

# MERCHANT SHIPPING (SEAFARERS) (CREW AGREEMENTS, LISTS OF CREW AND DISCHARGE OF SEAFARERS) REGULATION

(Cap. 478 sections 80, 81, 82, 95, 119 and 134)

[2 September 1996]

## PART I

### PRELIMINARY

1. *(Omitted as spent)*
2. **Interpretation**
  - (1) In this Regulation, unless the context otherwise requires—  
“coastal voyage” (沿岸航程) means any voyage which is solely within river trade limits;  
“ship” (船、船舶) means a Hong Kong ship;  
“tons” (噸) and “tonnage” (噸位) mean tons and tonnage as calculated in accordance with the Merchant Shipping (Registration) (Tonnage) Regulations (Cap. 415 sub. leg. C).
  - (2) In this Regulation, references to the gross or to the register tonnage of a ship are, in the case of a ship having alternative gross or alternative register tonnages, references to the larger of its gross tonnages or to the larger of its register tonnages, as the case may be.

## PART II

### CREW AGREEMENTS

3. **Exemptions from requirements of section 80 of the Ordinance**

The requirements of section 80 of the Ordinance relating to crew agreements shall not apply to—

  - (a) a ship of less than 80 register tons engaged solely on coastal voyages except any ship authorized by virtue of a passenger certificate and general safety certificate issued under Part II of the Merchant Shipping (Safety) Ordinance (Cap. 369) to carry passengers within river trade limits;
  - (b) a fishing vessel except a trawler to which Part XII of the Merchant Shipping Ordinance (Cap. 281) applies; or
  - (c) a person employed in a ship solely in connection with the construction, alteration, repair or testing of the ship, its machinery or equipment, and not directly in connection with the normal manning of the ship within the deck, engine room, catering or radio department.
4. **Notice of intention to employ a seafarer under crew agreement**

- (1) Except in the circumstances specified in subsection (4), any person, before employing a seafarer under a crew agreement made in Hong Kong, shall give prior notice to the Superintendent.
- (2) A notice under subsection (1) shall be given before the period of 24 hours ending with the time when the crew agreement is made or the agreement is added, as the case may be:  
Provided that, if it is not possible to give the notice before the beginning of that period, it shall be given as early as practicable within that period.
- (3) A notice under subsection (1) shall contain the following particulars—
  - (a) the name of the ship (or, if the crew agreement relates to more than one ship, of each ship to which the agreement relates), its port of registry and official number;
  - (b) whether a new crew agreement is to be made or whether an agreement with any seafarer is to be added to those contained in a crew agreement;
  - (c) the date on which, and the place and time at which, the crew agreement is to be made or an agreement with any seafarer is to be added to those contained in the crew agreement; and
  - (d) the capacity in which each seafarer to whom the notice relates is to be employed.
- (4) The circumstances in which no notice need be given under subsection (1) are where it is not practicable without unreasonably delaying the ship to give notice before employing the seafarer.

## **5. Carrying of copy of crew agreement in ships**

- (1) A ship required under section 80 of the Ordinance to carry a crew agreement may, in the case of an agreement which relates both to that and to other ships and which is kept at an address ashore in Hong Kong, comply with that requirement by carrying a copy of the agreement certified in the manner provided by subsection (2).
- (2) A copy of a crew agreement carried in a ship in accordance with subsection (1) shall bear a certificate signed by the Superintendent certifying that it is a true copy of the crew agreement and specifying the address in Hong Kong at which the crew agreement is kept and the name of the person by whom it is so kept.

## **6. Delivery of crew agreement and copies**

- (1) The employer shall, within 28 days of the date on which a crew agreement is made or any agreement is added to those contained in a crew agreement or, if it is not practicable within that period, as soon as practicable thereafter, deliver to the Superintendent a copy of the crew agreement and of any agreement so added.
- (2) The employer shall, within 28 days of the date when the last seafarer remaining employed under the crew agreement ceases to be employed under that agreement, deliver the crew agreement to the Superintendent.

- (3) No crew agreement shall be made or added to in Hong Kong except before the Superintendent unless otherwise permitted by the Superintendent.
- (4) Where a ship remains within the waters of Hong Kong for not less than 2 working days, the employer shall, within 2 working days of the ship's arrival in such waters, deliver the crew agreement to the Superintendent.
- (5) Where a crew agreement is delivered to the Superintendent under subsection (4), he shall—
  - (a) make any entries or endorsements required under the Ordinance to be made therein by the Superintendent; and
  - (b) as soon as possible after making any such entries or endorsements, return the crew agreement to the employer concerned.

## **7. Display of crew agreement**

- (1) Subject to subsection (2), the master of a ship shall cause—
  - (a) a copy of any crew agreement relating to the ship; or
  - (b) an extract containing the terms of that agreement applicable—
    - (i) to all seafarers employed under it; and
    - (ii) to each description of seafarers so employed,to be posted in some conspicuous place on board the ship where it can be read by the seafarers employed under the crew agreement and he shall cause it to be kept so posted and legible so long as any seafarer is employed in the ship under the crew agreement.
- (2) The Superintendent may grant exemptions from all or any of the provisions of subsection (1) for classes of cases or individual cases on such conditions, if any, as he thinks fit and may, subject to giving reasonable notice, alter or cancel any such exemption.

## **8. Supply and production of copy documents**

Upon a seafarer making a demand of his employer or of the master of the ship on which he is employed, the employer or the master, as the case may be, shall as soon as practicable—

- (a) cause to be supplied to him a copy of the crew agreement under which he is employed or such extracts therefrom as are necessary to show the terms on which he is employed; and
- (b) cause to be made available to him a copy of any document referred to in the agreement.

## **9. Offences**

Any person who fails to comply with an obligation imposed on him under section 4, 6 (except section 6(5)) or 8, and any master of a ship who fails to comply with any obligation imposed on him under section 7 or 8, commits an offence and is liable on conviction to a fine at level 1.

# **PART III**

## LISTS OF CREW

### 10. Interpretation

(1) In this Part—

“certificate of competency or of service” (合格證書或服務資歷證書) means a certificate of competency or of service—

- (a) issued or deemed to be issued under regulations made under Part VIII of the Ordinance; or
- (b) recognized under regulations made under Part VIII of the Ordinance as equivalent to a certificate of competency or of service issued under such regulations;

“endorsement” (批註), in relation to a certificate of competency or of service or a licence, means an endorsement in respect of a trading area, type of ship or dangerous cargo.

(2) In this Part, unless the context otherwise requires—

- (a) references to the employment of a seafarer in a ship include references to the engagement of a seafarer; and
- (b) references to the discharge of a seafarer include references to termination of the engagement of a seafarer.

### 11. Lists of crew contained in crew agreement

A list of crew may be contained in the same document as a crew agreement and any particular entered in the crew agreement shall be treated as forming part of the particular entered in the list.

### 12. Particulars to be specified in lists of crew

(1) Subject to subsection (2), a list of crew shall contain the following particulars—

- (a) the name of the ship, its port of registry and official number;
- (b) the name of the owner of the ship and his address;
- (c) the number of the certificate evidencing an exemption granted by the Authority from the requirements of section 80 of the Ordinance with respect to the ship or any person in it; and
- (d) in respect of every seafarer from time to time on board the ship, whether or not he is employed under a crew agreement—
  - (i) his name;
  - (ii) his address;
  - (iii) in the case of—
    - (A) a registered seafarer, the number of his current employment registration book, service record book or discharge book, or the date and place of his birth; and
    - (B) any other seafarer, the number of his document equivalent to such book or the date and place of his birth;

- (iv) the name of the ship in which he was last employed and, if he was discharged from that ship more than 12 months before he became employed in the ship to which the list of crew relates, the year in which he was so discharged;
  - (v) the capacity in which he is employed in the ship;
  - (vi) the grade (including any command, service or other endorsement) and number of any certificate of competency or of service or licence, and particulars of any other certificates or endorsements, required under the Ordinance to be held by him;
  - (vii) the date on which he went on board the ship to commence his employment in it;
  - (viii) the date on and place at which he left the ship and, if he left on discharge, the reason for his discharge;
  - (ix) if he is left behind otherwise than on discharge, the date and place of and the reason (if known to the master of the ship) for this being done; and
  - (x) the name and relationship of his next of kin and the address of his next of kin, if different from that of the seafarer.
- (2) A list of crew which relates to seafarers employed under a crew agreement need contain only the particulars referred to in subsection (1)(a) and, in respect of each seafarer, the particulars referred to in subsection (1)(d)(i), (ii), (iii), (v), (vii) and (viii) if the remaining particulars referred to in subsection (1) are contained in the crew agreement.

### **13. Delivery of copies of lists of crew and notification of changes**

- (1) Where—
- (a) a new list of crew is made; or
  - (b) any change (including the addition of any particulars) is made in a list of crew,
- the master of the ship concerned shall, if such new list or change is not made before the Superintendent, within 28 working days after such new list or change is made or, if it is not practicable within that period, as soon as practicable thereafter, deliver to the Superintendent—
- (i) a copy of the new list or notification of the change, as the case may be; and
  - (ii) copies of any certificates of competency or of service or licences, and any other certificates and endorsements, required under the Ordinance to be held by seafarers entered in a list of crew.
- (2) For the purposes of subsection (1), the master of the ship concerned shall endorse the copy of a new list of crew or the notification of any change with a certificate that it is a true copy.
- (3) Where a ship remains within the waters of Hong Kong for not less than 2 working days, the employer shall, within 2 working days of the ship's arrival in such waters, deliver a list of crew to the Superintendent.

- (4) Where a list of crew is delivered to the Superintendent under subsection (3), he shall—
- (a) make any entries or endorsements required under the Ordinance to be made therein by the Superintendent; and
  - (b) as soon as possible after making any such entries or endorsements, return the list of crew to the employer concerned.

**14. Copies of lists of crew**

- (1) A copy of every list of crew (including all changes in it notified to the owner) shall be maintained by the owner of the ship at an address in Hong Kong.
- (2) The master of a ship shall, as soon as practicable and in any event within 3 working days of any change being made in the list of crew, notify the change to the owner of the ship.
- (3) In this section, “owner” (船東) has the meaning assigned to it under the Merchant Shipping (Registration) Ordinance (Cap. 415).

**15. Lost or abandoned ships**

When any person having in his possession the copy of a list of crew required to be maintained under section 14 has reason to believe that the ship to which it relates has been lost or abandoned, he shall immediately deliver the copy of the list to the Superintendent.

**16. Superintendent may demand lists of crew**

A person having in his possession a copy of a list of crew required to be maintained under section 14 relating to a ship shall produce it on demand to the Superintendent who may retain it or return it to that person as he thinks fit.

**17. Duration of lists of crew**

A list of crew shall remain in force—

- (a) if any seafarer is employed in the ship under a crew agreement, until all the seafarers employed under that agreement in that ship have been discharged; and
- (b) in any other case, until the ship first calls at a port more than 6 months after the first entry relating to a seafarer is made in the list.

**18. Delivery of lists of crew**

Where, pursuant to section 11, a list of crew is not contained in the same document as a crew agreement, the master of a ship shall, within 28 working days after the list has ceased to be in force or, if it is not practicable within that period, as soon as practicable thereafter, deliver the list to the Superintendent.

**19. Production of lists of crew**

The master of a ship shall, on demand, produce to—

- (a) the Superintendent; or
- (b) an officer of customs and excise,

the list of crew required to be maintained in the ship.

## **20. Offences**

- (1) The master of a ship who fails to comply with an obligation imposed on him under section 13(1) or (2), 14(2), 18 or 19 commits an offence and is liable on conviction to a fine at level 1.
- (2) A person who fails to comply with an obligation imposed on him under section 13(3), 14(1), 15 or 16 commits an offence and is liable on conviction to a fine at level 1.

## **PART IV**

### **DISCHARGE OF SEAFARERS**

## **21. Notice of discharge**

- (1) Subject to section 22, the master of ship shall, not less than 48 hours before a seafarer is discharged from the ship or, if it is not practicable within that period, as soon as practicable thereafter, give a notice of discharge in writing to the Superintendent if the seafarer is to be so discharged in Hong Kong.
- (2) A notice of discharge shall contain the following particulars—
  - (a) the name of the ship, its port of registry and official number;
  - (b) the place, date and time of the seafarer's discharge;
  - (c) the capacity in which the seafarer is employed in the ship; and
  - (d) the seafarer's name if, at the time of discharge, a dispute about his wages is to be submitted to the Superintendent under section 87 of the Ordinance or a complaint in writing is to be made by the seafarer to the Superintendent under section 9 of the Merchant Shipping (Seafarers) (Disciplinary Offences on Board Ships) Regulation (Cap. 478 sub. leg. N).
- (3) Where a notice of discharge relates to more than one seafarer, it shall state, in addition to the particulars specified in subsection (2), the number of seafarers being discharged.

## **22. Discharge in Hong Kong**

A notice of discharge is not required in respect of a seafarer discharged in Hong Kong—

- (a) if—
  - (i) at the time of discharge, not such dispute or complaint in writing as is referred to in section 21(2)(d) is to be submitted or made to the Superintendent; and

- (ii) the master of the ship concerned has reasonable grounds for believing that the total number of seafarers (other than seafarers exempted by section 3(c) from the requirements of section 80 of the Ordinance) who will be discharged from the ship, while it remains in the place where the seafarer is being discharged, will not exceed 2;
- (b) if the seafarer is to be discharged from a ship exempted from the requirements of section 80 of the Ordinance by section 3(a) or (b);
- (c) if the seafarer is exempted from the requirements of section 80 of the Ordinance by section 3(c); or
- (d) if the crew agreement under which the seafarer is employed relates to more than one ship.

### **23. Discharge outside Hong Kong**

A seafarer employed in a ship shall not be discharged from the ship in a place outside Hong Kong without the consent of the Superintendent, except where—

- (a) the seafarer is employed under an agreement for one or more voyages and he is to be discharged either at the end of that voyage or of the last of such voyages;
- (b) the seafarer is employed under an agreement for a specified period and he is to be discharged at the end of that period;
- (c) the seafarer and the master of the ship agree (notwithstanding anything in the agreement under which the seafarer is employed) that he should be discharged at the place and at the time when he is discharged; or
- (d) it appears to the master that it is not practicable without unreasonably delaying the ship to obtain the consent of the Superintendent to a seafarer's discharge and that—
  - (i) in the interests of safety or for the preservation of good order and discipline on board the ship, it is necessary that the seafarer should be discharged; or
  - (ii) the seafarer is incapable of performing his duties by reason of illness or injury and is in urgent need of medical or surgical attention which cannot be provided on board the ship.

### **24. Procedure on discharge**

- (1) Where a seafarer is present when he is discharged—
  - (a) the master of the ship from which the seafarer is being discharged, or one of the ship's officers authorized by him in that behalf, shall, before the seafarer is discharged—  
—



- (i) if the seafarer produces his employment registration book, service record book or discharge book to him, record in it the name of the ship, its port of registry, gross or register tonnage and official number, the description of the voyage, the capacity in which the seafarer has been employed in the ship, the date on which he began to be so employed and the date and place of his discharge; or
    - (ii) if the seafarer does not produce his employment registration book, service record book or discharge book to him, give to the seafarer a certificate of discharge containing the like particulars;
  - (b) the master of a ship shall ensure that the seafarer is discharged in the presence of—
    - (i) the Superintendent;
    - (ii) the master;
    - (iii) the seafarer's employer; or
    - (iv) a person authorized in that behalf by the master or employer;
  - (c) the master or person authorized in that behalf by the master shall—
    - (i) make and sign an entry in the official log book recording the place, date and time of the seafarer's discharge if it occurs during the currency of the crew agreement; and
    - (ii) make and sign an entry in the crew agreement or, if there is a list of crew separate from a crew agreement, in the list of crew, recording the place and date of, and the reason for, the seafarer's discharge; and
  - (d) the seafarer shall sign the entry in the crew agreement and list of crew referred to in paragraph (c)(ii).
- (2) Where a seafarer is not present when he is discharged, the master, or a person authorized in that behalf by the master, shall still make the entries referred to in subsection (1)(c).
  - (3) All entries in the official log book required under subsections (1) and (2) shall, in addition to being signed by the person making the entry, be signed also by a member of the crew.
  - (4) If a seafarer so requests within a period of 6 months from the date of his discharge from or his leaving a ship, the master of the ship, or one of the ship's officers authorized by the master in that behalf, shall give to the seafarer a certificate (which shall be separate from any other document) either as to the quality of his work or indicating whether he has fully discharged his obligations under the crew agreement under which he was employed.

## 25. Offences

- (1) Any person (including the master of a ship) who—
  - (a) discharges a seafarer in contravention of any of the provisions of section 23;

- (b) fails to comply with an obligation imposed on him under section 24(1)(a) or (c)(ii) or (4); or
- (c) fails to comply with an obligation imposed on him under section 24(2) in relation to an entry in a crew agreement or in a list of crew,

commits an offence and is liable on conviction to a fine at level 2.

- (2) Any person (including the master of a ship) who—
  - (a) fails to make an entry in the official log book as required by section 24(1)(c)(i); or
  - (b) fails to comply with an obligation imposed on him under section 24(2) in relation to an entry in the official log book,

commits an offence and is liable on conviction to a fine at level 1.

- (3) The master of a ship who fails to comply with an obligation imposed on him under section 21(1) or 24(1)(b) commits an offence and is liable on conviction to a fine at level 2.
- (4) A seafarer who fails to comply with an obligation imposed on him under section 24(1)(d) commits an offence and is liable on conviction to a fine at level 1.