

中国船东互保协会文件

中船保保字【2016】13号

关于2006年海事劳工公约2014年修正案 -关于财务担保问题的通函

各会员公司：

参 2016 年 6 月 30 日协会发布的“中船保赔字[2016]8 号通函”和 2016 年 10 月 25 日协会发布的“中船保赔字[2016]16 号通函”。这两个通函告知各会员公司，2006 年海事劳工公约有关财务担保要求的 2014 年修正案将于 2017 年 1 月 18 日生效及国际同业为协助会员船东履行该公约将采取的解决方案。

本通函旨在向会员公司通报本协会对此问题拟采取的解决方案：协会将同国际同业一样为适用 2006 年海事劳工公约 2014 年修正案的入会船舶出具该公约要求船舶上需要备有的证书，用以证明船东已就下列责任安排了保险或其他财务保障：

- 海事劳工公约规则 2.5.2、标准 A2.5.2 和导则 B2.5 下所规定的在海员被遗弃时未支付的船员工资和遣返费用及其相关费用；
- 海事劳工公约规则 4.2、标准 A4.2.1 和导则 B4.2 下所规定的船员因死亡或长期残疾而应得的补偿。

上述责任中，因工伤造成的伤残赔偿责任通常属于协会保险条款中船员责任的承保范围。船员的遣返费用以及未支付的工资报酬在某些情况下属于协会承保范围，包括因船舶失事引起的此类船东责任。然而，由船东的财务问题导致弃船而引起的船员遣返费用和未付工资报酬则不在保赔险承保范围之内。

为了能够协助会员公司顺利履约，在会员公司同意接受附录一中的“海事劳工公约扩展条款（2016 年版）（ MARITIME LABOUR CONVENTION EXTENSION CLAUSE 2016 ）”的前提下，协会将为会员公司的入会船舶签发符合 2006 年海事劳工公约 2014 年修正案下的如下两个证书：

1 、 CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY IN RESPECT OF SEAFARER REPATRIATION COSTS AND LIABILITIES AS REQUIRED UNDER REGULATION 2.5.2, STANDARD A2.5.2 OF THE MARITIME LABOUR CONVENTION 2006, AS AMENDED（见附录二）；

2 、 CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY IN RESPECT OF SHIPOWNERS' LIABILITY AS REQUIRED UNDER REGULATION 4.2 STANDARD A4.2.1 PARAGRAPH 1 (b) OF THE MARITIME LABOUR CONVENTION 2006 AS AMENDED（见附录三）；

附录一中的“海事劳工公约扩展条款（2016 年版）（ MARITIME LABOUR CONVENTION EXTENSION CLAUSE 2016 ）”规定，协会将对证书中明确规定的在公约规则 and 标准之内的船员索赔进行赔付。该条

款还规定，如果协会所支付的款项不属于协会承保范围，会员公司有义务对协会进行补偿。

为了协会能够及时准确地签发上述两个证书，请会员公司填写如附录四的申请表格（APPLICATION FORM FOR MLC CERTIFICATES）。

不同与以往的油污及残骸清除公约下协会签发的“蓝卡”，2006年海事劳工公约 2014 年修正案下，在获得了协会签发的证书后，船东无需向船旗国另外申请换发证书，尽管某些船旗国可能会要求船东在登记时向有关当局提供有效的证书副本用于存档。在此提请会员公司注意：协会签发的上述两个证书将以 PDF 文件格式提供会员公司，会员公司需要将该文件打印出来送船。按照 2006 年海事劳工公约 2014 年修正案的要求，上述两个证书需要随船携带，并须张贴在船上海员能够到达的显著位置。

2006 年海事劳工公约 2014 年修正案要求，符合以下条件的船舶需配备协会签发的上述两个证书：

- 在海事劳工公约生效的成员国登记注册；或
- 挂靠海事劳工公约成员国的港口。

有关海事劳工公约的成员国，可以参考国际劳工组织(ILO)网站：
<http://www.ilo.org/global/standards/maritime-labour-convention/database-ratification-implementation/lang--en/index.htm>

不在公约成员国登记注册也不挂靠公约成员国港口的船舶，可以不用配备海事劳工公约证书。

根据中国政府主管部门的公告,2006年海事劳工公约适用于中国籍国际航行船舶和国内沿海航行船舶及其在这些船舶上工作的船员,但军事船舶、公务船舶、渔业船舶、体育运动船艇,以及在港区、内河和遮蔽水域航行、作业的船舶除外。据悉,目前中国政府主管部门正在履行2006年海事劳工公约2014年修正案的国内批准程序,预计2006年海事劳工公约2014年修正案不可能从2017年1月18日起适用于中国籍国内沿海航行船舶。协会将根据中国政府主管部门公布的时间表,为协会入会的中国籍国内沿海航行船舶签发相关证书。

协会将持续关注海事劳工公约及其修正案实施的进展,并及时向会员公司通报。



Annex 1:

MARITIME LABOUR CONVENTION EXTENSION CLAUSE 2016

1. Subject only to the other provisions of this MLC Extension ("the Extension"), the Association shall discharge and pay on the Member's behalf under the 2006 Maritime Labour Convention as amended (MLC 2006) or domestic legislation by a State Party implementing MLC 2006:
 - (a) *Liabilities in respect of outstanding wages and repatriation of a seafarer together with costs and expenses incidental thereto in accordance with Regulation 2.5, Standard A2.5 and Guideline B2.5; and*
 - (b) *Liabilities in respect of compensating a seafarer for death or long-term disability in accordance with Regulation 4.2, Standard A4.2 and Guideline B4.2.*
2. The Member shall reimburse the Association in full:
 - (a) any claim paid under paragraph 1(a) save to the extent that such claim is in respect of liabilities, costs or expenses recoverable under Rule 3 Section 1 , 3 or 5; and
 - (b) any claim paid under paragraph 1(b) save to the extent that such claim is in respect of liabilities, costs or expenses recoverable under Rule 3 Section 1.
3. There shall be no payment under paragraph 1(a) or paragraph 1(b) if and to the extent that the liability, cost or expense is recoverable under any social security scheme or fund, separate insurance or any other similar arrangement.
4. The Association shall not discharge or pay any liabilities, costs or expenses under paragraph 1(a) or paragraph 1(b), irrespective of whether a contributory cause of the same being incurred was any neglect on the part of the Member or the Member's servants or agents, where such liabilities, costs or expenses were directly or indirectly caused by or contributed to by or arise from:
 - (a) *Any chemical, biological, bio-chemical or electromagnetic weapon.*
 - (b) *The use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, computer virus or process or any other electronic system.*
5.
 - (a) *The Extension may be cancelled in respect of War Risks by the Association on 30 days' notice to the Member (such cancellation becoming effective on the expiry of 30 days from midnight of the day on which notice of cancellation is issued).*
 - (b) *Whether or not such notice of cancellation has been given the Extension hereunder shall terminate automatically in respect of the War Risks:*

(i) Upon the outbreak of war (whether there be a declaration of war or not) between any of the following: United Kingdom, United States of America, France, the Russian Federation, the People's Republic of China;

(ii) In respect of any ship, in connection with which cover is granted hereunder, in the event of such ship being requisitioned either for title or use.

(c) *The Extension excludes loss, damage, liability or expense arising from:*

(i) The outbreak of war (whether there be a declaration of war or not) between any of the following: the UK, the USA, France, The Russian Federation, the People's Republic of China;

(ii) Requisition for title or use.

6. The Extension shall be subject to Rule 8 D [iii] and Q.

7. Without prejudice to paragraph 5, cover under the Extension shall cease 30 days after notice of termination in accordance with either Regulation 2.5, Standard A2.5.2.11 or Regulation 4.2, Standard A4.2.12.

8. Any dispute arising out of or in connection with the Extension shall be resolved in accordance with Rule 29.

9. For the purpose of the Extension:

"Member" means any insured party who is liable for the payment of calls, contributions, premium or other sums due under the terms of entry

"Seafarer" shall have the same meaning as in MLC 2006.

"War Risks" means the risks set out in Rule 8 D[ii].

Annex 2:

**CERTIFICATE OF INSURANCE OR OTHER FINANCIAL
SECURITY IN RESPECT OF SEAFARER REPATRIATION COSTS AND LIABILITIES AS
REQUIRED UNDER REGULATION 2.5.2, STANDARD A2.5.2 OF THE MARITIME LABOUR
CONVENTION 2006, AS AMENDED**

Name of Ship:

Port of Registry:

Call sign:

IMO number of the ship:

Name, full address and website of the provider of insurance or other financial security:

Contact details of the persons or entity responsible for handling seafarers' request for relief:

Name of the shipowner on whose behalf financial security has been provided:

Period of validity of the financial security: _____ to _____

THIS IS TO CERTIFY that there is in force a policy of insurance or other financial security in respect of the above-named ship while in the above ownership which meets the financial security requirements of Regulation 2.5 paragraph 2 of the Maritime Labour Convention 2006 as Amended, where it is in force and applicable.

Provided always that the insurer or provider of financial security may cancel this Certificate in accordance with Standard A2.5.2.11 by giving at least 30 days' written notice to the competent authority of the flag State whereupon the liability of the insurer hereunder shall cease as from the date of expiry of the said period of notice but only as regards events arising thereafter.

The policy of insurance is subject to certain conditions and limitations details of which can be found on the provider's website under "Maritime Labour Convention Extension Clause 2016".

This certificate has been issued for and on behalf of the above-named provider of insurance or other financial security.

Date:

Authorised Signatory

By

[Managers of the above Association]

**CERTIFICATE OF INSURANCE OR OTHER FINANCIAL
SECURITY IN RESPECT OF SHIPOWNERS' LIABILITY AS REQUIRED UNDER REGULATION
4.2 STANDARD A4.2.1 PARAGRAPH 1 (b) OF THE MARITIME LABOUR CONVENTION 2006 AS
AMENDED**

[Managers of the above Association]

Annex 4: APPLICATION FORM FOR MLC CERTIFICATES

Application for Certificates of Financial Security under Regulation 2.5.2 Standard A2.5.2 and Regulation 4.2, Standard A4.2.1 paragraph (b) of the Maritime Labour Convention 2006 (as amended) ("MLC Certificates") pursuant to the Maritime Labour Convention Extension Clause 2016 ("MLC Extension Clause 2016")

To: China Shipowners Mutual Assurance Association

Member:

Name of vessel	IMO No.	Call sign	Port of Registry	Flag	Registered Owner
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Period of Validity of Certificates

Choose **one** of the following Options:

OPTION A

We request you to issue Certificates for the period 18 January 2017 to noon GMT on 20 February 2018 ☐

OPTION B

We request you to issue Certificates for the period 18 January 2017 to noon GMT on 20 February 2017 ☐

OPTION C

We request you to issue Certificates for the period noon GMT on 20 February 2017 to noon GMT on 20 February 2018] ☐

Explanation:

Option A should be used by members who have renewed or intend to renew their entry for the above vessel(s) with the Association for the 2017/2018 policy year.

Option B should be used by members who do not intend to renew the entry with the Association for the 2017/2018 policy year.

Option C should be used by members who intend to enter the above vessel(s) as a new entry with the Association for the 2017/2018 policy year.

Undertakings

1. We hereby undertake and agree that in consideration of the Association agreeing to issue the above Certificates at our request

- (a) We , all Joint Members and all Co-assureds will be bound by the terms of the MLC Extension Clause 2006;¹
 - (b) where any payment by the Association under any such certificate is in respect of war risks, we will indemnify the Association to the extent that such payment is recoverable under the Member's P&I war risks policy, or would have been recoverable if the Member had maintained and complied with the terms and conditions of a standard P&I war risks insurance policy,
 - (c) to assign to the Association all the rights of the Member under any social security scheme, or other insurance or national fund or other similar arrangement where such scheme, insurance, national fund or arrangement applies in respect of all or any liabilities arising under the MLC Certificates;
 - (d) 30 days from a notice to the Flag State of the termination thereof we shall take all necessary steps to remove the Certificates and any copies thereof from the Vessel(s) and return them to the Association.
2. If we request Certificates under Options A and/or C prior to entry in the Association of the above vessel(s) being concluded for the 2017/2018 policy year, we further undertake that, in consideration of the Association providing upon our request the above Certificates for a period including the 2017/2018 policy year in order to ensure that such Vessels are able to trade without delay and without the risk of penalties or fines for failing to satisfy MLC certification requirements
- (a) it is our intention to enter the above vessel(s) in the Association for the 2017/2018 policy year; and
 - (b) if we do not effect such entry we will indemnify the Association and hold it harmless in respect of any and all liabilities, losses, damages, risks, costs or expenses which it may suffer or incur under MLC or implementing domestic legislation as a direct or indirect consequence of issuing the Certificates.

The above undertakings shall be governed by and construed in accordance with law of the People's Republic of China and determined by arbitration in Beijing in accordance with Rule 29.

Dated:

.....

Signed by Member on behalf of the Member , all Joint Members and all Co-assureds

(if not signed by Member must be signed by authorised signatory of Member)

¹ A copy of the MLC Extension Clause 2016 is to be found on the Association's website