



New seafarer law could have wide-reaching impact

The Philippine government recently passed the Magna Carta for seafarers, aiming to improve the welfare and rights of Filipino seafarers. What are the key changes and consequences for shipowners? We have spoken to local experts.

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Following a lengthy legislative process, the Magna Carta of Filipino Seafarers was finally signed into law in the Philippines on 23 September 2024.

The Magna Carta aims to align domestic legislation with international conventions such as the Maritime Labour Convention (MLC) and the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), to ensure that Filipino seafarers have protections and opportunities in line with global standards.

The law was developed partly in response to the complex and often unjust nature of Filipino crew claims and the challenges posed by the existing legal framework. In particular, the application of garnishment has been problematic, and the difficulties in resolving these claims had negatively impacted the Philippines' status as a leading supplier of maritime labour. Filipino seafarers comprise a significant portion of the global maritime workforce.

Key change: garnishment rules

One of the most discussed changes introduced by the Magna Carta concerns the process of garnishment. Under previous laws, seafarers were entitled to immediate compensation from their employers if a motion for reconsideration was denied - even if the case was still under appeal (see fact box below). And in practice, if higher courts then changed the decision, the employers could often have difficulties recovering the award, simply because by then, the funds could have been used or transferred to family members, lawyers or others.

With the new law, however, the employer is no longer required to immediately issue full compensation if the case is appealed. The employer must promptly pay the part of the judgment that is not being contested, but for the rest of it, the seafarer must first provide a bond to guarantee that the money will be returned if the employer wins the appeal. If the employer wins, the bonding company will be the one to return the disputed amount to the employer.

Seafarers' groups have argued that this provision unfairly prolongs the process, potentially extending it over several years, until higher courts decide. Supporters on the other hand, have contended that this provision is designed to protect seafarers from “ambulance-chasing practices” by legal professionals.

Striking a better balance?

Herbert Tria, a Senior Partner at Del Rosario & Del Rosario law firm emphasizes that “it is not the Seafarers' groups who have opposed the Magna Carta. In fact, AMOSUP, the largest Filipino seafarers' union with over 100,000 members, supports the law, particularly the provision preventing automatic issuance of writs of execution. The support of ITF and AMOSUP lends legitimacy to the Magna Carta, positioning it as a game-changer that balances seafarers' interests and protects Members' rights,” said Tria.

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Andrew Malpass, President of Pandiman Philippines Inc. also welcomes the new law: “For years we have argued that this would be a win-win solution both for seafarers and shipowners. Ambulance-chasing lawyers often claim that they can get seafarers two to three times the contractual amount in compensation, but this is not true. In the over 40 years and nearly 50,000 cases we have dealt with, we have never seen the courts go beyond the parameters of the employment contract. The reality is that the seafarer loses out because of the ambulance-chasing lawyers’ greed.”

A game-changer for the industry

It remains to be seen how the Magna Carta will be implemented, but it seems clear that it will likely have wide-reaching consequences. It will affect all Filipino seafarers – both domestic and overseas – as well as manning agencies, shipowners, and managers worldwide. It also has implications for legal practitioners involved in seafarer claims and the broader stakeholders interested in the employment and welfare of Filipino seafarers.

Affected parties, particularly manning agencies and shipowners, will need to adapt to the new regulatory environment by ensuring decent working conditions, standardizing employment terms, and facilitating skill development as stipulated by the Act. They must also navigate the new garnishment regulations and adjust insurance and compensation frameworks to comply with the new mandates.

“There will be systemwide review of contracts, policies, and operations.” Herbert Tria, Del Rosario & Del Rosario.

“Once implemented, the Magna Carta will steer in a new horizon for the Filipino seafaring market as a whole. The law is designed to elevate the status of the country’s well-known seafaring tradition – from their training and competencies, living standards on board and ashore, and even crew claims protection. This will demand additional tasks for all industry actors. There will be systemwide review of contracts, policies, and operations,” said Tria.

The next step is for the new law to be published in the Official Gazette or in a newspaper of general circulation in the Philippines, and the law will take effect 15 days later. That initiates a 90-day period during which relevant government agencies are mandated to craft the necessary Implementing Rules and Regulations (IRR). Questions remain as to what the impacts of these will be, but it seems clear that the Magna Carta will be a game-changer for the industry.

Garnishment
Under previous Filipino laws, once the National Labor Relations Commission (NLRC) or the National Conciliation and Mediation Board (NCMB) denied a Motion for Reconsideration, the decision becomes final after 10 days. Labor Arbiters or Voluntary Arbitrators can then issue a writ of execution, leading to garnishment of the manning agent's bank accounts – even if the case is appealed. This process will now be changed, as a result of the Magna Carta.

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