

**Order on insurance or other security for covering
shipowner's liability towards the seafarers and the master
in case of breach of the employment relationship**

Pursuant to section 49(xxvi), section 70, section 73a and section 74a of the act on seafarers' conditions of employment, etc. (*lov om søfarendes ansættelsesforhold m.v.*), cf. consolidated act no. 73 of 17 January 2014, as amended by act no. 400 of 2 May 2016 and section 20b of the act on safety at sea (*lov om sikkerhed til søs*), cf. consolidated act no. 72 of 17 January 2014, the following is hereby laid down:

Section 1. This order shall apply to persons employed on board Danish ships, cf. section 1(1) and section 49 of the act on seafarers' conditions of employment, etc. (*lov om søfarendes ansættelsesforhold m.v.*), irrespective of the ship's type and trade areas, except for fishing vessels and recreational craft.

Section 2. The shipowner shall take out insurance or provide other similar financial security covering claims by employees left behind against the shipowner and the employer if they are not the same in cases where the shipowner or the employer – contrary to their obligations according to the employment contract, including the collective agreement that may apply, or the act on seafarers' conditions of employment, etc. (*lov om søfarendes ansættelsesforhold m.v.*) and regulations issued pursuant to the act:

- 1) does not cover the employee's repatriation costs,
- 2) has left the employee without what is necessary for subsistence or economic support, or
- 3) in any other manner unilaterally and unjustifiably has interrupted the connection to the employee, including if the person concerned has not received wages for at least two months.

Section 3. The insurance or the other similar financial security shall, cf. however subsections 2 and 3, cover:

- 1) the basic needs of the employee until he or she has arrived home, including food, securing of heat, electricity, communication, hygiene and the necessary medical treatment, etc., repatriation costs as well as any other reasonable expenses deriving from the employee having been left behind, and
- 2) four months' due wages and other remuneration, etc. that the person concerned is entitled to receive as a consequence of the employment.

Subsection 2. The insurance or the other similar financial security shall not cover the claims mentioned in subsection 1(ii) to the extent that the employee is entitled to have these paid by the Wages Guarantee Fund (*Lønmodtagernes Garantifond*).

Subsection 3. The insurance or the other similar financial security shall not cover claims that the person concerned may have for refunds of expenses for medical treatment, dental treatment, medicaments, etc. which are, pursuant to the special health insurance scheme for seafarers, cf. order no. 1331 of 5 December 2006 on the special health insurance scheme for seafarers and others, covered by public refunding and may be made by the employee against the Danish Maritime Authority. The financial security shall not cover claims for payment of sickness benefits or maternity/paternity benefits, cf. order no. 728 of 29 June 2012 on sickness benefits for seafarers and order no. 1110 of 26 November 2012 on maternity/paternity benefits for seafarers, to the extent that these claims are covered by public refunding and may be made by the employee against the Danish Maritime Authority.

Subsection 4. As regards ships primarily engaged on voyages between two ports in another EU/EEA country so that the employees are considered to normally do work in the country concerned or where the employment otherwise means that the seafarers are covered by an EU guarantee scheme¹ in another EU/EEA member State, the financial security may, furthermore, exempt the claims mentioned in subsection 1(ii) to the extent that they are covered by the relevant guarantee scheme. This shall, however, apply only to State schemes if the shipowner has acquired documentation of the extent of the scheme and the conditions, etc. for paying compensation and if the information hereon is available to the seafarers on board the ship. As regards schemes established privately in other member States for implementation of the directive, the requirements stipulated in sections 4-6 shall apply.

Section 4. For the purposes of this order, approved insurance or other similar financial security shall mean:

- 1) a P&I (Protection & Indemnity) insurance on normal conditions, which is offered by a member of the International Group of P&I Clubs for which a certificate has been issued in accordance with section 6,
- 2) an insurance for which a certificate has been issued in accordance with section 6 from an insurance company established in the European Union or in an EEA member State and which is entitled to offer the relevant insurance in accordance with the EU provisions on insurance business and the legislation in the country concerned,
- 3) another insurance or guarantee approved by the Danish Maritime Authority for which a certificate has been issued in accordance with section 6, which is offered by an insurance company or a bank entitled to offer the relevant service in accordance with the legislation in force in the country where the company is domiciled.

Subsection 2. As regards ships owned by authorities, schools, institutions or the like covered by a State, municipal or regional self-insurance scheme, a declaration issued by the relevant State authority or by the one responsible for the economy of the municipality or the region stating that the relevant ship's conditions of employment are covered by the self-insurance scheme shall be considered sufficient guarantee. The declaration shall also contain the information mentioned in section 6(1)(i)-(iv) and (vi).

Section 5. The insurance or the similar financial security shall not lapse until the expiry of the period of validity unless the insurance company, etc. has informed the Danish Maritime Authority about this at least 30 days in advance.

Subsection 2. The insurance and the similar financial security shall provide a possibility of acquiring compensation for the claims mentioned in section 3. If the insurance has been maximised, documentation shall be available stating that the claims mentioned in section 3 are covered. The documentation shall be forwarded to the Danish Maritime Authority upon request.

Subsection 3. It shall be possible to direct the claims mentioned in section 3 directly to the insurer or the guarantor. The insurer or the guarantor may invoke the conditions related to exemption from liability that the shipowner or the employer would have been able to invoke against the employee. On the other hand, the insurer or guarantor may not invoke any objections that he or she would have been able to invoke against the shipowner or the employer. The insurance company or the provider of the guarantee which has met the

¹ I.e. schemes in other EU or EEA member States that have been established to implement Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, as amended by Directive 2002/74/EC of the European Parliament and of the Council.

claims mentioned in section 3 may reserve the right to be subrogated to the employee's claims against the shipowner and the employer.

Subsection 4. Claims made by the employee or by somebody acting on his or her behalf against the insurer or the guarantor shall be accompanied by the necessary documentation. As regards claims where there is doubt whether the person concerned is entitled to have the claim paid in full or part by the Wages Guarantee Fund (*Lønmodtagernes Garantifond*), the person concerned shall either authorise the insurer to acquire information about the coverage from the Fund or acquire such information by himself/herself.

Section 6. For confirmation of the availability of the insurance or other similar financial security mentioned in section 2, a certificate issued by the insurer or the provider of the other financial security shall be available to the seafarers on board the ship. The certificate shall contain the following information:

- 1) Ship's name.
- 2) Ship's port of registry.
- 3) Ship's call sign.
- 4) Ship's IMO number.
- 5) The name and address of the insurance company or the provider of the other similar financial security.
- 6) Contact details of where seafarers' requests for assistance can be directed.
- 7) Confirmation that the insurance covers the claims mentioned in section 3.
- 8) The period of validity of the insurance.

Subsection 2. Confirmation by an insurance company that the insurance complies with Standard A 2.5.2 of the Maritime Labour Convention (MLC) shall be equal to the declaration mentioned in subsection 1(vii).

Subsection 3. When more insurance companies or providers of financial security provide coverage, certificates from each company or provider containing information about which claims each scheme covers shall have been made available to the seafarers on board the ship.

Subsection 4. As regards ships where the seafarers are covered by the Wages Guarantee Fund (*Lønmodtagernes Garantifond*), a declaration issued by the Wages Guarantee Fund (*Lønmodtagernes Garantifond*) and the Danish Maritime Authority, respectively, on the coverage of the Fund and on the schemes mentioned in section 3(3) shall have been made available to the seafarers on board the ship.

Subsection 5. As regards ships where the public sector is self-insured, the declaration to this effect mentioned in section 4(2) shall be available to the employees on board the ship.

Subsection 6. Declarations and certificates shall have been issued in the working language of the ship or in English. If the ship is engaged in international voyages, it shall be in English or a translation into English shall be attached.

Section 7. The Danish Maritime Authority may require documentation that the insurer is entitled to run insurance business and has been approved by the insurance inspection authority in the country where the business has its place of business or head office and that the insurance meets the requirements of this order. In special cases, the Danish Maritime Authority may – as regards insurances and guarantees covered by section 4(1)(iii) – require it to be documented as well that the relevant company, etc. is solvent and capable of meeting its obligations. The Danish Maritime Authority may also reject to issue an approval or withdraw an already issued approval if it acquires information that makes it likely that there is a risk that the company concerned cannot meet its obligations.

Subsection 2. The Danish Maritime Authority may limit the approval in time and make it conditional upon the insurances and guarantees mentioned in section 4(1)(iii).

Subsection 3. In case of changes of importance to the coverage of the insurance or the other similar security, the shipowner shall be obliged to inform the Danish Maritime Authority about this immediately after having become aware about it.

Section 8. Order no. 943 of 8 July 2013 on financial security for seafarers' repatriation with subsistence shall be repealed on 17 January 2017.

Section 9. Violations of this order shall be liable to punishment by fine.

Subsection 2. Companies, etc. (legal personalities) may be liable to punishment in accordance with the provisions stipulated in part 5 of the penal code (*straffeloven*).

Section 10. This order shall enter into force on 1 January 2017. The insurance mentioned in section 2 shall have been established no later than by 17 January 2017.

Danish Maritime Authority, 21 November 2016

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