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[MAGNA CARTA of Filipino Seafarers Signed](#)



DEL ROSARIO & DEL ROSARIO
DEL ROSARIO PANDIPHIL Inc.

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By: Ruben Del Rosario / Herbert Tria, Del Rosario & Del Rosario / Del Rosario Pandiphil Inc.

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Q&A ON THE SALIENT POINTS OF MAGNA CARTA OF FILIPINO SEAFARERS REPUBLIC ACT NO. 12021

This important piece of legislation was signed into law by the President of the Philippines on 23 September 2024 and will become effective after 15 days following its publication. In the midst of the crafting of the Rules and Regulations necessary for the effective implementation of the law, this edition of the Philippine Shipping Update will attempt to familiarize our industry stakeholders on this new law's impact on Filipino Crew Claims handling in Q&A form. (**Note:** Statements contained below are opinions of Del Rosario & Del Rosario and does not constitute legal advice)

On Execution of Judgments and Monetary Awards

Q. Would there be an execution or enforcement of the judgment award after the end of the proceedings at the NLRC or voluntary arbitration at the NCMB?

A. It depends on the nature of the claim.

1. On disputes involving termination of employment, underpayment of wages, payment of wages for the unexpired portion of the employment contract

Yes, the judgment award can be enforced against the vessel interest even if the case is elevated to the Court of Appeals or to the Supreme Court.

2. On Disability or Death Claims

No, the Decision cannot be automatically enforced against the manning agents/shipmanagers/shipowners during the pendency of the case before the Court of Appeals or the Supreme Court.

For example, the company is willing to pay the seafarer US\$25,000 for his grade 6 disability as assessed by the company-designated physician. The NLRC or the Voluntary Arbitrator awarded him US\$60,000 disability benefits. If the company questions the claim before the higher courts, the seafarer can only immediately execute the amount of US\$25,000 as this is an undisputed amount.

Q. Do the seafarers or the heirs, in disability or death claims, have a remedy to still enforce the judgment award while the case is pending appeal or judicial review?

A. Yes, the judgment award may still be enforced provided the seafarers or the heirs post a sufficient bond to ensure the full restitution of the amounts received and the bond shall be maintained until final resolution of the appeal or judicial review. However, the costs of the bond shall be immediately reimbursed by the losing party if the seafarer ultimately prevails on appeal or judicial review.

Q. In case the Court of Appeals or the Supreme Court reverses or modifies the judgment award issued by the Labor Arbiters or Voluntary Arbitrators, can the judgment award paid to the seafarers or to the heirs still be recovered?

A. Yes, the amounts paid to the seafarer or to the heirs can be recovered by the shipowner/shipmanagers/manning agents from the bonding company which issued the seafarer's bond.

On Determination of Disability Grading / Fitness to Work

Q. Who shall resolve the issue of conflicting medical assessments of the company-designated physician and seafarer's personal doctor?

A. The third doctor shall determine the final disability grading / fitness to work of the seafarer which shall be binding upon the seafarer and the employer.

Q. Is the process of appointing a third doctor mandatory under the law?

A. Yes, the process of appointing a third doctor is mandatory before any dispute settlement, arbitration proceedings or case may be filed where the issue is the disability grading, fitness to work, or the illness or injury of the seafarer.

Q. Is work-relation among the issues to be determined by the third doctor?

A. No, the issues to be resolved by the third doctor are only with respect to the final disability grading or the fitness to work of the seafarer.

Q. Can any medical practitioner be appointed as third doctor by the seafarer and the employer?

A. No, the third doctor shall only be selected from a pool of DOH-accredited medical specialists relevant to the injury or illness of the seafarer. In addition, the third doctor should be duly trained in the determination of maritime disability grading.

Q. What steps must be followed by the seafarer before a third doctor may be appointed?

A. A seafarer, who disagrees with the company-designated physician's final assessment, may seek its re-evaluation by a physician of choice of the seafarer who must specialize in the illness or injury. If the

grading to a third doctor.

Prohibition on Appearances of Non-Lawyers in Labor Proceedings and Fees

Q. May a non-lawyer appear on behalf of the seafarer in labor proceedings?

A. No, non-lawyers may not act as legal representatives of seafarers or appear on their behalf at any stage or in any proceedings before labor tribunals including the NLRC, Labor Arbiter, conciliation and mediation in the NCMB or voluntary arbitration, DMW and other quasi-judicial bodies unless they represent themselves or they represent the organization or members thereof.

Q. Is there a cap on attorney's fees that may be charged for representing the seafarers?

A. Yes, any stipulation on fees shall not exceed ten percent (10%) of the compensation or benefit which may be received by or awarded to the seafarer or to his successors-in-interest pursuant to Seafarers Protection Act. Any contract, agreement, or arrangement of any sort to the contrary shall be null and void.

Q. How did the Magna Carta limit the fees to be charged against the seafarers to 10%?

A. The Magna Carta limits the fees by requiring the seafarer's legal representative/s to submit an Entry of Appearance, with attached notarized certification and Affidavit of Undertaking with the following averments:

1. The legal representatives shall not charge the seafarer for a fee contingent of more than ten percent (10%) of the compensation which may be awarded to the seafarer; and
2. The legal representatives shall not lend or borrow money from the seafarers, or participate in usurious lending practices, and shall not recommend, endorse, or facilitate loans, with lending individuals or companies connected to seafarers, directly or indirectly.

Further, any excess from the ten percent (10%) received or collected by the legal representative of the seafarer shall be held in trust in favor of the seafarer.

On Seafarers' Repatriation

Q. What is the basic rule in the repatriation of a Filipino seafarer?

A. In all cases of repatriation, the affected seafarer shall be repatriated to the point of hire.

"Point of Hire" shall mean the place indicated in the contract of employment, and which shall be the basis in determining the commencement of the contract.

Q. Would there be an instance that the seafarer will be repatriated other than to the point of hire?

A. Yes, in case of incapacity of the seafarer which need not be of permanent character, or in case of seafarer's death, the seafarer or the remains of the seafarer shall be repatriated to the point of hire or to the seafarer's place of domicile at the option of the seafarer or the seafarer's next of kin.

contract.

Q. To whom did Magna Carta impose the liabilities related to repatriation?

A. Similar to the provisions of the POEA Standard Employment Contract and the Amended Migrant Workers Act of 2010 (Republic Act No. 10022), the shipowners/shipmanagers/manning agents shall bear all costs related to repatriation, transport of the personal effects and remains of the seafarers, including the provision on financial security in case of abandonment of seafarers.

Q. What are the components of repatriation expenses which shall be borne by the shipowners/shipmanagers/manning agents?

A. The repatriation expenses to be provided by the shipowners/shipmanagers/manning agents shall consist of the following:

1. Basic pay and allowances from the moment the seafarers leave the ship until they reach the repatriation destination;
2. Accommodation and food from the moment the seafarers leave the ship until they reach the repatriation destination;
3. Transportation charges, wherein the normal mode of transport should be by air;
4. Deployment cost of the shipowner; and
5. Immigration fees, fines, and penalties.

Q. Is there an exception to the rule that repatriation costs shall be borne by the shipowners/shipmanagers/manning agents?

A. Similar to Sections 19.E and G of the POEA Standard Employment Contract, the Magna Carta likewise exempts the shipowners/shipmanagers/manning agents from shouldering the costs of repatriation in instances where the termination of employment is for (a) just cause or (b) upon the request of the seafarer.

Q. While repatriation-related costs can be demanded as a matter of right by the seafarer or the next of kin, can that right be waived?

A. Yes, the right can be waived provided the waiver is in writing, and made freely and voluntarily, with full knowledge of its consequences.

However, no waiver shall be allowed under the following circumstances:

1. When the seafarer is abandoned, held captive on or off the ship as a result of acts of piracy or armed robbery against the ship; or
2. When the seafarer is incapable of travelling due to illness, injury or incapacity; or
3. Other causes that affect the seafarer's safety and security.

Q. What are the rules insofar as quarantine and medical expenses are concerned in repatriation due to epidemic or pandemic?

A. The following rules shall be followed:

quarantine, whether or not the seafarers have symptoms, have been exposed, or are quarantined as a safety precaution for the community.

2. Upon arrival at the point of hire – the Philippine government shall bear the cost of medical care and quarantine expenses, following the whole-of-government approach in the management of epidemics and pandemics.

Note: Declaration of the World Health Organization is required.

Period to Settle Claims

Q. What is the period mandated by the Magna Carta to the principal or manning agent to act on the claim of a seafarer or seafarer's successor-in-interest?

A. In the event a seafarer, or the successor-in-interest files a claim for unpaid salaries and other statutory monetary benefits, or those arising from disability or death, the principal or the manning agent shall have a period of 15 days from the submission of the claim, proof or complete documents, as the case may be, to determine the validity of the claim. The results of the validation by the principal or manning agent shall be communicated to the seafarer within the aforesaid 15-day period. The principal or manning agent shall, within 15 days from the time it has communicated to the seafarer its findings, settle its obligations to the seafarer, if any.

Q. Is the principal or manning agent mandated by law to settle the above-described claim of a seafarer?

A. No, the Magna Carta merely imposes upon the principal or manning agent the obligation to determine the validity of the claim within the 15-day period. Further, the mandate of the law does not mean an automatic settlement of the claim regardless of the validity or merits of the claim.

Dispute Resolution

Q. Which has jurisdiction over claims or disputes arising from the employment of Filipino seafarers?

A. Similar to the provisions of the POEA Standard Employment Contract, Amended Migrant Workers Act and the Labor Code of the Philippines, the following rules shall apply:

1. If the employment contract is covered by a CBA – the matter shall be submitted for voluntary arbitration in accordance with existing laws, rules, and regulations;
2. When there is no CBA – the parties have the option of either submitting the case to the jurisdiction of the National Labor Relations Commission or commence voluntary arbitration under the Labor Code of the Philippines.

Q. What is the purpose sought to be achieved in the creation of Maritime Industry Labor Conciliators-Mediators and Voluntary Arbitrators?

A. The said body shall handle the mediation, conciliation or arbitration of all issues relating to the employment of seafarers. Further, they shall have expertise, appropriate competence, integrity, and

There is a need to await the Implementing Rules to fully understand the implication of this new organization (if any) vis-à-vis the jurisdiction of the existing labor courts.

Right to Free Legal Representation

Q. Can the seafarer avail of free legal assistance for his money claims against the shipowners/shipmanagers/manning agents?

A. Yes, if the seafarer cannot afford the services of a counsel, seafarer shall have a right to free legal assistance and protection at the expense of the government.

On the Application of the Law

Q. Does the law have retroactive application?

A. No, because the law does not contain a provision stating that it can be applied retroactively. This is in accordance with Article 4 of the Philippine Civil Code which states that "Laws shall have no retroactive effect unless the contrary is provided."

Note: *The authors intend to limit the scope of this Article to issues which may have an impact in the claims handling process of the readers. For questions on other provisions of the law and clarifications, you may send an email to mail@delrosariolaw.com.*

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This publication aims to provide commentary on issues affecting the manning industry, analysis of recent cases and updates on legislation. It is meant to be brief and is not intended to be legal advice. To subscribe or for further information, please email ruben.delrosario@delrosario-pandiphil.com.



Del Rosario Pandiphil Inc. / Del Rosario & Del Rosario

Office Address: DelRosarioLaw Centre, 21st Drive corner 20th Drive, Bonifacio Global City,
Taguig, Metro Manila, Philippines

Telephone: 63 2 8810 1791 / 63 2 5317 7888 **Fax:** 63 2 5317 7890

24/7 Emergency Mobile: (63) (917) 830-8384;

mail@delrosario-pandiphil.com; www.delrosario-pandiphil.com

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