

# AMENDMENTS TO THE PHILIPPINES MIGRANT WORKERS ACT 1995 (MWA)



**Sam**  
Kendall-Marsden: Syndicate Claims Director  
Telephone: +44 20 3320 8876  
E-mail: [sam.kendall-marsden@ctcplc.com](mailto:sam.kendall-marsden@ctcplc.com)

The MWA regulates the employment of Filipino seafarers overseas, as well as protecting and promoting their welfare.

Members may be aware of recent amendments to the MWA, extending the compulsory insurance coverage required for death, injury, illness and further liabilities. Members who employ Filipino seafarers will be affected by these changes and they will need to ensure that adequate insurance cover is in place to comply with them.

The amendments to the MWA took effect in May 2010 but the new insurance requirements did not come into force until 7 November 2010.

The MWA provides that manning and recruitment agencies must either obtain the necessary insurance cover or certify that such cover has been arranged on behalf of the seafarer, in order for the Philippine Overseas Employment Administration (POEA) to issue an overseas employment certificate. This is necessary to allow a seafarer to be deployed overseas. Cover can either be provided by a policy issued by a private insurance company 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 proofs of cover can be provided by manning and recruitment agencies, as long as the minimum compulsory insurance requirements of the MWA are met.

Obtaining additional insurance in the Philippines will impose a further financial burden on members. The International Group of P&I Clubs (IG) understands the POEA has indicated that a "certificate of cover" confirming P&I cover is in place, provided by a manning agent on the letterhead of a POEA accredited principal, will be considered suitable evidence that appropriate insurance cover is in place. However, the POEA is aware that this approach has not been approved by the IG because P&I cover does not provide direct cover to seafarers as required by the MWA and the compulsory insurance provisions of the MWA are broader in scope than P&I cover.

As members will be aware, P&I cover is indemnity cover and, as such, it does not provide insurance direct to an individual seafarer as is required by the MWA. P&I cover indemnifies an assured shipowner member in relation to the member's contractual obligations (subject to approval and the term/conditions of entry) and legal liabilities to a seafarer on board or in relation to an entered ship resulting from the member's negligent act or omission.

The MWA provides, amongst other things, that any claim arising from accidental death, natural death or disablement shall be paid to the seafarer or their heirs without dispute and on an absolute liability basis i.e. without the necessity of the seafarer or their heirs having to prove fault or negligence of any kind. Hence, regardless of whether the death, illness or injury is work-related or not, the seafarer or their heirs would be entitled to US\$15,000, US\$10,000 and US\$7,500 in cases of accidental death, natural death or permanent disablement respectively.

Another area of concern is the obligation to arrange insurance cover in respect of money claims brought by a seafarer and the scope of such a claim involving disputed or unpaid wages not being covered by P&I. Also, the obligation to arrange insurance cover does not contain any exceptions 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 MWA to provide subsistence allowance benefit of at least US\$100 per month for a maximum of six months.

Club cover cannot act as the default position to meet the insurance obligations imposed on the recruitment and manning agencies by the MWA for the reasons set out above. Clubs cannot, therefore, provide certificates or other evidence of cover attesting that the minimum insurance requirements under the MWA are met and members will now need to consider the insurance required to achieve compliance with the MWA in close liaison with their manning agents.

The IG is continuing to work closely with relevant international and domestic shipowner industry associations in lobbying for the necessary changes to the law to overcome any unnecessary additional deployment costs and the increased obligations that will be imposed on the sea-based employment sector in complying with the MWA.

The club is continuing to monitor developments in conjunction with the IG and will provide members with further updates.

