

## SEAFARER SUBJECT GUIDE

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### ABANDONMENT OF SEAFARERS IN SOUTH KOREA

This Guide deals with the situation where seafarers are abandoned in a port in South Korea as well as where seafarers are abandoned on a South Korean flagged vessel in a port outside South Korea. This document is not intended to be legal advice, nor does it constitute legal advice. If a seafarer is abandoned, he is strongly advised to consult a lawyer qualified to practise in South Korea.

\*A full text version of this Subject Guide including footnotes will become available for subscription in due course. In the meantime if there is a specific inquiry on any Subject Guide, please contact SRI.

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#### 1. **When is a seafarer considered abandoned according to national case law or legislation? Is there any special legislation concerning abandoned crew?**

1.1 There would appear to be no precedent which defines the abandonment of a seafarer. However, Korea adopted relevant provisions regarding abandonment from Maritime Labour Convention 2006 ('the MLC'), although it has not yet ratified that Convention. Therefore, abandonment is defined by the MLC. Accordingly, abandonment is defined as follows:

'Abandonment is characterised by the severance of ties between the shipowner and the seafarer. Abandonment occurs when the shipowner fails to fulfil certain fundamental obligations to the seafarer relating to timely repatriation and payment of outstanding remuneration and to provision of the basic necessities of life, *inter alia*, adequate food, accommodation and medical care. Abandonment will have occurred when the master of the ship has been left without any financial means in respect of ship operation' or

'A seafarer shall be deemed to have abandoned where, in violation of the requirements of the Convention or the terms of the seafarers' employment agreement, the shipowner: (a) fails to cover the cost of the seafarer's repatriation; or (b) has left the seafarer without the necessary maintenance and support; or (c) has otherwise unilaterally severed their ties with the seafarer including failure to pay contractual wages for a period of at least two months'.

1.2 The Seafarers Act criminalizes abandonment by the master of seafarers engaged on board a South Korean flagged ship in a foreign state. The Act also provides that the repatriation expenses for the abandoned seafarers shall be borne by the South Korean government first and it can then recover the cost from the state whose flag the ship flies, or can issue an order of port embargo until such costs are recovered.

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- 1.3 In contrast to the former Act, which had insufficient provisions protecting seafarers' rights while being repatriated, the newly amended Seafarers Act provides that a seafarer shall be repatriated to the place he chooses for repatriation from between the seafarer's country of residence and the place at which the seafarer entered into the engagement agreement. According to the amended Act: (a) seafarers can choose where to be repatriated; (b) repatriation expenses are expanded as compared to the former act; and (c) the scope of ships subject to mandatory repatriation insurance is expanded. In addition, it became mandatory to keep documents in the ship in which repatriation related provisions are written for the seafarers to read.
- 1.4 The former Act limited repatriation expenses owed by the seafarers' employer to costs for transportation, accommodation, and food. However, the newly amended Act expanded such expenses by including all the general expenses from leaving the ship until arrival at the place of repatriation. According to the relevant provisions, repatriation expenses are as follow: expenses for transportation, accommodation, food, freight of less than 30kg luggage carried by seafarer, and medical care.
- 1.5 A newly introduced provision in the Act prohibits the employer of seafarers from requiring seafarers to pay in advance repatriation expenses while entering into an employment agreement with seafarers.
- 1.6 Previously, the former Act compelled only deep-sea fishing vessels to procure insurance covering repatriation. However, the amended Act expanded its scope to oceangoing merchant ships which is regulated by Presidential decree and costal merchant ship where foreigner(s) are working onboard.
- 1.7 The Seafarers Act provides that a shipowner shall carry and make available to seafarers a copy of the applicable provisions regarding repatriation so that seafarers can easily access it and be aware of the applicable provisions with a view to facilitating their rights to repatriation.
- 1.8 If shipowner fails or does not perform to make arrangements for repatriation of the seafarers engaged on board Korean-flagged vessel, Minister of the competent ministry shall take necessary measures to repatriate seafarers concerned. In that case, the Minister can recover the cost from the shipowner. In cases where foreign national seafarers engaged on board a foreign vessel are abandoned in a port of South Korean territory, Minister can repatriate such seafarers, and recover the cost from the state whose flag she ship flies. The Minister shall not charge seafarers with the expenses of their repatriation, and he can order a port embargo in relation to the vessel until the costs incurred in repatriating are recovered.

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- 1.9 Repatriation costs are normally covered under the shipowners' P&I policy. However, such a P&I policy may not help seafarers, given that most of the rules of international P&I Clubs contain a pay to be paid clause. When the governing law of the policy is South Korean law, it is possible for the seafarers to claim directly against the P&I insurer, while under English law such a direct claim will be restricted by the 'pay to be paid clause' in the policy. In most cases where the shipowner is bankrupt or insolvent, the shipowner will not, and mostly would not be able, to pay the repatriation costs. As a result, seafarers would not be entitled to claim for repatriation costs against P&I club directly according to the 'pay to be paid clause' which is given effect under English law.
- 1.10 Busan District Court held on 17 June 2009, that where a seafarer, who had suffered from an accident during the navigation of his vessel, exercised a direct claim against the P&I Club, a clause designating English law as the governing law of marine insurance policies was enforceable in South Korea since English law has long been established as a governing law in insurance transactions and the application of English law would not be contrary to good custom and the social orders of South Korea nor deprive a policyholder of its rights. The court thus accepted the defendant's argument that the 'pay to be paid' rule should apply on the basis that the governing law was English law, while the plaintiff's case was dismissed. In cases where the governing law is South Korean law, the KCC allows a seafarer to exercise a direct claim against the insurer for repatriation costs.

## 2. What is the immigration status of abandoned seafarers?

- 2.1 Any foreign vessel shall be entitled to enter into and depart from the open ports of South Korea. According to the Customs Act, foreign vessels can enter into open ports simply by reporting their entry to the port custom authority and depart from ports by permission of the port custom authority. Seafarers on board such vessel shall be entitled to stay within South Korean territorial waters so long as they stay on board.

## 3. Can an abandoned seafarer get shore leave?

- 3.1 The Immigration Control Act provides for seafarers' shore leave permission.
- 3.2 According to the Immigration Control Act, when the master of ship, forwarding agent, or the seafarer himself requests, an immigration control official may permit the landing of such a crew member for up to 15 days. For such shore leave, the seafarer must submit his seaman's certificate in order to let the official verify the crew's capacity. In cases where the official permits a seafarer's landing, the permission may

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be conditional, providing for the duration of the landing, restrictions on districts he can visit, and so forth. The duration of the shore leave can be extended when admitted to be necessary.

- 3.3 According to the Immigration Control Act, if it is deemed that a foreigner on board ship (including crew members) is required to land urgently due to a disease or any accident, an immigration control official may permit emergency shore leave for up to 30 days, on receipt of an application by the master of the ship or a forwarding agent.

### **4. Is abandonment of seafarers considered a crime?**

- 4.1 Abandonment of a ship and its seafarers by the master constitutes a crime according to the Seafarers Act. No other special provision for the abandonment by the shipowner or other seafarers' employer has been legislated. In this regard, a question arises as to whether a 'crime of abandonment,' which is stipulated under the criminal law, can be raised in relation to seafarers. As yet, there is no explicit precedent in relation to the abandonment of seafarers. It is unlikely that a court will apply such provision to seafarers since the 'crime of abandonment' has so far been recognized by the court only within a limited scope.

### **5. What entities and/or persons may be involved with or assist an abandoned crew?**

- 5.1 Various entities and/or persons may be involved with or assist an abandoned crew.
- 5.2 Lawyers

See FIND ASSISTANCE on the SRI app which can be downloaded from the home page of the SRI website at [www.seafarersrights.org](http://www.seafarersrights.org)

- 5.2.1 In addition, reference may be made to the Guide on Using Lawyers and Fact File available on the SRI app and at

[https://www.seafarersrights.org/seafarers\\_subjects/using\\_lawyers/](https://www.seafarersrights.org/seafarers_subjects/using_lawyers/)

- 5.3 ITF Inspectors and union officials

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### 5.4 Welfare agencies

See FIND ASSISTANCE on the SRI app which can be downloaded from the home page of the SRI website at [www.seafarersrights.org](http://www.seafarersrights.org)

### 5.5 Governments and Embassies

Additionally the seafarer may need to access government official websites, including lists of embassies, to find an appropriate contact.