



Ukrainian Seafarers: What to do?

March 2022



The ongoing crisis in Ukraine is a disturbing reminder of how interconnected and volatile the modern world truly is. As most countries inch ever closer to returning to normal from the two-year battle with Covid, this resurgent conflict rages on in Ukraine with global implications. As with most tumultuous events around the world, this crisis has brought new challenges and hurdles to the maritime industry. As reported by BIMCO and ICS in the 2021 version of the Seafarer Workforce Report, 4% of the 1.89 million seafarers worldwide are Ukrainian. In this newsletter we address some of the many questions being posed by vessel owners/operators regarding the repatriation of these crew members and the applicable coverages.

To start, it is important to understand what the typical responsibilities of a vessel owner/operator are for the repatriation of their crew. For this, one must first look to the crew contract and any applicable collective bargaining agreements, which will differ by company and country. Additionally, the Maritime Labour Convention also states in Guideline B2.5.1 paragraph 6 that:

“Each Member should require that shipowners take responsibility for repatriation arrangements by appropriate and expeditious means. The normal mode of transport should be by air. The Member should prescribe the destinations to which seafarers may be repatriated. The destinations should include the countries with which seafarers may be deemed to have a substantial connection including:

- (a) the place at which the seafarer agreed to enter into the engagement;
- (b) the place stipulated by collective agreement;
- (c) the seafarer’s country of residence; or
- (d) such other place as may be mutually agreed at the time of engagement.”

In view of this, it is important to take into consideration the most recent statement from the ITF-affiliated Marine Transport Workers Trade Union of Ukraine (MTWTU), which can also be found [here](#) on their website:

At the moment, air connection between Ukraine and any other country of the world has been suspended, depriving our seafarers of an opportunity to be repatriated straight to Ukraine and get back to their families in such grave time to render their support and defense.

In given circumstances, below are the MTWTU's comments towards the crew change crisis that is deploying now:

- Those seafarers whose maximum duration of contracts has expired and who were or are supposed to be repatriated — it is recommended to remain on board for as long as it becomes possible and safe to return. Companies are advised to prolong Seafarers' Employment Agreements as appropriate.
- For those seafarers willing to return home upon expiry of their employment contracts/terminating their employment, flight tickets to neighboring friendly countries of Ukraine (main airports — Chisinau, Moldova and Warsaw, Poland; Hungary, Slovakia, Romania) shall be purchased by the Company, as well as amounts to cover costs of transportation to Ukrainian land border/ checkpoints shall be reimbursed. In this case the Companies are advised to settle the seafarers' wage balance in cash, upon their request, prior to disembarkation from the vessel.

Wishing for a peaceful sky above for all of us.

Sincerely yours,

MTWTU Chairman Oleg Grygoriuk

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Once a vessel owner/operator has reviewed everything and taken into consideration the feasibility of repatriating the Ukrainian seafarer at that point in time, it is reasonable to assume that one of four different scenarios could occur with a seafarer coming to the end of their contract or, for certain scenarios below, ending their contract early. Below we outline these scenarios and provide our thoughts on the applicable coverage. Please note that prior to proceeding/relying on the below we recommend insureds to seek their own legal counsel, review their policies' terms and conditions, and confer with your insurance broker:

1) The seafarer is happy to remain on board and the vessel owner agrees to same, thereby extending their contract accordingly.

It is understood that the MLC has an 11-month max contract limit (there may be extraordinary circumstances that allow for an extension beyond this).

- a. Coverage implication: Cover as a crew member would continue unprejudiced via P&I and War P&I. Any additional wages, stores, etc. associated with the seafarer remaining onboard would be considered an operational expense and not covered.

2) The seafarer is happy to remain onboard and the vessel owner agrees to same but the contract is not extended for whatever reason.

- a. Coverage implication: Cover as a supernumerary/non-seafarer onboard would not be prejudiced and would respond in the event of injury/illness/death via P&I or War P&I depending on the circumstance. Some Clubs may require a Letter of Indemnity and/or a declaration to be made for supernumeraries to be on board. We recommend that you contact your broker to be sure of the position.



- 3) The seafarer does not want to remain on board.** The recommendation we have discussed with various insurers would be to reach an agreement with the seafarer as to a mutually agreed repatriation location and, ideally, obtain an amendment/waiver to the employment contract from him/her agreeing that the owner is not responsible for anything that happens upon arrival at the agreed location. On the next page we have outlined a wording in blue from one of the P&I Clubs via the International Group (IG) Personnel Sub-Committee that has been suggested for the amendment/waiver when repatriating Ukrainian crew members due to early termination of the contract or at the end of their contract.
- a. Cover implication: Cover as a crew member would continue unprejudiced for the duration of the repatriation to the mutually agreed location via P&I and War P&I. Repatriation expenses and any additional increased expenses (delay, room & board, meals, etc.) due to the circumstances would be considered by insurers as an operational expense and not covered. This is due to the fact that there is no triggered event whereby the P&I or War P&I would respond and cover the repatriation expenses.
 - b. If the seafarer was injured/killed during the repatriation to the mutually agreed location, we believe that cover would respond either via the P&I (non-war event) or War P&I (war event).
 - c. If the seafarer was injured/ill/casualty while on the vessel and needed to be repatriated under the terms and conditions of the policy, then the additional increased costs to repatriate the seafarer would be covered via P&I or War P&I due to the triggered event.
- 4) The seafarer does not want to remain onboard but will not agree with the vessel owner/operator to a mutually agreed location and/or an amendment/waiver to the employment contract.** Our recommendation would be to document the fact that this was attempted and proceed in repatriating the crew member as noted in the above MTWTU's comments.
- a. Cover implications: Cover as a crew member would continue unprejudiced for the duration of the repatriation to the land border of Ukraine via P&I or War P&I. This approach may not protect the vessel owner/operator against all future liabilities but could possibly satisfy their duties under the employment contract/MLC.

Many Members will have Ukrainian personnel on board vessels at the end of their contracts awaiting repatriation and/or wishing to terminate their contract early in order to return to Ukraine. Given the difficulties and, currently, potential impossibility of repatriating crew to a home port in Ukraine due to the invasion by Russia, many Ukrainian seafarers have been requesting termination of their employment contract and to be repatriated to alternative destinations. In the circumstances, the International Group (IG) Personnel Sub-Committee have drafted the below Contract Addendum to assist:

QUOTE

Addendum to the contract of employment dated: XXXXX (hereinafter referred to as “SEA”).

This addendum is agreed between (name and rank of the seafarer), hereinafter referred to as “seafarer”, and (name of the employer which could be shipowner direct or its agents to be clarified appropriately as referred in original employment contract), hereinafter referred to as “employer”.

According to the terms of SEA, the seafarer’s term of employment on board (insert name of the vessel) completes on..... or is due to be completed on (insert date of completion of contract together with usual +/- tolerance period). The agreed place of repatriation in SEA is(insert name of place of repatriation in SEA).

The seafarer wishes to terminate the SEA before the termination date and after due consideration of the present exceptional circumstances the employer agrees to this request. Repatriation to the original place of engagement is no longer practical or is unsafe. The alternative place of repatriation is now agreed to be..... (insert new location for repatriation).

The seafarer undertakes that s/he shall comply with all applicable laws including but not limited to any entry or visa requirements imposed on her/him at the alternative place of repatriation. In the event that repatriation to the alternative place becomes impractical or unsafe after the nomination by the seafarer but prior to commencement of the repatriation journey, the seafarer and the employer agree to consider alternative viable places of repatriation.

The seafarer and the employer agree that early repatriation to such agreed alternative place of repatriation shall be deemed as due performance of the employer’s obligation to repatriate the seafarer and the employer will be released from any and all further obligations towards the seafarer under the contract of employment including any obligations imposed under the applicable CBA and/or the Maritime Labour Convention and/or applicable laws other than those which have accrued to the date of repatriation and not yet been discharged.

UNQUOTE

Whilst the above is a suggested possible wording, the effectiveness of this or any wording used is dependent upon the particular clauses of a contract and the law governing it. In the circumstances, Members should seek independent legal advice before proceeding with/relying upon any addendum and/or waiver. Members should also investigate the position with their War Risk Underwriters as standard P&I cover excludes sickness, injury or death arising out of war, whether directly or indirectly.

The IG Personnel Sub Committee wish to make it clear that the above does not constitute an IG approved wording but is merely to facilitate uniformity of approach and assistance to Ukrainian seafarers and Members at a time of great upheaval when time is of the essence.

As this crisis continues to unfold, there will certainly be new challenges that unfold for vessel owners/operators and seafarers across the world. Our team of global marine experts remain ready to assist wherever needed so please do not hesitate to reach out to your local Lockton/P.L. Ferrari representative.

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