

Translation: Only the Danish document has legal validity.

*Order no. 814 of 6 of June 2023  
issued by the Danish Maritime Authority*

## **Order on Executive Order on insurance or another guarantee to cover the shipping companies' liability to seafarers and masters in the event of breach of the employment relationship<sup>1)</sup>**

Pursuant to sections 70, 73a(4-6) and 74a of the Act on Seafarers' Employment, cf. Consolidated Act no. 1662 of 17 December 2018, and section 20b of the Maritime Safety Act, cf. Consolidated Act no. 221 of 11 February 2022:

### *Scope of application*

**Section 1.** This Executive Order applies to employees on board Danish ships, cf. section 1(1) and section 49 of the Act on Seafarers' Employment Conditions, etc., irrespective of the use and trade area of the ships, with the exception of fishing vessels and recreational craft.

### *Shipping companies' commitments*

**Section 2.** The shipping company shall take out insurance or provide other equivalent financial security covering the surviving employees' claims against the shipping company and against the employer, if different, in cases where the shipping company or the employer are in breach of the obligations under the employment contract, including the collective agreement that may apply, or the Act on Seafarers' Employment and rules issued pursuant to the Act

- 1) Fails to cover the employee's repatriation costs,
- 2) Has left the employee without adequate means of subsistence or financial support; or
- 3) Has otherwise unilaterally and unjustifiably terminated the relationship with the employee, including if the employee has not received salary for at least 2 months.

### *Insurance or other equivalent financial security*

**Section 3.** The insurance or other equivalent financial security must, cf. subsections 2 and 3, cover

- 1) The basic needs of the employee until they have returned home, including food, heating, electricity, communication, hygiene and necessary medical treatment, etc., repatriation costs and other reasonable expenses resulting from the fact that the employee has been left behind; and

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2) Four months' outstanding salary and other remuneration, etc., to which the person concerned is entitled as a result of the employment relationship.

Subsection 2. The insurance or other equivalent financial security shall not cover the claims mentioned in subsection 1(2) to the extent that the employee is entitled to have these paid by Wage Earner's Guarantee Fund (LG).

Subsection 3. The insurance or other equivalent financial security shall not cover the claims mentioned in subsection 1(1) to the extent that the person concerned may be entitled to reimbursement of expenses for medical treatment, dental treatment, medicines, etc, which, pursuant to the special health insurance scheme for seafarers, cf. Executive Order no. 1331 of 5 December 2006 on the special health insurance scheme for seafarers, etc., are covered by public reimbursement and can be claimed by the employee against the Danish Maritime Authority.

Subsection 4. The financial security shall not cover claims for payment of sickness or maternity benefits, cf. Executive Order no. 728 of 29 June 2012 on sickness benefits for seafarers, and Executive Order no. 1011 of 28 June 2022 on maternity benefits for seafarers, to the extent that these claims are covered by public reimbursement and can be claimed by the employee against the Danish Maritime Authority.

Subsection 5. For ships that mainly sail between two ports in another EU/EEA country so that the employees are considered to normally perform work in the country in question, or where the employment relationship otherwise means that the seafarers are covered by an EU guarantee scheme, cf. subsection 6, in another EU/EEA Member State, the financial guarantee may also exempt the claims referred to in subsection 1(2) to the extent that these are covered by the guarantee scheme in question. However, this only applies to government schemes if the shipping company has obtained documentation on the scope of the scheme and the conditions, etc., for the payment of compensation, and if this information is available to the seafarers on board the ship.

Subsection 6. An EU guarantee scheme is understood to mean schemes in other EU or EEA member states established to implement Council Directive 80/987/EEC on the protection of employees in the event of the insolvency of their employer, as amended by European Parliament and Council Directive 2002/74/EC.

**Section 4.** For schemes established under private auspices in other EU or EEA member states to implement the directive mentioned in section 3(6), the requirements mentioned in sections 5-7 apply.

**Section 5.** In this Executive Order, approved insurance or other equivalent financial security means

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- 1) P&I insurance (Protection & Indemnity, P&I) on usual terms and conditions offered by a member of the International Group of P&I Clubs, for which a certificate has been issued in accordance with section 7,
- 2) Insurance for which a certificate has been issued in accordance with section 7 from an insurance company established in the European Union or in an EEA country, which is authorised to offer the insurance in question in accordance with EU rules on insurance activities and the legislation of the country in question or
- 3) Any other insurance or guarantee approved by the Danish Maritime Authority and for which a certificate has been issued in accordance with section 7, and which is offered by an insurance company or a bank authorised to offer the service in question under the legislation applicable in the company's home country.

Subsection 2. For ships owned by authorities, schools, institutions or similar covered by a state, municipal or regional self-insurance scheme, a declaration issued by the relevant state authority or by the financial officer of the municipality or region that the employment of the ship in question is covered by the self-insurance scheme is considered a sufficient guarantee. The declaration must also contain the information mentioned in section 7(1)(1-4) and (6).

**Section 6.** The insurance mentioned in section 2 or the corresponding financial security may not be cancelled before the expiry of the validity period unless the insurance company, etc., has given at least 30 days' prior notice to the Danish Maritime Authority.

Subsection 2. The insurance and the corresponding financial security must make it possible to obtain compensation for the claims mentioned in section 3. If the insurance is maximised, there must be documentation to show that there is cover for the claims mentioned in section 3. Documentation must be submitted to the Danish Maritime Authority upon request.

Subsection 3. The claims mentioned in section 3 must be able to be made directly against the insurer or guarantor. The insurer or guarantor can invoke the conditions for exemption from liability that the shipping company or employer could have invoked against the employee. On the other hand, the insurer or guarantor cannot invoke defences that it could invoke against the shipping company or the employer. The insurer or guarantor who has fulfilled the requirements mentioned in section 3 may reserve the right to subrogate the employee's claim against the shipping company and the employer.

Subsection 4. Claims that the employee or someone acting on their behalf asserts against the insurer or guarantor must be accompanied by the necessary documentation. For claims where there may be doubt as to whether the person concerned is entitled to have the claim paid in full or in part by the Wage Earner's Guarantee Fund (LG), the person concerned must

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either authorise the insurer to obtain information about the cover from the fund or obtain such documentation themselves.

**Section 7.** A certificate issued by the insurer or the provider of the other financial security shall be available to seafarers on board the ship to confirm that the insurance or other equivalent financial security referred to in section 2 is in place. The certificate must contain the following information:

- 1) The ship's name.
- 2) The ship's home port.
- 3) The ship's call sign.
- 4) The ship's IMO number.
- 5) Name and address of the insurer or provider of the other equivalent financial security.
- 6) The contact details to which seafarers' requests for assistance should be addressed.
- 7) A confirmation that the insurance covers the claims mentioned in section 3.
- 8) The validity period of the insurance.

Subsection 2. An insurance company's confirmation that the insurance fulfils Standard A 2.5.2. of the Maritime Labour Convention (MLC) is equivalent to the declaration mentioned in subsection 1(7).

Subsection 3. When several insurance companies or financial security providers provide cover, certificates from each company or provider stating which claims each scheme covers must be made available to seafarers on board the ship.

Subsection 4. For ships where the seafarers are covered by the Wage Earner's Guarantee Fund (LG), a declaration issued by the Wage Earner's Guarantee Fund (LG) and a declaration issued by the Danish Maritime Authority on the cover of the fund and on the schemes mentioned in section 3(3) must be available on board the ship.

Subsection 5. For ships where the public is self-insured, the declaration mentioned in section 5(2) must be available to the employees on board the ship.

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Subsection 6. Declarations and certificates must be issued in the ship's working language or English. If the ship is sailing internationally, it must be written in English or have an English translation attached.

*The powers of the Danish Maritime Authority*

**Section 8.** The Danish Maritime Authority may require documentation that the insurer is authorised to conduct insurance business and is approved by the insurance supervisory authority in the country where the company has its business address or head office, and that the insurance meets the requirements of this Executive Order. In special cases for insurance and guarantees covered by section 5(1)(3), the Danish Maritime Authority may require that it also be documented that the company, etc., in question is solvent and can fulfil its obligations. The Danish Maritime Authority may also refuse to issue an authorisation or revoke an already issued authorisation if it becomes aware of information that makes it likely that there is a risk that the company in question cannot fulfil its obligations.

Subsection 2. The Danish Maritime Authority may limit the time and condition the approval of the insurances and guarantees mentioned in section 5(1)(3).

Subsection 3. In the event of changes that affect the insurance or other similar security cover, the shipping company is required to notify the Danish Maritime Authority immediately after becoming aware of this.

*Penalties and entry into force, etc.*

**Section 9.** Violation of this Executive Order is punishable by a fine.

Subsection 2. Criminal liability may be imposed on companies, etc., (legal persons) in accordance with the rules in chapter 5 of the Danish Criminal Code.

**Section 10.** The Executive Order shall enter into force on 1 July 2023.

Subsection 2. Executive Order no. 1346 of 21 November 2016 on insurance or other guarantee to cover the shipping companies' liability to seafarers and the master in case of breach of the employment relationship is terminated.

*The Danish Maritime Authority, 6 June 2023*

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/ Kristina Ravn

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#### Official notes

<sup>1)</sup> The Executive Order contains provisions implementing Directive (EU) 2018/131 of the European Parliament and of the Council of 23 January 2018 implementing the agreement entered into between the European Community Shipowners' Association (ECSA) and the European Transport Workers' Federation (ETF) amending Directive 2009/13/EC in line with the 2014 amendments to the Maritime Labour Convention, 2006, as approved by the International Labour Conference on 11 June 2014, issued by the Member States, Official Journal of the European Union 2018, no. L 22, page 28.