the POEA SEC and general CBA terms, and in addition the misconception that the IG Clubs provide P&I cover direct to seafarers. The obligation to procure insurance cover for each migrant worker, or to certify that such cover is in place, that meets the requirements of the amended MWA, rests solely with the manning and recruitment agencies.

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The amendments to the MWA mandate, amongst other things, that any claim arising from accidental death, natural death or disablement shall be paid to the seafarer or their heirs without dispute, and on an absolute liability basis i.e. without the necessity of the seafarer or their heirs having to prove fault or negligence of any kind. Hence, regardless of whether the death, illness or injury is work-related or not, the seafarer or their heirs would be entitled to USD15,000, USD10,000 and USD7,500 in cases of accidental death, natural death or permanent disablement respectively.

The amended MWA mandates that the manning and recruitment agents must either provide the necessary insurance cover, or certify that such cover is in place, direct to seafarers. The necessary cover can either be provided by private insurance companies registered with the Philippine Insurance Commission or, in the case of seafarers who are insured under policies issued by foreign insurance companies, certificates or other adequate proof of cover provided by manning and recruitment agencies, shall be accepted provided the minimum requirements of sub-paragraphs (a) to (i) of the MWA are met.

This will require insurance cover to be obtained by the manning and recruitment agencies for the benefit of seafarers being in addition to the benefits already provided to seafarers under the POEA and/or CBA since there are a number of requirements contained in the amendments to the MWA that cannot be met by Club cover. Club cover cannot therefore act as the default position to meet the insurance obligations imposed on the recruitment and manning agencies and Clubs cannot therefore provide certificates or other evidence of cover attesting that the minimum insurance requirements under the MWA are met.

Club cover is indemnity cover. As such it does not provide insurance direct to an individual seafarer, which is required by the amended MWA. It indemnifies an assured shipowner member in relation to the member's contractual obligations (subject to approval and the term/conditions of entry) and legal liabilities to a seafarer on board or in relation to an entered ship, resulting from the member's negligent act or omission. The additional costs that will be imposed on the manning and recruitment agents to obtain the required insurance cover are likely to be passed on to their foreign principals, which will impose a financial burden on employers/shipowners members despite the very generous no fault contractual obligations already contained within the POEA SEC and often more generous CBAs.

These concerns were highlighted by the IG to the JMG during the negotiations leading to the amended MWA. Disappointingly these concerns have not been addressed, due in part to the fact that the Philippine government has focussed on migrant workers employed in the land based sector and its unwillingness to differentiate between land based and sea based workers (the latter constitute a relatively small sector in comparison) in the amendments to the MWA.

The IG is continuing to monitor the development of the implementing rules and regulations (IRR) and will provide a further update to members in due course.

Yours faithfully
A BILBROUGH & CO LTD
(MANAGERS)

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