

CIRCULAR REF: 2010/028

**CIRCULATED TO ALL MEMBERS, BROKERS AND DIRECTORS
ATTENTION INSURANCE DEPARTMENT**

**27 SEPTEMBER 2010
KMW**

THE MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 AS AMENDED BY REPUBLIC ACT No 100022

We refer Members to the previous Circular issued in June 2010 on the amendments to the Filipino Migrant Workers Act of 1995 (the Amended Migrant Workers Act – AMWA) that became law on 8 March 2010.–

The International Group (IG) understands that the relevant government agencies have now finalised the necessary Omnibus Implementing Rules and Regulations, and additional Insurance Commission “Guidelines” dealing specifically with the compulsory insurance provisions of the Act. However, the Insurance Commission Guidelines will not apply to the deployment of seafarers until the Philippine Overseas Employment Administration issues a Governing Board Resolution and Memorandum Circular which are expected to be issued in the third or fourth week of October.

Implications for Members

We refer Members to the concerns of the IG as outlined in the previous circular in relation to the compulsory insurance provisions within the final text of the AMWA, in particular that Club cover does not extend to all of the “minimum” compulsory insurance requirements of the AMWA, nor does it provide cover directly to seafarers.

As an example, the AMWA creates an obligation to arrange insurance cover in respect of “money claims” brought by an employee, and the scope of such a claim could involve disputed or unpaid wages not covered by P&I. Similarly, the obligation to arrange insurance cover does not contain any exception in relation to liabilities specifically excluded from P&I, such as those arising from acts of terrorism or war risks. It is also unlikely that P&I cover could indemnify a Member’s obligations under the Act to provide “subsistence allowance benefit” of “at least” USD 100 per month, for a maximum of 6 months.

The IG has continued to highlight these areas of concern to key parties involved in the development of the Omnibus Implementing Rules and Regulations and Insurance Commission Guidelines. It has ensured that the Joint Manning Group has been kept fully informed of the IG’s concerns throughout the process. The IG has in particular engaged in extensive liaison with the relevant international and domestic shipowner industry associations.

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Despite the strenuous efforts of those representing the sea-based sector, it has not proved possible to secure amendments to the Insurance Commission Guidelines in particular, such that they are in complete accord with the current practice within the sea-based sector.

The AMWA mandates that the manning and recruitment agencies must either provide the necessary insurance cover, or certify that such cover has been arranged on behalf of the seafarer, in order that the POEA can issue an Overseas Employment Certificate, which is necessary to allow a seafarer to be deployed overseas. Cover can either be evidenced in the form of a policy issued by private insurance companies registered with the Philippine Insurance Commission or, in the case of seafarers who are insured under policies issued by foreign insurance companies, certificates or other adequate proof of cover can be provided by manning and recruitment agencies, provided the minimum compulsory insurance requirements of the AMWA are met. Since Club cover does not meet all of the minimum requirements and does not directly insure seafarers, Clubs are unfortunately not in a position to provide certificates or other evidence of cover attesting that the minimum requirements of the AMWA are met.

The position of the IG as outlined in the previous Circular therefore remains unchanged as there are still a number of requirements contained in the AMWA that cannot be met by Club cover.

Notwithstanding all of the above, the IG understands that the POEA has indicated that the "Certificate of Cover" (CoC), contained in the Annex to this Circular, if provided by the Manning Agent on the letterhead of a POEA Accredited Principal, will be considered as suitable evidence that appropriate insurance cover is in place. The POEA and the JMG are aware that the attached CoC has not been approved by the IG and that no assumptions should be drawn from the wording of the CoC in relation to the scope of Club cover.

Members, in close liaison with their Manning Agents, will now need to consider the insurance required to achieve compliance with the AMWA.

The IG will continue to work closely with the relevant international and domestic shipowner industry associations in lobbying for the necessary changes to the law to overcome any unnecessary additional deployment cost and the increased obligations that will be imposed on the sea-based employment sector in complying with the AMWA, and the potential for the sea-based employment sector to be adversely affected again by future amendments to the AMWA.

The IG understands that the on-going review to amend the POEA Standard Employment Contract (SEC) by the Tripartite Working Group has also neared completion and that the revised POEA SEC will be issued in the very near future. The IG is continuing to monitor developments and a further update to Members on the implications of the revised POEA SEC will be issued in due course.

All Clubs in the International Group of P&I Clubs have issued similar circulars.

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