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ИНФОРМАЦИОННЫЙ БЮЛЛЕТЕНЬ

Тема: КТМС – поправки 2014

СУБ на ВВТ

Транспортная
безопасность

Энергетическая
эффективность

Оценка
РИСКОВ

МКУБ

ISPS

SOLAS

MARPOL

MLC

STCW

Vetting
TMSA

ISO-9001
ISO-14001
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Уважаемые коллеги!

Компания ИБИКОН предлагает Вашему вниманию информацию по Сводной конвенции МОТ 2006 года о труде в морском судоходстве (КТМС).

11 апреля 2014 года на заседании в штаб-квартире МОТ в Женеве (Швейцария) специальный трехсторонний комитет МОТ принял поправки, которые будут внесены в Сводную конвенцию МОТ 2006 года о труде в морском судоходстве (КТМС).

Внесение этих поправок – начало борьбы против судовладельцев, бросающих экипажи на произвол судьбы. По данным МОТ, в марте 2014 года насчитывалось 159 торговых судов, оставленных судовладельцами. Моряки на таких судах могут на длительное время остаться без заработной платы и без возможности вернуться домой, если судоходная компания не может обеспечить работу судна. Такая ситуация привела к необходимости конкретизировать некоторые вопросы, касающиеся материальной ответственности судовладельцев перед членами экипажей. Поскольку судовладельцы считают возможным оставлять суда в порту и бросать экипажи на произвол судьбы, Международная организация труда (МОТ) начала борьбу против такого положения вещей.

Изменения должны обеспечить гарантированное выполнение обязательств судовладельцев по репатриации и выплате компенсаций пострадавшим от несчастных случаев морякам. Суда под национальным флагом должны будут иметь на борту свидетельства, подтверждающее финансовое обеспечение указанных обязательств. Это либо страховка, либо государственное социальное страхование, либо банковская гарантия. В Российской Федерации (РФ) страхование работников от несчастных случаев и профессиональных заболеваний обеспечивает Фонд социального страхования РФ (ФСС РФ), в который работодатели отчисляют соответствующие взносы. Государства, ратифицировавшие КТМС, будут требовать выполнения этого условия.

Копии свидетельств должны быть вывешены на судне на видном месте, где каждый моряк мог бы ознакомиться с ними. Кроме того, эти документы должны быть на английском языке или с приложением перевода на английский.



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Помощь, обеспечиваемая системой финансовых гарантий репатриации, должна быть достаточной, чтобы покрыть не только проезд моряка домой, но при необходимости проживание, питание, медицинскую помощь, одежду и любые другие разумные расходы на моряков, оставленных без средств к существованию. Более того, в случае задолженности заработной платы, она должна быть выплачена за счет финансовых гарантий, но за период не более 4 месяцев.

В изменениях также предусмотрено, что моряки должны получать уведомление в случае, если финансовое обеспечение судовладельца должно быть аннулировано или не подлежит продлению.

В соответствии с этими поправками, моряк признается оставленным без средств к существованию, если судовладелец не в состоянии нести расходы на репатриацию или оставляет экипаж без необходимой поддержки в порту, или в одностороннем порядке разрывает трудовые отношения с моряком.

Разработка этих изменений в КТМС началась практически с момента принятия Конвенции в 2006 году в рамках рабочей группы ИМО-MOT, в которой были представлены все три стороны социального партнерства.

Вступление в силу принятых поправок даст больше возможностей для защиты моряков и их семей от действий недобросовестных судовладельцев, позволит свести к минимуму случаи оставления моряков без средств к существованию в иностранном порту или в результате несчастного случая.

Поправки КТМС приведены в приложении к настоящему информационному бюллетеню:

СУБ на ВВТ

Транспортная
безопасность

Энергетическая
эффективность

Оценка
РИСКОВ

МКУБ

ISPS

SOLAS

MARPOL

MLC

STCW

Vetting
TMSA

ISO-9001

ISO-14001

OHSAS-18001



MLC 2006:
HOW WILL IT
AFFECT YOU?

New legislation is coming to improve the lives of seafarers for the better. Here are some of the key points you should be aware of:

RECRUITMENT:
Crewing agencies can't charge you for finding you work.

AGE: You can't work on a ship if you are less than 16.

HEALTH: You can't work on a ship if you aren't physically fit.

FOOD: You have access to good quality catering.

HOURS OF WORK: You have the right to rest at regular intervals (you can't work for more than 14 hours without a rest).

ACCOMODATION: You are entitled to safe living facilities while onboard.

MANNING LEVELS: You have the right to work on a safe ship.

EMPLOYMENT AGREEMENT: You are entitled to fair contracts.

MEDICAL CARE: You have access to medical and dental care.

QUALIFICATIONS: You can't work on a ship if you don't have the required training.



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**TEXT OF THE AMENDMENTS OF 2014
TO THE MARITIME LABOUR CONVENTION, 2006**

Amendments to the Code implementing Regulations 2.5 and 4.2 and appendices of the Maritime Labour Convention, 2006 (MLC, 2006), adopted by the Special Tripartite Committee on 11 April 2014

**I. Amendments to the Code implementing Regulation 2.5
– Repatriation of the MLC, 2006 (and appendices)**

A. Amendments relating to Standard A2.5

In the present heading, “Standard A2.5 – Repatriation”, replace “A2.5” by “A2.5.1”.

Following paragraph 9 of the present Standard A2.5, add the following heading and text:

Standard A2.5.2 – Financial security

1. In implementation of Regulation 2.5, paragraph 2, this Standard establishes requirements to ensure the provision of an expeditious and effective financial security system to assist seafarers in the event of their abandonment.

2. For the purposes of this Standard, a seafarer shall be deemed to have been abandoned where, in violation of the requirements of this Convention or the terms of the seafarers’ employment agreement, the shipowner:

- (a) fails to cover the cost of the seafarer’s repatriation; or
- (b) has left the seafarer without the necessary maintenance and support; or
- (c) has otherwise unilaterally severed their ties with the seafarer including failure to pay contractual wages for a period of at least two months.

3. Each Member shall ensure that a financial security system meeting the requirements of this Standard is in place for ships flying its flag. The financial security system may be in the form of a social security scheme or insurance or a national fund or other similar arrangements. Its form shall be determined by the Member after consultation with the shipowners’ and seafarers’ organizations concerned.

4. The financial security system shall provide direct access, sufficient coverage and expedited financial assistance, in accordance with this Standard, to any abandoned seafarer on a ship flying the flag of the Member.

5. For the purposes of paragraph 2(b) of this Standard, necessary maintenance and support of seafarers shall include: adequate food, accommodation, drinking water supplies, essential fuel for survival on board the ship and necessary medical care.

6. Each Member shall require that ships that fly its flag, and to which paragraph 1 or 2 of Regulation 5.1.3 applies, carry on board a certificate or other documentary evidence of financial security issued by the financial security provider. A copy shall be posted in a conspicuous place on board where it is available to the seafarers. Where more than one financial security provider provides cover, the document provided by each provider shall be carried on board.

7. The certificate or other documentary evidence of financial security shall contain the information required in Appendix A2-I. It shall be in English or accompanied by an English translation.

СУБ на ВВТ

Транспортная
безопасность

Энергетическая
эффективность

Оценка
РИСКОВ

МКУБ

ISPS

SOLAS

MARPOL

MLC

STCW

Vetting
TMSA

ISO-9001

ISO-14001

OHSAS-18001

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8. Assistance provided by the financial security system shall be granted promptly upon request made by the seafarer or the seafarer's nominated representative and supported by the necessary justification of entitlement in accordance with paragraph 2 above.

9. Having regard to Regulations 2.2 and 2.5, assistance provided by the financial security system shall be sufficient to cover the following:

- (a) outstanding wages and other entitlements due from the shipowner to the seafarer under their employment agreement, the relevant collective bargaining agreement or the national law of the flag State, limited to four months of any such outstanding wages and four months of any such outstanding entitlements;
- (b) all expenses reasonably incurred by the seafarer, including the cost of repatriation referred to in paragraph 10; and
- (c) the essential needs of the seafarer including such items as: adequate food, clothing where necessary, accommodation, drinking water supplies, essential fuel for survival on board the ship, necessary medical care and any other reasonable costs or charges from the act or omission constituting the abandonment until the seafarer's arrival at home.

10. The cost of repatriation shall cover travel by appropriate and expeditious means, normally by air, and include provision for food and accommodation of the seafarer from the time of leaving the ship until arrival at the seafarer's home, necessary medical care, passage and transport of personal effects and any other reasonable costs or charges arising from the abandonment.

11. The financial security shall not cease before the end of the period of validity of the financial security unless the financial security provider has given prior notification of at least 30 days to the competent authority of the flag State.

12. If the provider of insurance or other financial security has made any payment to any seafarer in accordance with this Standard, such provider shall, up to the amount it has paid and in accordance with the applicable law, acquire by subrogation, assignment or otherwise, the rights which the seafarer would have enjoyed.

13. Nothing in this Standard shall prejudice any right of recourse of the insurer or provider of financial security against third parties.

14. The provisions in this Standard are not intended to be exclusive or to prejudice any other rights, claims or remedies that may also be available to compensate seafarers who are abandoned. National laws and regulations may provide that any amounts payable under this Standard can be offset against amounts received from other sources arising from any rights, claims or remedies that may be the subject of compensation under the present Standard.

B. Amendments relating to Guideline B2.5

At the end of the present Guideline B2.5, add the following heading and text:

Guideline B2.5.3 – Financial security

1. In implementation of paragraph 8 of Standard A2.5.2, if time is needed to check the validity of certain aspects of the request of the seafarer or the seafarer's nominated representative, this should not prevent the seafarer from immediately receiving such part of the assistance requested as is recognized as justified.

СУБ на ВВТ

Транспортная
безопасность

Энергетическая
эффективность

Оценка
РИСКОВ

МКУБ

ISPS

SOLAS

MARPOL

MLC

STCW

Vetting
TMSA

ISO-9001

ISO-14001

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C. Amendment to include a new appendix

Before Appendix A5-I, add the following appendix:

APPENDIX A2-I

Evidence of financial security under Regulation 2.5, paragraph 2

The certificate or other documentary evidence referred to in Standard A2.5.2, paragraph 7, shall include the following information:

- (a) name of the ship;
- (b) port of registry of the ship;
- (c) call sign of the ship;
- (d) IMO number of the ship;
- (e) name and address of the provider or providers of the financial security;
- (f) contact details of the persons or entity responsible for handling seafarers' requests for relief;
- (g) name of the shipowner;
- (h) period of validity of the financial security; and
- (i) an attestation from the financial security provider that the financial security meets the requirements of Standard A2.5.2.

D. Amendments relating to Appendices A5-I, A5-II and A5-III

At the end of Appendix A5-I, add the following item:

Financial security for repatriation

In Appendix A5-II, after item 14 under the heading Declaration of Maritime Labour Compliance – Part I, add the following item:

15. Financial security for repatriation (Regulation 2.5)

In Appendix A5-II, after item 14 under the heading Declaration of Maritime Labour Compliance – Part II, add the following item:

15. Financial security for repatriation (Regulation 2.5)

At the end of Appendix A5-III, add the following area:

Financial security for repatriation

II. Amendments to the Code implementing Regulation 4.2 – Shipowners' liability of the MLC, 2006 (and appendices)

A. Amendments relating to Standard A4.2

In the present heading, "Standard A4.2 – Shipowners' liability", replace "A4.2" by "A4.2.1".

Following paragraph 7 of the present Standard A4.2, add the following text:

8. National laws and regulations shall provide that the system of financial security to assure compensation as provided by paragraph 1(b) of this Standard for contractual claims, as defined in Standard A4.2.2, meet the following minimum requirements:

- (a) the contractual compensation, where set out in the seafarer's employment agreement and without prejudice to subparagraph (c) of this paragraph, shall be paid in full and without delay;

СУБ на ВВТ

Транспортная
безопасность

Энергетическая
эффективность

Оценка
РИСКОВ

МКУБ

ISPS

SOLAS

MARPOL

MLC

STCW

Vetting
TMSA

ISO-9001

ISO-14001

OHSAS-18001



СУБ на ВВТ

Транспортная
безопасность

Энергетическая
эффективность

Оценка
РИСКОВ

МКУБ

ISPS

SOLAS

MARPOL

MLC

STCW

Vetting
TMSA

ISO-9001

ISO-14001

OHSAS-18001

- (b) there shall be no pressure to accept a payment less than the contractual amount;
- (c) where the nature of the long-term disability of a seafarer makes it difficult to assess the full compensation to which the seafarer may be entitled, an interim payment or payments shall be made to the seafarer so as to avoid undue hardship;
- (d) in accordance with Regulation 4.2, paragraph 2, the seafarer shall receive payment without prejudice to other legal rights, but such payment may be offset by the shipowner against any damages resulting from any other claim made by the seafarer against the shipowner and arising from the same incident; and
- (e) the claim for contractual compensation may be brought directly by the seafarer concerned, or their next of kin, or a representative of the seafarer or designated beneficiary.

9. National laws and regulations shall ensure that seafarers receive prior notification if a shipowner's financial security is to be cancelled or terminated.

10. National laws and regulations shall ensure that the competent authority of the flag State is notified by the provider of the financial security if a shipowner's financial security is cancelled or terminated.

11. Each Member shall require that ships that fly its flag carry on board a certificate or other documentary evidence of financial security issued by the financial security provider. A copy shall be posted in a conspicuous place on board where it is available to the seafarers. Where more than one financial security provider provides cover, the document provided by each provider shall be carried on board.

12. The financial security shall not cease before the end of the period of validity of the financial security unless the financial security provider has given prior notification of at least 30 days to the competent authority of the flag State.

13. The financial security shall provide for the payment of all contractual claims covered by it which arise during the period for which the document is valid.

14. The certificate or other documentary evidence of financial security shall contain the information required in Appendix A4-I. It shall be in English or accompanied by an English translation.

Add the following heading and text following the present Standard A4.2:

Standard A4.2.2 – Treatment of contractual claims

1. For the purposes of Standard A4.2.1, paragraph 8, and the present Standard, the term "contractual claim" means any claim which relates to death or long-term disability of seafarers due to an occupational injury, illness or hazard as set out in national law, the seafarers' employment agreement or collective agreement.

2. The system of financial security, as provided for in Standard A4.2.1, paragraph 1(b), may be in the form of a social security scheme or insurance or fund or other similar arrangements. Its form shall be determined by the Member after consultation with the shipowners' and seafarers' organizations concerned.

3. National laws and regulations shall ensure that effective arrangements are in place to receive, deal with and impartially settle contractual claims relating to compensation referred to in Standard A4.2.1, paragraph 8, through expeditious and fair procedures.

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B. Amendments relating to Guideline B4.2

In the present heading, “Guideline B4.2 – Shipowners’ liability”, replace “B4.2” by “B4.2.1”.

In paragraph 1 of the present Guideline B4.2, replace “Standard A4.2” by “Standard A4.2.1”.

Following paragraph 3 of the present Guideline B4.2, add the following heading and text:

Guideline B4.2.2 – Treatment of contractual claims

1. National laws or regulations should provide that the parties to the payment of a contractual claim may use the Model Receipt and Release Form set out in Appendix B4-I.

C. Amendment to include new appendices

After Appendix A2-I, add the following appendix:

APPENDIX A4-I

Evidence of financial security under Regulation 4.2

The certificate or other documentary evidence of financial security required under Standard A4.2.1, paragraph 14, shall include the following information:

- (a) name of the ship;
- (b) port of registry of the ship;
- (c) call sign of the ship;
- (d) IMO number of the ship;
- (e) name and address of the provider or providers of the financial security;
- (f) contact details of the persons or entity responsible for handling seafarers’ contractual claims;
- (g) name of the shipowner;
- (h) period of validity of the financial security; and
- (i) an attestation from the financial security provider that the financial security meets the requirements of Standard A4.2.1.

After Appendix A4-I, add the following appendix:

APPENDIX B4-I

Model Receipt and Release Form referred to in Guideline B4.2.2

Ship (name, port of registry and IMO number):

Incident (date and place):

Seafarer/legal heir and/or dependant:

Shipowner:

I, [Seafarer] [Seafarer’s legal heir and/or dependant]* hereby acknowledge receipt of the sum of [currency and amount] in satisfaction of the Shipowner’s obligation to pay contractual compensation for personal injury and/or death under the terms and conditions of [my] [the Seafarer’s]* employment and I hereby release the Shipowner from their obligations under the said terms and conditions.

СУБ на ВВТ

Транспортная
безопасность

Энергетическая
эффективность

Оценка
РИСКОВ

МКУБ

ISPS

SOLAS

MARPOL

MLC

STCW

Vetting
TMSA

ISO-9001

ISO-14001

OHSAS-18001

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СУБ на ВВТ

Транспортная
безопасность

Энергетическая
эффективность

Оценка
РИСКОВ

МКУБ

ISPS

SOLAS

MARPOL

MLC

STCW

Vetting
TMSA

ISO-9001

ISO-14001

OHSAS-18001

The payment is made without admission of liability of any claims and is accepted without prejudice to [my] [the Seafarer's legal heir and/or dependant's]* right to pursue any claim at law in respect of negligence, tort, breach of statutory duty or any other legal redress available and arising out of the above incident.

Dated:

Seafarer/legal heir and/or dependant:

Signed:

For acknowledgement:

Shipowner/Shipowner representative:

Signed:

Financial security provider:

Signed:

* Delete as appropriate.

D. Amendments relating to Appendices A5-I, A5-II and A5-III

At the end of Appendix A5-I, add the following item:

Financial security relating to shipowners' liability

In Appendix A5-II, as the last item under the heading Declaration of Maritime Labour Compliance – Part I, add the following item:

16. Financial security relating to shipowners' liability (Regulation 4.2)

In Appendix A5-II, as the last item under the heading Declaration of Maritime Labour Compliance – Part II, add the following item:

16. Financial security relating to shipowners' liability (Regulation 4.2)

At the end of Appendix A5-III, add the following area:

Financial security relating to shipowners' liability

