

Employing seafarers from Ukraine

What not to do

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My firm has been practising maritime law in Ukraine for 15 years. I can't claim that we have seen it all but in that time we have been involved in numerous cases ourselves, and heard enough from friends and colleagues, to compile a list of some frequent, unnecessary mistakes that shipowners and crewing offices are prone to make.

We have a fine reputation for producing excellent seafarers in Ukraine and the process of employing them successfully should not be difficult and fraught with misunderstandings. But if you really want to get it wrong...

1. Don't think about the corporate structure of your business.

■ In Ukraine there are generally two options: either to open a subsidiary (joint venture) or a representative office. Their status is different, so the consequences are different too. If a seafarer has a claim against the shipowner, he will look for an opportunity to pursue his case in Ukraine. You should estimate the risk of this and think about the connection, both legal and corporate, between the head office and the local one before you start.

2. Don't make your relationship with local managers clear at the outset. You can postpone any it until later.

■ Usually a crewing operation in Ukraine that employs seafarers direct aims to save paying local crewing agencies and/or to keep the process of employment under the company's control. It is essential that the terms under which local managers are set out in writing at the outset. Local managers must be interested in working for you and you must be interested in working with them. Note that under Ukrainian law, even a director is an

employee. So it is only in a limited number of cases that an employer may terminate an employment agreement before its expiration date. Legally, you cannot fire your local director when you wish.

3. Don't think about the possibility of claims from crew members.

■ In order to protect their interests, Ukrainian crew members come to local courts with claims based on the norms of local legislation and this sometimes contradicts international rules. For instance, the amount of compensation for damage caused to the health of a seaman is usually determined by collective agreement incorporated into individual employment contract.

However, if this is less than the sum stipulated by the norms of Ukrainian law, the sum stipulated according to Ukrainian legislation is to be paid out.

In accordance with the rules established by the Chapter 82 of the Civil Code of Ukraine, compensation for damage caused to the health of an employee while performing his labour duties consists of:

- payment of lost wages depending upon the degree of loss of capability;
- one-off benefit payment to the sufferer (or in case of his death, to the members of his family and dependents of the deceased); and
- compensation for the expenses of medical and social aid.

As many shipowners and P&I clubs know, loss of life claims in Ukraine have become quite difficult to handle. Much of this is due to the discrepancy between the provisions of Ukrainian law and seafarers' contracts of employment/collective agreements. These are often exploited by so-called ambulance chasers, whose activity has greatly increased lately.

Ukraine is one of the largest seafarer suppliers to the world maritime fleet. In Odessa alone there are about 200 crew manning agencies licensed by the Ministry of Labour of Ukraine. It's a large number of people. There is a risk that you will encounter people, who may ask you, for

example, for compensation for psychological suffering or stress. Alas, Ukrainian legislation does not provide the exact procedure of calculating the amount of compensation that is subject to be paid for 'moral damage' caused to a person.

4. Don't ask professionals how to retain seafarers with pensions, insurance or other social programmes.

■ International shipowners often ask us what they can do if cadets leave their company even though they received a stipendium and were trained on board. Usually we say there is nothing that can be done as the above arrangements are the results of a 'gentleman's agreement' in an exchange of letters. Taking the local peculiarities into consideration, you must protect yourself through a written contract with a well-thought out programme and restrict its circulation as confidential information.

5. Don't pay attention to formal agreements

■ Oral agreements are enforceable in shipping in some countries, but not in Ukraine. You may prove something only if it is in writing. Even if you don't want to pay a lawyer to draft a document, at least put the key conditions in writing. And remember that draft agreements which are 'always' used and by 'everyone' are usually useless as they do not contain essential and specific clauses.

6. Don't hire a lawyer until you have got a problem.

■ This makes as much sense as only going to see a doctor when you cannot breathe any longer. What kind of help can be arranged by lawyers? To draft, review your company's statute, internal regulations, agreements and contracts in time. Otherwise be patient and tolerant when you are tried and tested in battle.

There are a many other factors to bear in mind but the above advice is the result of analysing current shipping practice. We hope our recommendations are useful and at least convey an idea of the right approach.