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11th February 2020

LA(20)07

To: Labour Affairs Committee

FINAL DRAFT ICS MANNING AGENCY GUIDELINES

Action Required: Members are invited to note the proposed final version of the draft guidelines which have been produced in response to feedback received from members. Members are invited to provide any final comments to the undersigned by close of business on Friday 21st February 2020 and then these will be sent for type setting and issuance by the end of March 2020.

Natalie Shaw

Director Employment Affairs.

Draft Manning Agency Guidelines Endorsed by ICS, ECSA, ASA, and IMEC.

Introduction

These guidelines have been produced to assist Shipping Companies choose reputable manning agencies ensuring that seafarers are recruited in line with requirements of the ILO Maritime Labour Convention 2006.

Background to the Guidelines

These guidelines aim to:

- Provide clear advice to companies on what to look for when identifying a manning agent to work with.
- Advise shipping or ship management companies which have their own internal or “owned” manning agents, as to how to operate them in line with legal requirements and best practice.
- Ensure companies know how to audit manning agencies to ISM/ MLC requirements.
- Encourage governments to operate systems to regulate recruitment and placement services for seafarers, through licensing or alternative means
- Advise shipowners what to do if they have been targeted by fraudulent operators, advertising with their name.
- Assist shipowners in ensuring their relationship with their manning agents upholds seafarers’ rights and welfare.
- Strengthen the provisions within the ILO Maritime Labour Convention 2006.

What is a manning agent as opposed to a crew manager?

~~There is a distinction between the role of a manning agent and the role of crew manager as there is a difference in the activities conducted. A differentiation between crew management on the one hand and manning agency on the other has to be justified because there is an actual difference in the activities carried out by the respective entities.~~

~~Such a differentiation of the activities performed by the crew managers, as opposed to manning agents, is described according to field information received by the industry.~~

~~It is established that~~ The relevant main functions and responsibilities of these two different actors of the modern shipping industry are the following as follows:

What is a manning agent?

A manning agent is a recruitment agency that fulfils the following functions:

- advertises a vacancy and gathers applications
- proposes seafarers/candidates to principals/clients,
- arranges medical and visa requirements for outgoing seafarers and
- arranges most local procedures / requirements for crew joining.

What is a crew manager?

A crew manager is a company that employs seafarers on behalf of a ship manager or shipowner.-A Crew Manager fulfils the functions set out below and operates as follows:

yorum [TS1]: These paragraphs are Theambiguous and I'm not convinced they add any value. Can we remove these two and the one below – as well as the heading above?

yorum [NS2R2]: I don't think we can remove as these came from Cyprus but I will try to reword more succinctly hopefully to make it clearer

- Signs Crew Management Agreements with shipowners (e.g. Crewman A & Crewman B)
- Interviews seafarers and ensures all licences and certificates are authenticated. Ensures also that medicals and all other local requirements are satisfied.
- Selects appropriate and competent seafarers according to their service and experience and allocates them to relevant ships under management.
- May act as the maritime employer having all the judicial responsibilities for the crew.
- Ensures that the laws of the Flag State of the ships are satisfied as regards to ranks, qualifications and certificates of crew.
- Ensure that the laws of the Flag State are satisfied as regards employment regulations and crew tax and social insurance.
- Implements under its own name insurances in respect of crew accident and crew protection and indemnity exposure.
- Administers crew and all their related issues including but not limited to: travel arrangements to and from the ships / payroll matters / medical needs / replacement, including leave applications / conclusion of union agreements etc.
- Provides training for cadets, leading to the attainment of STCW Certificates of Competency.
- Identifies, upgrading and training needs of seafarers. Initiates and implements training schemes onboard and ashore aiming at maintaining the high quality and competence of the seafarers.
- Contracted to provide crew management services mostly on a lump sum basis but at times on a “cost plus” basis.

ILO Maritime Labour Convention 2006.

The ILO Maritime Labour Convention, 2006 Regulation 1.4 and Standard A1.4 aim to ensure that seafarers can access an efficient and well-regulated seafarer recruitment and placement system. It contains requirements that apply to public and private services whose primary purpose is the recruitment and placement of seafarers or which recruit and place a significant number of seafarers. It requires that:

- All seafarers shall have access to an efficient, adequate and accountable system for finding employment on board ship without charge to the seafarer.
- Shipowners who use seafarer recruitment and placement services that are based in countries or territories that are not parties to the MLC must ensure that those services conform to the requirements of the MLC.
- Public seafarer recruitment and placement services must be operated in an orderly manner protecting and promoting seafarers’ employment rights.
- Private seafarer recruitment and placement services must comply with a system of licensing or certification or other form of regulation.
- These provisions shall also apply to recruitment and placement services operated by a seafarers’ organization in the Member’s territory for the supply of seafarers who are their nationals to ships flying their flag.
- Seafarer recruitment and placement services are prohibited from using means, mechanisms or lists intended to prevent or deter seafarers from gaining employment for which they are qualified.
- No fees or other charges for seafarer recruitment or placement, or for providing employment to seafarers, may be borne directly or indirectly, in whole or in part, by seafarers, other than the cost of the seafarer obtaining a national statutory medical certificate, the national seafarer’s book and a passport or other similar personal travel documents. (The cost of visas shall be borne by the shipowner).

- Seafarer recruitment and placement services maintain an up-to-date register of all seafarers recruited or placed through them, to be available for inspection by the competent authority.

A seafarer recruitment and placement service means any person, company, institution, agency or other organization, in the public or the private sector, which is engaged in recruiting seafarers on behalf of shipowners or placing seafarers with shipowners;

yorum [NS3]: Inserted following suggestion from Francesco

yorum [NS4R4]:

Private seafarer recruitment and placement services are also required to ensure that:

- Seafarers are informed of their rights and duties under their employment agreements prior to or in the process of engagement and that proper arrangements are made for seafarers to examine their employment agreements before and after they are signed and for them to receive a copy of the agreements;
- Seafarers recruited or placed by them are qualified and hold the documents necessary for a job and that the seafarers' employment agreements are in accordance with applicable laws and regulations and any collective bargaining agreement that forms part of the employment agreement;
- The shipowner with whom any seafarer is placed has the means to protect seafarers from being stranded in a foreign port;
- Any complaint concerning their activities is examined and responded to and the competent authority is advised of any unresolved complaint;
- There is an established a system of protection, by way of insurance or an equivalent appropriate measure, to compensate seafarers for monetary loss they may incur due to the failure of a recruitment and placement service or the relevant shipowner under the seafarers' employment agreement to meet its obligations to them.

Each country that has ratified the MLC is required to advise its nationals on the possible implications of signing on a ship that flies the flag of a State which has not ratified the Convention, until it is satisfied that standards equivalent to those fixed by the MLC are being applied. Such measures shall not contradict the principle of free movement of workers stipulated by the treaties to which the two States concerned may be parties.

Access to Manning Agents

There are 3 main methods to be able to access manning agencies:

- Introductory agency – which will send papers for a company to review
- A hiring hall, which is an organization usually under the auspices of a labour union, with responsibility to provide new recruits for employers who have a collective bargaining agreement with the union. Employer use of a hiring hall may be voluntary, or compulsory under the terms of their contract with the union (or, in a few cases, the labour laws of the jurisdiction in question). Compulsory use of a hiring hall effectively turns employers into a closed shop as seafarers must join the union before being hired. Presence of a hiring hall places responsibility on a union to ensure that its members are suitably qualified and responsible individuals before assigning them to the employer. A union will often enforce a basic code of conduct among its members. If a

hiring hall is reputable, the relationship between the union and the employer can be relatively harmonious. The union will handle qualifications and other eligibility requirements and maintain individual employment records. Hiring halls are most prevalent in skilled trades and where employers need to find qualified recruits quickly.

- Employment business, they choose the seafarers for the shipping companies similarly to a temp agency which provides workers for a defined period for shore-based roles. They may supply applications and/or curriculum vitae to employers, or they may conduct interviews on the employer's behalf, in return for a fee paid by the employer.

What defines a good Manning Agency?

It should be:-

- Transparent in its operations.
- Licensed by the appropriate national authority or operate to national legal standards that are effectively enforced.
- Able to provide a list of customers to approach for feedback.
- Very responsive to problems identified and willing to resolve these quickly.
- ISO certified if possible, for consideration at tender or Tanker Management and Self-Assessment (TMSA) vetted. (See TMSA best practice criteria below)
- A long-term relationship with its seafarers and their customers would indicate a reputable agency with a high degree of satisfaction.
- Allowing for some degree of choice of the candidates available for a particular post
- Able to validate certificates held by candidates being offered up.
- Fulfilling its obligations under their respective contract with the shipowner/ ship manager on a timely basis.
- Able to answer questions posed as part of an audit process, if such a process exists.
- Able to provide positive references as part of a due diligence process.
- Able to provide 24hour availability including a dedicated customer relations manager
- Able to be flexible in terms of what they offer. Determining what is needed by way of services available and meeting these needs.
- Confident that they can handle data in a responsible way and comply with respective data protection laws such as GDPR in Europe.

What signals a bad Manning Agency?

A manning agency must not:

- Attempt to charge to recruit or place a seafarer or requiring an administration charge.
- Adopt any discriminatory practices, such as victimization or failing to respect protected characteristics such as gender, age, or race.
- Operate any blacklists of people, including listing who may have raised a complaint under the MLC 2006 or a health and safety issue
- Promise any jobs that do not exist, or glamourize / exaggerate jobs that do exist

It should also not:

- Make it difficult for a seafarer to be relieved at the end of their contract or fail to ensure that a relief seafarer is identified.
- Falsely describe the terms and conditions / remuneration for employment.
- Demonstrate a lack of awareness of the differences in applicable flag state laws and those of labour supply countries too.
- Find it difficult to provide referee shipping companies who can be approached for a reference on their performance.
- Be too cheap, cut corners, or charge the seafarers for anything not considered acceptable under the MLC 2006.
- Find it difficult to establish and agree appropriate break clauses in a contract.
- Find it difficult to explain the roles and responsibilities of their business as a manning agent and likewise the roles and responsibilities of the shipowner so that a seafarer clearly knows who is responsible for handling respective matters.

TMSA Criteria Elements 3 & 3A

Where ships are subject to TMSA vetting the following steps need to be followed. These also can be useful for companies not subject to TMSA to consider asking their manning agents to follow. For the purposes of TMSA, where responsibilities are delegated to manning agents or third-party contractors, their functions are assessed as if performed by the company.

- Ensure that all vessels have qualified, competent and motivated personnel who fully understand their roles and responsibilities capable of working effectively as a team.
- Establish and maintain procedures related to the recruitment, training and wellbeing of vessel personnel including:
 - Verifying that certificates of competency are authentic and valid
 - Taking additional steps to determine the competency of vessel personnel and the accuracy of pre-employment records
 - Verifying that medical requirements are met by personnel at the time of appointment and on an ongoing basis
 - Ensure that mandatory, company specific and individual training requirements are identified and that training records of personnel are kept.
 - Confirm that the working hours of personnel are accurately recorded and that management monitors the records to ensure adequate rest periods.
 - Provide adequate resources to administer the conditions of employment for personnel including personal needs, wellbeing and requirements.
 - Determine and clearly state the working language to be used onboard vessels and ensure that all vessel personnel can communicate in this language.

Fraudulent or bogus operators

The primary concern is with entities which purport to be manning agents who claim to have a relationship with a shipowner / employer but who do not in reality and who advertise and recruit for non-existent jobs. The ILO Maritime Labour Convention 2006 does not have a way to handle entities which operate bogus and fraudulent operations often through websites.

What to do about fraudulent or bogus operators?

- Report the situation to the authorities to ensure it is formally on record. (Both the Police and Maritime Administration.
- Place a disclaimer onto your company’s website to explain that you are aware that there is a fraudulent agency using your companies name and to discourage people from being tempted to contact them.
- Provide information on the company’s website to explain your recruitment process to be transparent with people potentially interested in being recruited by your company.
- Check the ITF scams document regarding crewing agents.
- Alert seafarers not to respond to requests for upfront payment.
- Encourage seafarers to check the hyperlink addresses are bona fide and also the origins of any request.
- Educate seafarers not to fall for such scams.

Tick box criteria

The table below provides a list of key criteria a shipowner should check when selecting a manning agent.

	Tick
ISO accredited? TMSA / criteria met?	
Does not charge seafarers for any services except those allowed under MLC 2006?	
The national flag legislation in the country of the Manning Agents operations. Several labour supply countries have detailed legislative provisions for their Recruitment & Placement Services licensing regime on their official websites for review by potential shipowners / Managers when selecting a Manning Agency.	
Does not operate blacklists?	
Accurately advertises and fills vacancies which they are handling?	
Ensures all the appropriate terms and conditions of employment are properly honoured?	