

Ukraine Conflict - Repatriation of Crew FAQs



Monica Lambrou-Whiting
Senior Claims Manager

In view of the numerous requests from Members seeking advice on the repatriation of crewmembers arising from the crisis in Ukraine, we have produced the following FAQs to assist Members.

As the situation develops, we hope to provide further advice including any industry guidelines that are issued. Most of the questions involve repatriation, and changes or amendments to crew contracts. These are operational matters and we must stress that while we are providing advice to assist Members, they should obtain legal advice on the applicable law governing the crew contract and any Flag State or regulatory requirements.

Please also note that any questions relating to War Risks should be referred to your War Risk insurer for advice/guidance.

FAQ's

1) What if Owners are unable to repatriate a crewmember to his/her home country or place of engagement?

If it is not possible, practical or safe to repatriate a seafarer to his/her home country or place of engagement then, subject to the applicable law of the contract and the ship's flag state, Members may agree to an alternative place of repatriation, with the consent of the crewmember. We recommend that Members always check with their manning agents for any advice or guidance they may have on repatriation issues.

2) In the event a crewmember is repatriated to an alternative place when will Owners' contractual obligation to him/her cease?

In most cases the contract of employment provides that crewmembers should be repatriated to their country/place of origin. An Owner's obligations to that crewmember shall continue until that repatriation is completed. However, it is likely that the intention of both Owner and crewmember is that once repatriation to an alternative place has been accomplished, then the crew contract should be considered at an end, and so we recommend that this intention and variation of the original contract of employment is recorded in an addendum [see FAQ 6 for further details on this].

3) What if a crewmember wishes to terminate his/her contract earlier than the original contract termination date?

In view of the present crisis in Ukraine many Ukrainian seafarers are requesting to be released from their employment contract before the original termination date. Members may agree to any request to end the crew contract early and permit the crewmember to be repatriated [see FAQ 6 for further details on this].

4) What if the crew contract provides that a crewmember is to be repatriated to his/her country of origin, but this is not practical or safe due to the crisis?

Travel within Ukraine is now not possible, practical or safe. It is therefore extremely unlikely that Members will be able to make arrangements for crewmembers to return safely to their hometowns or villages in the Ukraine. In these circumstances it will be necessary for Owners and crewmembers to agree an alternative place of repatriation, and consequently in most cases this will be a variation to the contract of employment [see FAQ 2 above].

5) What if the crewmember wants to be repatriated to a place close to the border of his/her home country?

Many crewmembers may request to be repatriated to a neighbouring state, close to their country of origin. In this instance, subject to compliance with any legal/immigration or other security requirements, Members may be able to arrange to repatriate crewmembers to a neighbouring state, close to the border of the crewmember's home country, to facilitate the crewmember's onward journey.

As repatriation to this alternative place is likely to be considered as a variation to the contract of employment, this should be recorded in an addendum to the contract of employment, to ensure that once repatriation to this alternative has been completed, the contract of employment is at an end and the Member's contractual obligations cease [see FAQ 6].

6) In the event a crewmember is repatriated to an alternative place how should this be recorded?

Should Owners ask the crewmember to sign a waiver to confirm that Owners have discharged their contractual obligations?

As advised in FAQ 5. above, repatriation to an alternative place may constitute a variation of the contract of employment and it maybe the intention of both parties that the contract of employment terminates upon repatriation to the alternative place. At present there are no industry guidelines for such waivers, but should such guidelines be issued in the future we will advise Members. In the meantime, and in order to assist Members at the current time, the International Group of P&I Clubs have proposed the wording below which may be used either in circumstances where normal repatriation cannot take place or where a crewmember wishes to terminate their contract early due to the crisis. We highlight that this is not a formally adopted IG wording but rather a suggested draft to assist all Clubs' Members at this difficult time.

However, we must stress that any waiver is likely to constitute a change to the crew contract and the legitimacy or enforceability of such a variation will depend on the law of the flag state and law applicable to the crew contract. In these circumstances we caution Members and recommend that they seek independent legal advice before proceeding with any addendum and/or waiver. It is also recommended they check the position with their war risk insurers.

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

For normal repatriation after the end of the contract you can amend above version as follows:-

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).

Due to the present exceptional circumstances 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 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

7) Should Owners include a 'hold harmless' in the waiver?

Whilst Owners may include a hold harmless clause in the waiver there is no guarantee that this will be legally binding or enforceable and it may deter a crewmember from signing the waiver. It is therefore, strongly recommended that Members take legal advice on this point.

8) Will Owners still be responsible for any crew illness/injury during repatriation to the alternative place? Will P&I crew cover remain in place?

The crew contract and MLC provides that Owners are responsible for their crew during and up to the completion of the repatriation journey. Members will have P&I cover as normal, until termination of the crew contract, for any crew illness or injury during the repatriation period. We must caution however that illness or injury will not be covered if it has arisen directly or indirectly due to a war risk. Members are therefore strongly advised to check with their war risks insurers with regard to cover for any repatriation journey and particularly the scenario referred to in FAQ 5 above.

9) Will P&I cover respond in case of any crew injury or illness due to an Act of War?

As stated above standard P&I cover does not respond to crew illness or injury due or arising from war risks.

10) In the event it is not possible, practical or safe for crewmember to be repatriated upon completion of his/her contract of employment are Owners entitled to extend the contract of employment?

MLC requirements are that the maximum period a crewmember may work on board before repatriation should be less than 12 months and the maritime industry provides that this maximum period should be 11 months. Members are therefore advised to check with their flag state to ensure that any crew contract extensions do not breach applicable guidelines/regulations.

11) In the event that a crewmember's contract of employment is extended does this affect P&I crew cover?

P&I will cover normal crew risks under any extended contract provided that such an extension was authorized by the appropriate authority.

12) What if Owners are unable to repatriate Russian crewmembers due to sanctions on Russia that may affect travel arrangements?

The same applies as in FAQ 1 above. Owners may also wish to consider addendum to the contract/waiver under FAQ 6 above.
