

Miami guidelines policy



Policy guidelines governing the approval of ITF acceptable CBA's for cruise ships flying flags of convenience

Adopted by ITF fair practices committee, Buenos Aires, 15 June 2011

Introduction

1. This “Miami Guidelines policy” revises the 1994 guidelines governing the approval of ITF acceptable agreements for cruise ships flying flags of convenience only. The cruise industry has developed a unique operational system which substantially differs from other maritime transport systems. These guidelines reflect the distinctive nature of the cruise industry and set out the instruments for the ITF affiliates signing acceptable ITF cruise agreements.

Negotiating rights and responsibilities

2. Where cruise ships are owned by international consortia the union(s) in the primary beneficial ownership country should act as “lead” negotiators involving other unions as appropriate, including union(s) in the primary crew supplying countries.
3. Where cruise ships are owned by international consortia the lead negotiation union(s), as appropriate, should enter into a bilateral agreement with the union(s) in the primary crew supplying countries, securing membership rights and union services.
4. It is, however, understood that for such an arrangement to be effective the owner/operator might also be invited to be part of such a bilateral agreement.

Consultation procedures for the signing of agreements covering FOC cruise ships

5. Agreements should only be signed with owners and operators and only in exceptional cases, and only after approval by the ITF secretariat, with managers and agents.
6. The owner/operator should endeavour to utilize labour from the area where the vessel operates whenever possible.
7. The signing of multiyear agreements is acceptable.
8. Where superior wages, other conditions and compensation are applicable under national legislation, collective bargaining agreements or awards, these must take precedence over the ITF minimum standards.
9. The terms of agreement(s) shall be incorporated in individual contracts of employment.

Where agreements that do not meet these Guidelines are already in place they should be allowed to expire. Also, a further period of adjustment to the benchmark may be allowed to enable agreements to reach the standards of the guidelines in stages.

10. All agreements must be sent to the ITF secretariat who will check them against these guideline(s). Where the secretariat identifies any area of the agreement that deviate from these guidelines, the union holding the agreement should be contacted and asked for comments.
11. Agreements may be recommended by the ITF secretariat and will be sent to the ITF cruise ship task force for review if the variation from the guideline(s) is of a major character. The ITF cruise ship task force then has the authority to approve or disapprove the agreements and to recommend amendments.
12. The union(s) holding the agreement(s) may appeal the ITF cruise ship task force decision to the fair practices committee steering group.
13. Agreements submitted to the ITF secretariat are binding on all parties, the ITF, its affiliates and those seafarers that are covered by them through the approval and amendment process and through its expiration date thereafter.

14. Amendments may also be made during the interim period i.e. between the effective and expiration dates, if agreed between the union(s) and the owner/operator. Agreements and amended agreements must be attached to the applicable ITF special agreement at its first renewal after the agreement and/or amended agreements have been signed.
15. In industrial action situations ITF inspectors should liaise with the unions in the beneficial ownership country. Where there is no ITF affiliate in a country of beneficial ownership the ITF inspectors should, in consultation with the ITF secretariat, sign an ITF acceptable agreement of their choice. In industrial action situations ITF inspectors should, whenever possible, aim to sign a fleet agreement.
16. ITF inspectors and coordinators receiving complaints from seafarer(s) on cruise vessels covered by ITF approved agreements should contact the ITF secretariat before any action is taken. Inspectors and coordinators should not contact the owner/operator without prior approval from the ITF secretariat since many cruise agreements include very specific grievance and/or arbitration procedures. When the ITF secretariat transfer the matter to the union(s) involved, inspectors and coordinators should be told of the outcome afterwards.

Training and education

17. Unions with members on board cruise vessels should facilitate the participation of their members in trade union seminars (e.g. ITF/NSU seminars).

General rules

Seafarer

18. To align the Miami Guidelines with MLC 2006, and to identify a clear definition of the term seafarer, the guidelines will adopt the definition given in MLC 2006 Article II (f):

“Seafarer means any person who is employed or engaged or works in any capacity on board a ship to which this convention applies.”

Distribution of agreements

19. Copies of the agreement(s) and protocols should be placed on board and also forwarded to the ITF secretariat. Printed copies of the agreement(s) should be given to all seafarers covered by it and the seafarers should have an opportunity to review and seek advice on their terms and conditions, including the agreement, before signing the employment contract.

Discrimination

20. Agreements should meet the standards of the ILO Discrimination (Employment and Occupation) and MLC 2006 Article III:

Article III – MLC 2006

“Each member shall satisfy itself that the provisions of its law and regulations respect, in the context of this Convention, the fundamental rights to:

freedom of association and the effective recognition of the right to collective bargaining;

the elimination of all forms of forced or compulsory labour;

the effective abolition of child labour; and

the elimination of discrimination in respect of employment and occupation.”

Manning agencies and hiring partners

21. The seafarer should not have to pay any application fees, manning agency fees, or similar fees and any such fees should be paid by the owner/operator.
22. Manning agencies should not be allowed to operate or receive any referral fees, or similar fees, from medical facilities issuing medical certificates, and if such arrangements exist, be prohibited from charging the seafarer.

Employment and repatriation

23. Expenses related to travelling to the ship, repatriation and obtaining visas should be paid by the owner/operator.

Medical certificates

24. If the medical certificate is paid partially or wholly by the seafarer it should not include tests that are not required under the laws of the seafarer's country of residence nor required by the flag state. Where additional tests are required, costs should be borne fully by the owner/operator.

25. Pregnancy tests should, under no circumstances, be required.

26. HIV testing should not be mandatory. Where national legislation requires the test for immigration or medical assessment, it should, under no circumstances, be used to discriminate against the seafarer for employment purposes. ITF considers selection for employment based on HIV as unacceptable. There should be no discrimination against seafarers on the basis of real or perceived HIV status.

Duration of service

27. The duration of employment should be an absolute maximum of 10 months with an aim of reducing this to a maximum of:
9 months by 2014;
8 months by 2018; and no more than
7 months by 2022.

Probationary period(s)

28. For seafarers entering employment for the first time, the initial 90 days with the owner/operator might be designated a probationary period, which entitles both the seafarer and the owner/operator to terminate employment without notice. However, the owner/operator must be responsible for the cost of repatriation if they choose to terminate the seafarer's employment.

29. For seafarers who are promoted, the initial 90 days might be designated a probationary period. Where a promotion is not confirmed, the seafarer should be offered the option of returning to his/her former position. However, the owner/operator must be responsible for the cost of repatriation where both parties agreed to terminate the employment.

Termination

30. The seafarer should be entitled to terminate his/her employment by giving one month's written notice and to terminate his/her employment immediately if the ship is certified as unseaworthy. The seafarer should be entitled to a minimum of two months' basic wages if employment is terminated by the employer before the expiry of the agreed service period, except if terminated during the probationary period.

Hours of work

31. Collective bargaining agreements may have one or two systems i.e.:

Fully consolidated wages i.e. an unlimited number of hours of work limited only by the rest hour clause.

Partially consolidated Wages i.e. the maximum normal working hours per week covered by basic wages should be 40 from Monday to Friday and the maximum number of consolidated overtime hours per month should be 130, for a total of 303 hours per month, with extra overtime paid thereafter.

Rest hours

32. Each seafarer shall have at least 10 hours off duty in each period of 24 hours and 77 hours in any 7-day period. The hours of rest may be broken into no more than two periods, one of which shall consist of at least 6 consecutive hours off duty. The interval between consecutive periods of rest shall not exceed fourteen (14) hours. Short breaks of less than 30 minutes will not be considered as a period of rest. This period of twenty-four (24) hours shall begin at the time a seafarer starts work immediately after having had a period of at least six consecutive

hours off duty. Musters, fire-fighting and lifeboat drills, and drills prescribed by national laws and regulations and by international instruments, shall be conducted in a manner that minimizes the disturbance of rest periods and does not induce fatigue. The owner/operator must post in an accessible place on board a table detailing the schedule of service at sea and in port and the minimum hours of rest for each position on board in the language of the ship and in English. Records of seafarers' daily hours of rest shall be maintained to allow for monitoring of compliance with this provision.

Wages

33. Agreements should ensure that seafarers are paid wages on a non-discriminatory basis as required under the ILO Equal Remuneration Convention, 1951 (No. 100) and paid according to the ILO Maritime Labour Convention, 2006.

Overtime

34. Collective bargaining agreements should include an overtime record clause if it covers positions with partially consolidated wages. Included overtime should be paid with not less than 25% bonus and extra overtime should be paid with not less than 50% bonus based on the basic wage.

Life insurance

35. Compensation for loss of life should be not less than:

USD 75,000 plus USD 15,000 for each dependent child under the age of 21;

increasing to USD 90,000 plus USD 20,000 for each dependent child under the age of 21 by 2014;

further increasing it to USD 100,000 plus USD 22,000 for each dependent child under the age of 21 by 2018; and to

USD 120,000 plus USD 25,000 for each dependent child under the age of 21 by 2022.

36. If a seafarer dies through any cause whilst in the employment of the company including death from natural causes and death occurring whilst travelling to and from the vessels, or as a result of marine or similar peril, the compensation should be paid out using the IMO/ILO form for contractual claims.
37. To facilitate faster resolution for the beneficiaries of a deceased seafarer who met his/her death following an accident, the compensation should be doubled where all parties agree no additional claim shall be made. The beneficiaries, however, must be informed of the options established in law governing the agreements, in case they wish to pursue a claim without settling the contractual entitlements provided by the text of the agreement.

Disability insurance

38. The compensation for disability should be not less than:

USD 80,000;

increasing to USD 100,000 for junior ratings, USD 120,000 for senior ratings and USD 140,000 for officers by 2014;

further increasing to USD 120,000 for junior ratings, USD 140,000 for senior ratings and USD 160,000 for officers by 2018, and to

USD 150,000 for junior ratings, USD 200,000 for senior ratings and USD 250,000 for officers by 2022.

39. A seafarer, who suffers permanent disability as a result of an accident whilst in the employment of the company, regardless of fault, including accident occurring whilst travelling to or from the ship, should be paid out using the IMO/ILO Form for contractual claims.
40. To facilitate faster resolution for a seafarer who is declared disabled as a result of an accident, the compensation should be doubled where all parties agree no additional claim will be made. The seafarer, however, must be informed of the options established in law governing the agreements in case he/she wishes to pursue a claim without settling the contractual entitlements provided by the text of the agreement.

Loss of personal effects

41. Seafarers should be compensated with a minimum of:

USD 3,000;

increasing to USD 4,000 by 2014;

USD 5,000 by 2018; and

USD 6,000 by 2022

for the loss of personal effects.

Medical treatment and maintenance

42. Seafarers should, at the owner/operator's expense, be given free medical treatment and be paid maintenance of at least USD 12 per day, unless room and board is paid by the owner/operator, until maximum medical improvement (MMI) has been achieved.

Sick wages

43. When seafarers are landed at any port because of sickness or injury a pro rata payment of their guaranteed wages, shall continue until they have been repatriated at the company's expense.

44. Thereafter the seafarers shall be entitled to sick pay at the rate equivalent to their basic wage while they remain sick up to a maximum of 130 days after repatriation.

45. However, in the event of incapacity due to an accident the basic wages shall be paid until the injured seafarer has been cured or until a medical determination is made in accordance with the clause concerning permanent disability.

Pension and provident fund

46. Seafarers should, on retirement, be provided with a pension and/or a provident fund at no later than 62 years of age, or when the service time and age combined equal the pension age (i.e. 62 or less) if requested by the seafarer.

Public holidays

47. The following days shall be considered as public holidays at sea or in port: Christmas Day, Boxing Day, New Year's Day, Good Friday, Easter Monday, International Labour Day (1 May), Spring Bank Holiday and Summer Bank Holiday, or such public holidays as are agreed upon, having regard to the nationality of the majority of the crew members and detailed in the collective agreement. Payment for work on public holidays may be included in the wage scale with a fixed monthly amount, or paid with overtime. If a public holiday falls on a Saturday or a Sunday, the following working day shall be observed as a public holiday.
48. Public holidays might, in lieu of overtime pay, be compensated with one extra compensatory leave day per month of service.

Maternity

49. Agreements should include a maternity leave clause that meets the standard of the ILO Maternity Protection Convention, 2000 (No. 183) with the following minimum terms:

Repatriation at the owner/operator's expense not later than the 26th week of pregnancy; and where the nature of the vessel's operations could, in the circumstances, be hazardous – at the first port of call

Two months' basic pay, increasing to ten weeks' by 2014, 12 weeks' by 2018 and to 14 weeks by 2022

Priority in filling a suitable vacancy in the same or equivalent position within one year following the birth of a child should such a vacancy be available.

Accommodation

50. This should meet the requirements of the ILO conventions and recommendations in place when the vessel was built and the ILO Maritime Labour Convention, 2006, for all vessels ordered, or substantially altered after, it came into force.

Food

51. This should meet the requirements of the ILO Maritime Labour Convention, 2006.

War zone and high risk area

52. The seafarer should have the right not to proceed to a war zone or high risk area and be repatriated at the owner/operator's expense. If the seafarer does proceed to a war zone or high risk area he/she shall be entitled to 100% of the basic wages, in addition to his/her contractual wages, for the duration of the ship's stay in this area, subject to a minimum of 5 days and the disability/loss of life compensation shall be doubled.

Health and safety

53. Agreements should include safety clauses providing for the necessary personal protective equipment for all seafarers' basic safety training and the need for advice on possible hazards or work of a dangerous nature, and include accident prevention measures.

54. Agreements should facilitate the establishment of an onboard safety and health committee in accordance with the provisions contained in the ILO Code of Practice on Accident Prevention on Board, and in compliance with the requirements of the ISM Code. The agreement should provide for an elected crew safety representative(s) to be a member(s) of the safety and health committee.

55. Agreements should follow the requirements of the STCW 1978 Convention as amended with an aim that all seafarers should be encouraged to conclude the basic safety training courses as required under Regulation VI/1. Cruise ship agreements might include a clause allowing for funding of such training courses

56. Seafarers are entitled to a healthy working environment: the company should provide working conditions that eliminate the hazards of smoking.

57. The purpose of maritime medical fitness assessment is to ensure that any medical condition does not put other people at risk and that the individual is not at excessive personal risk from the condition while working at sea.

Dock workers' clause

58. Neither the ship's seafarers nor anyone else on board whether in permanent or temporary employment by the owners/company, shall carry out cargo handling and other work traditionally or historically done by dock workers, without the prior agreement of the ITF dockers' union or unions concerned, and provided that the individual seafarers volunteer to carry out such duties for which they should be adequately compensated.

59. For the purpose of this clause "cargo handling" may include but is not limited to:

Loading and unloading of passenger luggage. However, this does not include the onboard distribution and collection of passenger luggage which is considered seafarers' work.

Loading and unloading of ships' spares and provisions. However, this may not include onboard transportation and does not include onboard stowing which is considered seafarers' work.

60. Where a vessel is in a port where an official trade dispute involving an ITF dockers' union is taking place, neither the ship's seafarers nor anyone else on board whether in permanent or temporary employment by the owners/company, shall be instructed or induced to undertake cargo handling and other work, traditionally and historically done by members of the union involved in the official trade dispute.

61. When the ITF dockers' union in a port allows seafarers to carry out work that traditionally or historically has been done by dock workers, the seafarers shall be paid the extra overtime rate specified in ... [the reference must be included for each agreement since their layout varies] ... for each hour or part of an hour that such work is performed during their regular 40-hour work week, in addition to their normal pay.

Any such work performed outside their regular 40-hour work week shall be compensated by double the extra overtime rate for each hour or part of an hour that such work is performed, in addition to their normal pay.

62. If a seafarer is normally paid fully consolidated wages then the extra overtime rate shall be calculated as follows: Total monthly consolidated pay divided by 303 and multiplied by 1.5 equals the extra overtime rate to be used when calculating the payment.

Dispute resolution and arbitration

63. Agreements should include an onboard dispute resolution procedure that meets the requirements of the ILO Maritime Labour Convention, 2006, and may include an arbitration clause if the cost of the arbitration is paid by the owner/operator and the costs of the seafarer's legal representation is either paid by the owner/operator or the union if the Seafarer is not represented by private counsel.

Waivers

64. The company undertakes not to demand or request any seafarer to enter into an agreement whereby he/she waives or otherwise assigns, or agrees to variations to the terms of the agreement negotiated by the union.

Cabotage

65. The standards included in the ITF Athens policy and any other applicable ITF policies and/or MOU should be met when a cruise ship trades in direct competition with vessels covered under the ITF Athens policy and any other applicable ITF policy.

Access to vessels

66. Agreements should include a clause giving ITF inspectors and representatives from unions that are party to agreements in force for the vessel being visited, access to the vessel and its seafarers. This might be regulated through a protocol between the owner/operator

and union(s) if such a protocol is preapproved by the ITF secretariat and it satisfies the provisions of ITF policies.

Deck and engine

Wages

67. All deck and engine officers and deck and engine ratings should be covered by the ITF standard collective agreement or ITF approved TCC agreements or national agreements, or a combination thereof on a non-discriminatory basis.

Annual leave

68. Should be not less than 8.5 days per month of service based on 1/30 of the basic wage per day.

Catering (food, beverage and hotel services)

Wages

69. For the purposes of an ITF benchmark the basic rate of pay for a factor 1.000 position should be not less than the current ILO minimum recommendation for an able seaman (AB), while the factor for the lowest position, excluding trainees, apprentices and similar positions, should not to be less than 60% of that.

Annual leave

70. Should be not less than:

4.5 days per month of service based on 1/30 of the basic wage per day;

increasing to 5 days based on the 1/30 formula by 2014;

6 days by 2018 based on the 1/30 formula; and

8.5 days by 2022 based on the 1/30 formula.

Concessionaries (entertainment, casino, shop and spa etc.)

71. The terms and conditions for concessionary personnel should not be less than those given to catering personnel and basic wages for a 40-hour work week should not be less than what is the ILO minimum recommendation for an able seaman (AB). The owner/operator should be responsible for enforcing these minimum terms on all concessionaries contracted to provide services onboard their vessels.

ITF special agreement

16 point cruise questionnaire:

72. The questionnaire should always be sent to the ITF secretariat if the agreement(s) is with a ship manager, manning agency and the like.

Seafarers' protection and welfare fund:

73. Ten per cent of the standard ITF welfare contributions, subject to an annual USD 6,000 minimum, increasing to 12.5% of the standard ITF welfare contributions, subject to an annual USD 7,500 minimum in 2014, to 15% of the standard ITF welfare contributions, subject to an annual USD 9,000 minimum in 2018 and to 20% of the standard ITF welfare contributions, subject to an annual USD 12,000 minimum in 2022. No additional discounts are allowed except if approved by the ITF secretariat and where the chair and the vice chair of the cruise ship task force have been consulted in advance.

ITF special agreement:

74. Two-year periods and annual rollovers are acceptable.