



STEAMSHIP MUTUAL

To the Members

July 2010

Dear Sirs

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

Background

On 8th March 2010 amendments to the Filipino Migrant Workers Act of 1995 (Republic Act No. 8042) (MWA) passed into law. The amendments are not yet in force but will take effect 15 days after publication in at least 2 newspapers of general circulation. Assuming that the implementing rules and regulations (IRR) formulated by the relevant government departments are published on or before 15th July 2010, the IRR will take effect on the 30th July 2010. The amendments to the Act consider pre-employment medical examination arrangements and requirements for a minimum compulsory insurance cover.

Implications for Members

PEME

The final text of the amendments to the MWA provides that seafarers whose employers pay for pre-employment medical examination services are exempt from the "compulsory and exclusive arrangement" provisions of the Act which would otherwise prevent an employer from nominating a clinic to undertake a PEME.

Compulsory Insurance

The amended Act has introduced a series of insurance benefits for the migrant worker, the provision of which is compulsory. These benefits are as follows:

- Accidental death benefit of US\$15,000 irrespective of fault or whether death is work related.
- Natural death benefit of US\$10,000 irrespective of cause or whether death is work related.
- Permanent total disability compensation payment US\$7,500 for complete loss of sight, loss/paralysis of 2 limbs, brain injury with incurable imbecility or insanity.
- Medical evacuation with medical supervision to a medical facility if no adequate medical facility is proximate to the overseas worker.
- Medical repatriation to worker's residence as determined by attending physician.

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THE STEAMSHIP MUTUAL UNDERWRITING ASSOCIATION (BERMUDA) LIMITED
Registered Office: Clarendon House, 2 Church Street, Hamilton HM 11, Bermuda
Authorised and Regulated by the Bermuda Monetary Authority and the United Kingdom Financial Services
Authority
(FSA registration number 202762)

MANAGERS: STEAMSHIP MUTUAL MANAGEMENT (BERMUDA) LIMITED
WASHINGTON MALL I, PO BOX HM 447, HAMILTON HM BX, BERMUDA
Tel: (441) 295 4502 Fax: (441) 292 8787 Website: www.sims1.com

- Subsistence allowance benefits of US\$100 per month for a maximum of 6 months if the migrant worker is involved in litigation. This benefit does not apply to seafarers.
- Compassionate visit by one individual if hospitalised for 7 consecutive days and just transportation cost.
- Medical repatriation using appropriate mode of transportation such as air ambulance if clearance to travel is more than 14 days of discharge from hospital.
- Repatriation costs of the worker where his/her employment is terminated by the employer without any valid cause or by the employee with just cause.
- Money claims arising from employers' liability which may be awarded or given to the worker in judgment of settlement of his case by the NLRC.

The amended MWA mandates that manning and recruitment agents must either provide the necessary insurance cover or certify that such cover is in place, direct to seafarers. Having purchased an insurance policy issued in the seafarer's name, the manning agent shall provide an authenticated copy of the policy to the migrant worker. The certificate of insurance will also be provided to the POEA as a requirement for the issuance of an Overseas Employment Certificate.

Significantly, the amended Act states that such insurance must be provided directly to the seafarer.

The implementation of the compulsory insurance provision cannot be enforced before the 30th July. The Insurance Commission together with the Department of Labour and Employment, the NLRC and POEA in consultation with the recruitment/manning agencies and legitimate non government organisations must issue implementing rules and regulations specific to the compulsory insurance provisions and will meet to consider:

- Qualification of participating insurers.
- Accreditation of insurers.
- Uniform standard policy format.
- Premium rate.
- Benefits.
- Underwriting guidelines.
- Claims procedure.
- Dispute settlement.
- Administrative monitoring supervision.

It is not expected that the compulsory insurance provisions will be implemented before the beginning of the 4th quarter of 2010.

The International Group has been closely monitoring the development of the amendments to the MWA and has highlighted areas of concern to key parties throughout the negotiation process. The Group has not been able to directly participate in the consultation process but has liaised closely with the Joint Manning Group (JMG) composed of manning industry associations which has represented the sea based sector in negotiations with the Philippines government. Although the Group has endeavoured to articulate that P&I cover is written on an indemnity basis, does not provide direct insurance and cannot therefore respond to a direct insurance requirement, this fact has not been recognised. Although most of the benefits provided for under the MWA are available through P&I crew cover, it is not possible for P&I insurance to respond to or meet the direct

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insurance requirements of the Act. The Philippine government has focussed on migrant workers employed in the land based sector when considering the amendments to the MWA and, in the view of the Group, unfortunately did not distinguish between these workers and those that work at sea, this also despite those working at sea already having a broad range of existing contractual benefits.

The Group is working closely in liaison with the JMG to promote an understanding of the provisions of P&I insurance and to seek a solution to the problem presented by the requirement for direct insurance of the migrant worker.

Pending completion of the IRR process, it is not necessary for the Members to ensure that additional insurance is purchased.

Yours faithfully,

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