

23 September 2010

TO ALL MEMBERS

Dear Sirs

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

We refer Members to the previous Circular (5:409) dated 21 June 2010 on the amendments to the Filipino Migrant Workers Act of 1995 (the Amended Migrant Workers Act – AMWA) that became law on 8 March 2010.

The International Group (IG) understands that the relevant government agencies have now finalised the necessary Omnibus Implementing Rules and Regulations (IRR), and that additional Insurance Commission “Guidelines” (ICG), dealing specifically with the compulsory insurance provisions of the Act, have now been published. However, the ICG will not apply to the deployment of seafarers until the Philippine Overseas Employment Administration (POEA) issues a Governing Board Resolution (GBR) and Memorandum Circular (MC). The GBR and MC are not expected to be in force until the third or fourth week of October.

Implications for Members

We refer Members to the concerns of the IG as outlined in the previous circular, in relation to the compulsory insurance provisions within the final text of the AMWA. In particular, Club cover does not extend to all of the “minimum” compulsory insurance requirements of the AMWA, nor does it provide cover directly to seafarers.

As an example, and notwithstanding the issue of policy deductibles, the AMWA creates an obligation to arrange insurance cover in respect of “money claims” brought by an employee, and the scope of such a claim could involve disputed or unpaid wages not covered by P&I. Similarly, the obligation to arrange insurance cover does not contain any exception in relation to liabilities specifically excluded from P&I, such as those arising from acts of terrorism or war risks. It is also unlikely that P&I cover could indemnify a Member’s obligations under the Act to provide “subsistence allowance benefit” of “at least” USD100 per month, for a maximum of 6 months.

The IG has continued to highlight these areas of concern to key parties involved in the development of the Omnibus IRR and ICG. It has ensured that the Joint Manning Group (JMG) has been kept fully informed of the IG’s concerns throughout the process. The IG has in particular engaged in extensive liaison with the relevant international and domestic shipowner industry associations.

Despite the strenuous efforts of those representing the sea-based sector, it has not proved possible to secure amendments to the ICG in particular, to accord with the current practice within the sea-based sector.

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The AMWA mandates that the manning and recruitment agencies must either provide the necessary insurance cover, or certify that such cover has been arranged on behalf of the seafarer, in order that the POEA can issue an Overseas Employment Certificate (OEC), which is necessary to allow a seafarer to be deployed overseas. Cover can either be evidenced in the form of a policy issued 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 can be provided by manning and recruitment agencies, provided the minimum compulsory insurance requirements of the AMWA are met.

Notwithstanding all of the above, the IG understands that the POEA has indicated that the "Certificate of Cover" (CoC), contained in the Annex to this Circular, if provided by the Manning Agent on the letterhead of a POEA Accredited Principal, will be considered as suitable evidence that appropriate insurance cover is in place. The POEA and the JMG are aware that the attached CoC has not been approved by the IG and that no assumptions should be drawn from the wording of the CoC in relation to the scope of Club cover.

Members, in close liaison with their Manning Agents, will now need to consider the insurance required to achieve compliance with the AMWA. The IG will continue to work closely with the relevant international and domestic shipowner industry associations in lobbying for the necessary changes to the law to overcome any unnecessary additional deployment costs arising from compliance with the AMWA. It is hoped the changes being sought will better reflect how the mature system within the sea-based employment sector has successfully operated for many years.

The IG understands that the on-going review to amend the POEA Standard Employment Contract (SEC) by the Tripartite Working Group has also neared completion and that the revised POEA SEC will be issued in the very near future. The IG is continuing to monitor developments and a further update to Members on the implications of the revised POEA SEC will be issued in due course.

Yours faithfully
A BILBROUGH & CO LTD
(MANAGERS)

All Clubs in the International Group are issuing similar circulars.

POEA ACCREDITED PRINCIPAL'S LETTERHEAD

Certificate of Cover

This is to certify that the vessel described hereunder:

Name of Vessel	:
Port of Registry	:
IMO No.	:
Name of Owner/Manager	:
Gross Tonnage	:
Class	:

is covered with indemnity insurance by [Name of the P&I Club] with respect to the liabilities related to crew employment contract and/or the vessel's Collective Bargaining Agreement (CBA) and/or applicable Philippine Laws, subject to the Club rules, terms and conditions.

Signed: Vessel Manager on behalf of the Owners