



Circular 2020/005

Seafarers' Employment on board during COVID-19

Date: 06-08-2020

To whom it may concern,

I. Introduction

This BMI Circular relates to all Belgian flagged ships, excluding fishing vessels, and addresses all concerned parties responsible for the manning of Belgian flagged ships.

On 11 March 2020 the World Health Organization (WHO) declared the outbreak of Coronavirus (COVID-19) as a worldwide pandemic. The pandemic has been increasing in strength, reaching worldwide proportions, now affecting most countries around the world.

The now prevailing pandemic has an increasing negative effect on seafarers serving on board ships, being the human element on which the shipping industry is dependent. The prime concern being the direct health risks, related to the pandemic itself. However, keeping the seafarers on board a ship, considered as a “self-contained” environment, and minimizing the ship-shore interaction, is (wrongly) assumed by many organizations as a good and safe practice to reduce the exposure and the health risk.

Under normal circumstances, seafarers were already spending many months on board ships, continuously performing strenuous tasks. Prolonged periods of service on board may lead to mental and physical fatigue, stress and anxiety, have a negative impact on the mental and/or physical health of the seafarers, and ultimately affects the safety of the ship.

Under the ISM Code 6.2 and MLC 4.3, the company or shipowner carries the responsibility in safeguarding the general health of the ship's crew and ensuring that the seafarers are medically fit for duty.

Timely relief of the serving seafarers, repatriation to their respective home countries and the provisions of suitable leave period, is imperative to ensure the mental and physical health of the seafarers but also the continuity of human resources and sustainability of the shipping industry during the pandemic.

As the pandemic unfolds worldwide, many governments have now introduced national and local restrictions toward ships and their crew, including:

- Delayed port clearance,
- Prevention of crew from embarking or disembarking (preventing shore leave and crew changes),
- Prevention of crew to have access to local health facilities and medical care,
- Imposition of quarantine or refusal of port entry to ships (in extreme cases).

Furthermore, the logistics of travelling, both nationally and internationally, has become increasingly difficult due to:

- Travel bans have been imposed in countries and regions,
- Flight connections are not available or reliable,
- Unavailability of diplomatic services (passport, visa...).

Companies and shipowners are expected to do their utmost to ensure that the seafarers serving on board their ships, are duly repatriated according to the terms and conditions of their employment. This may require the understanding, support and commitment of other stakeholders in the operation of the ship, such as the registered owner, bareboat charterer, commercial operator and/or charter party.

Due to the constantly changing and uncertain adverse conditions mentioned above, companies or shipowners are facing great challenges and difficulties to timely carry out the intended crew changes and repatriations, resulting in prolonged stays of their crews on board ships. When other possibilities or options have been exhausted, the ship managers or shipowners shall address the required extension of service on board, to BMI.

Since the outbreak of the coronavirus disease in 2019 (COVID-19), the Belgian Maritime Inspectorate (BMI) has been monitoring the situation closely, has taken into account the recommendations from the industry and the international organizations such as IMO, ILO, WHO and EU, and has issued the necessary guidelines.

This circular is related to BMI circular 2020-002 and aims for providing further support and detailed guidance in relation to the extension of the service of seafarers on board Belgian flagged vessels, as a result of the COVID-19 crisis.

II. Position of Port State Control

Major Port State Control authorities, represented by the Tokyo and Paris Memorandum of Understanding, have aligned their guidelines in relation to the COVID-19 outbreak, in how statutory requirements will be interpreted and enforced, safeguarding the safety, security, environmental protection and living and working conditions on board ships. In particular, the main MOU's address the requirements on accepting extended duration of the service on board and extended seafarers' employment agreements.

One of the major concerns of the MOU's is the misuse of the COVID-19 crisis to avoid compliance with the statutory requirements. Therefore, a case by case approach and approval by the flag state authorities, for granting any extension of the seafarers' employment agreements, is considered a decisive or key factor on accepting any extension. The same MOU's strongly oppose to automatic or unfounded extensions.

III. Duration of service on board

The maximum duration of service for each seafarer on board a Belgian flagged vessel is determined by the applicable Collective Bargain Agreement (CBA), fully endorsed by the Belgian Maritime Legislation. The maximum duration of service on board shall not exceed a period of 7 months (Ref. CBA non-pool).

The duration of service on board shall be specified in the seafarers' employment agreement (SEA) and determine the validity of it. The duration of service shall never exceed the maximum duration of service established in the applicable CBA, unless an extension has been authorized.

A valid Seafarers' Employment Agreement (SEA) must remain in force, during the whole time of service on board, until repatriation. Importantly, if any of the SEA's should expire, while the seafarers are in service on board, the SEA's must be extended, or new ones issued.

IV. Extension of service on board

The responsible companies or shipowners, are required to take a pro-active approach in organizing crew changes, taking into account the expected routing and ports of call. It is recommended that the companies or shipowners, maintain a close consultation with their respective commercial parties, ensuring the “human element” is considered as a strategic parameter in the overall commercial operation of the vessel.

The company or shipowner shall do the utmost to whenever possible, safely change crew members in a suitable or intended port of call, prior the expiry of the seafarers’ employment agreement. The company or shipowner should plan well ahead and take advantage of each opportunity to carry out a crew change.

The company or shipowner, in consultation with the other commercial parties, should take into consideration a possible course deviation to call at a port, or make an unscheduled stop at a port, where a crew change is possible.

The primary objective remains that the company or shipowner does the utmost to change crew as close to the maximum period of service on board as stated in the relevant CBA and SEA.

Under exceptional circumstances the Belgian Maritime Inspectorate may authorize the extension of the duration of service on board and SEA’s, for one or more seafarers. The extension may be granted in two stages:

A. From the maximum period of service until a maximum of 11 months of service on board.

When the SEA has just expired or is about to expire, and reaching the maximum period of service on board, in accordance with the relevant Collective Bargaining Agreement, and, there is no possibility to safely change the crew member in the intended port of call, an extension of the SEA, valid for up to 11 months from the date of signing on, may be authorized by BMI.

An extension can only be granted subject to the following conditions:

- 1) Objective evidence can be provided that, despite efforts, the crew change could not be carried out. (restrictions of ports of call and neighboring ports, travel restrictions, scheduled routing of the ship)
- 2) Evidence that the seafarer has agreed with the extension. An extended SEA or a general consent, signed by the concerned seafarer, constitutes sufficient evidence.
- 3) The company or shipowner, shall make a plan of action, to repatriate/replace the seafarers whose SEA’s have been extended, at the soonest possible opportunity and within the period of the extension.

B. From 11 months of service on board, onwards

When the extended SEA has just expired or is about to expire, and reaching the maximum extended period of service on board of 11 months, and, there is no possibility to safely change the crew member in the intended port of call, an exceptional extension of the SEA, may be authorized by BMI.

An exceptional extension can only be granted subject to the following conditions:

- 1) Objective evidence can be provided that the action plan mentioned under A (3) could not be carried out as intended due to unforeseen circumstances beyond the control of the company or shipowner (sudden changes in restrictions of ports and neighboring ports, closure of ports, sudden changes in the routing of the ship, quarantine of the ship, breakdown)
- 2) Evidence that the seafarer has agreed with the exceptional extension. An exceptional extended SEA or a general consent, signed by the concerned seafarer, constitutes sufficient evidence.
- 3) The ship manager or shipowner, shall propose concrete and immediate actions, to repatriate/replace the seafarers whose SEA’s have been exceptionally extended, as soon as possible and within the period of the exceptional extension.

- 4) Consideration should be given to divert the ship to call at a port, or make an unscheduled stop at an intermediate port, to ensure a crew change can be made.
- 5) The duration of the exceptional extension of the SEA shall depend on the actions mentioned under (3), but shall be kept as short as possible.

V. Procedure for applying for an extension

For the extension of any seafarers' employment agreement beyond the maximum duration of service on board, BMI may grant authorisation on a case by case basis, based on supporting evidence, justifying such extension.

On facing a situation mentioned under (A) or (B), applicable to one or more seafarers serving on board a Belgian flagged vessel, the company or shipowner shall complete the application form in annex to this circular. The application form is specific to each ship and lists the seafarer(s) for whom an extension of the SEA(s) is required. Multiple application forms may be applicable to one ship over the course of time.

The ship manager or shipowner should prepare the supporting evidence or information stated in A (1),(2)(3) or B (1),(2),(3), whichever applicable.

The completed application form and the supporting evidence shall be submitted to BMI for approval, through ship.belflag@mobiliteit.fgov.be. The submission shall only be carried out by the responsible company or shipowner. Manning agencies or other employers should not submit any application, unless they are legally mandated by the company or shipowner, to act on their behalf. In such case the submission must be accompanied by documented evidence of this mandate or a relevant power of attorney, signed by the company or shipowner.

Upon receipt of the application form, BMI will review and assess the supporting evidence and information. In case of approval the application form will be countersigned and endorsed, and returned to the applying company or shipowner. The countersigning and endorsement may be carried by electronic signature and stamp.

In the other case, further consultation will be set up with the company or shipowner, to obtain further clarification or information.

BMI reserves the right to refuse or reject an application for extension of a SEA, in case the evidence or information, mentioned under A (1),(2)(3) or B (1),(2),(3), whichever applicable, is found insufficient or incomplete to support the application for extension, or if the grounds on which the application for extension is based, is found unjustified. In such case the company or shipowner shall be advised accordingly.

The countersigned and endorsed application form serves as evidence towards any concerned party that the flag state has assessed the necessity to extend the duration of service on board, and authorizes the extension of the concerned SEA(s). Therefore the company or shipowner shall ensure that a copy of the attestation is physically or electronically available on board the ship.

Any SEA issued that is an extension of the original SEA must state that it is an extended contract.

VI. Extended SEA prior the application of this circular

In order to ensure the uniform implementation of the policy on extending the duration of service on board, a **retroactive application** of this circular is required. The companies or shipowner, who have requested an approval for extension of the SEA for one or more seafarers, prior the application of this circular (referred

to the date) but not earlier than 18 March 2020, shall resubmit the application for extension in accordance with the procedure mentioned in paragraph V.

Any resubmission of a previously approved extension, will not result in a revision of the decision to grant the extension.

Annex: Application by the shipowner for an extension of a seafarers' employment agreement (SEA) on ships flying the Belgian flag beyond the maximum duration of service on board related to Covid-19

The annex of this circular is available on <https://mobiliteit.belgium.be/nl/scheepvaart/koopvaardij> as the application form 'Covid-19 - Application for extension SEA'.
