

CAYMAN ISLANDS



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**THE MERCHANT SHIPPING LAW
(2011 REVISION)**

**THE MERCHANT SHIPPING (MARITIME LABOUR CONVENTION)
(REPATRIATION) REGULATIONS, 2014**

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**THE MERCHANT SHIPPING (MARITIME LABOUR CONVENTION)
(REPATRIATION) REGULATIONS, 2014**

The Cabinet, in exercise of the powers conferred by sections 136 and 463 of the Merchant Shipping Law (2011 Revision), makes the following Regulations -

1. These Regulations may be cited as the Merchant Shipping (Maritime Labour Convention) (Repatriation) Regulations, 2014. Citation

2. In these Regulations - Definitions

“authorized person” means a person authorized by the Chief Executive Officer to carry out inspections and audits for the purposes of these Regulations and includes any surveyor of ships appointed under section 419 of the Law;

“Chief Executive Officer” means the Chief Executive Officer of MACI appointed under section 9 of the Maritime Authority Law (2013 Revision); (2013 Revision)

“Convention Government” means a Government, other than the Cayman Islands, which is a Party to the Maritime Labour Convention;

“Declaration of Maritime Labour Compliance” means, in relation to a ship, the valid Part 1 and Part 2 documents drawn up and issued in accordance with the Maritime Labour Convention, in the forms corresponding to the relevant models given in Appendix A5-II of the Convention and having the contents, duration and validity specified in regulation 5.1.3 and standard A5.1.3 of the Convention;

“Maritime Labour Certificate” and “interim Maritime Labour Certificate” mean a Certificate issued in accordance with the Maritime Labour Convention;

“Maritime Labour Convention” means the Convention adopted on 23rd February 2006 by the General Conference of the International Labour Organization, as may be amended from time to time;

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“seafarer” means any person, including a master, who is employed or engages or works in any capacity on board a ship and whose normal place of work is on a ship;

“seafarer employment agreement” has the meaning assigned to it under the Merchant Shipping (Maritime Labour Convention) (Seafarer Employment Agreement, Shipowners’ Liabilities and Wages) Regulations, 2014; and

“shipowner” means -

- (a) in relation to a ship which has a valid Maritime Labour Certificate, the person identified as the shipowner on that Certificate; or
- (b) in relation to any other ship, the owner of the ship or, if different, any other organization or person such as the manager, or the bareboat charterer, that has assumed the responsibility for the operation of the ship from the owner.

Application of these Regulations and non-application of the Merchant Shipping (Repatriation) (Cayman Islands) Regulations, 1989

3. (1) Subject to paragraph (3), these Regulations (other than regulations 16 and 17) apply -

- (a) to Cayman Islands ships, wherever they may be; and
- (b) while they are in Cayman Islands waters, to ships -
 - (i) which are not Cayman Islands ships; and
 - (ii) to which regulations 16 and 17 do not apply.

(2) Regulations 16 and 17 apply to non-Cayman Islands ships, while they are within Cayman Islands waters, if -

- (a) the Maritime Labour Convention is in force for the State whose flag the ship is entitled to fly; and
- (b) the ship carries -
 - (i) a Maritime Labour Certificate to which a Declaration of Maritime Labour Compliance is attached, or
 - (ii) an interim Maritime Labour Certificate.

(3) These Regulations do not apply to -

- (a) pleasure vessels;
- (b) fishing vessels;
- (c) warships or naval auxiliaries; or
- (d) offshore installations whilst on their working stations.

(4) The Merchant Shipping (Repatriation) (Cayman Islands) Regulations, 1989 do not apply to seafarers on ships to which the Merchant Shipping (Maritime Labour Convention) (Repatriation) Regulations, 2014 apply.

4. (1) Subject to regulations 5 and 6, a shipowner shall make such provision as is necessary for repatriation of a seafarer as soon as is practicable in the following cases. Duty to repatriate seafarers

(2) Case 1 is where the seafarer's employment agreement expires.

(3) Case 2 is where the seafarer's employment agreement is terminated by the shipowner.

(4) Case 3 is where the seafarer's employment agreement is terminated by the seafarer in accordance with the terms of the agreement.

(5) Case 4 is where the seafarer is no longer able to carry out the seafarer's duties under the seafarer's employment agreement or cannot be expected to carry them out in the specific circumstances.

(6) Case 4 includes the following circumstances -

- (a) the seafarer has an illness, injury or medical condition which requires the seafarer's repatriation when found medically fit to travel;
- (b) shipwreck;
- (c) the shipowner is not able to fulfil its legal or contractual obligations to the seafarer following insolvency, the sale of the ship or a change in the ship's registration; and
- (d) the ship is bound for a war zone to which the seafarer does not consent to go.

(7) Case 5 is where the seafarer has completed the maximum duration of service periods on board following which the seafarer is entitled to repatriation, as set out in the seafarer's employment agreement.

(8) A shipowner who fails to comply with the obligations imposed under paragraph 1 commits an offence and is liable -

- (a) on summary conviction to a fine of ten thousand dollars, notwithstanding sections 6(2) and 8 of the Criminal Procedure Code (2013 Revision); and
- (b) on conviction on indictment, to a fine of fifty thousand dollars.

(2013 Revision)

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Place for return

5. (1) Subject to paragraph (2), a seafarer is entitled to repatriation to the destination provided for in or under the seafarer employment agreement, or such other place as may subsequently be agreed with the shipowner.

(2) If the seafarer employment agreement does not identify a destination, the seafarer is entitled to repatriation to the seafarer's choice of the following destinations -

- (a) the place at which the seafarer entered into the seafarer's employment agreement;
- (b) a place agreed with the shipowner; or
- (c) the seafarer's country of residence.

Limitations on and exceptions to duty to repatriate

6. The duty in regulation 4 ends when -

- (a) the seafarer is repatriated in accordance with regulation 7;
- (b) the shipowner makes reasonable arrangements for repatriation which are unsuccessful because of the seafarer's unreasonable conduct;
- (c) notwithstanding reasonable endeavours, the shipowner is unable to contact the seafarer for a period of three months or more;
- (d) the seafarer confirms in writing to the shipowner that repatriation is not required; or
- (e) the seafarer is dead.

Duty pending repatriation

7. (1) A shipowner to whom the duty in regulation 4 applies shall make such provision as is necessary for the seafarer's relief and maintenance (including food and lodging) pending repatriation.

(2) The shipowner shall have regard to the seafarer's personal circumstances and requirements when determining what provision is required under paragraph (1).

(3) Without prejudice to the generality of paragraph (1) the provision for relief and maintenance shall include -

- (a) clothing;
- (b) toiletries and other personal necessities;
- (c) surgical, medical, dental or optical treatment (including the repair or replacement of any appliance) for any condition requiring immediate care;
- (d) in cases where legal aid is unavailable or insufficient, reasonable costs for the defence of the seafarer in any criminal proceedings in respect of any act or omission within the scope of the

seafarer's employment, being proceedings where neither the employer nor the employer's agent is a party to the prosecution; and

- (e) sufficient money to meet any minor ancillary expenses necessarily incurred or likely to be so incurred for the seafarer's relief and maintenance.

(4) The duty in paragraph (1) ends when the duty in regulation 6 ends.

(5) A shipowner who fails to comply with the obligations imposed under paragraph (1) commits an offence and is liable -

- (a) on summary conviction to a fine of ten thousand dollars; and
- (b) on conviction on indictment, to a fine of twenty-five thousand dollars.

8. (1) Subject to paragraph (2), a shipowner shall not enter into an agreement with a seafarer under which the seafarer shall make payment in respect of either -

Prohibition on recovering costs from seafarer

- (a) repatriation costs; or
- (b) relief and maintenance costs.

(2) A seafarer's employment agreement may provide that the seafarer shall reimburse repatriation costs, subject to a maximum of one thousand dollars, where the agreement is terminated because of the seafarer's misconduct.

(3) If a seafarer's employment agreement contains provision described in paragraph (2) and the duty on the seafarer arises, a deduction equivalent to those costs may be made from the wages due to the seafarer under that agreement.

(4) If a seafarer's employment agreement does not contain provision described in paragraph (2), the shipowner may only recover damages in respect of the costs described in paragraph (1)(a) and (b), subject to a maximum of one thousand dollars, where the agreement is terminated because of the seafarer's misconduct.

(5) A shipowner who fails to comply with the obligation imposed under paragraph (1) commits an offence and is liable -

- (a) on summary conviction to a fine of ten thousand dollars; and
- (b) on conviction on indictment, to a fine of fifteen thousand dollars.

(6) An agreement entered into in breach of paragraph (1) is void.

9. Nothing in these Regulations limits any right of the shipowner to recover the cost of repatriation under third party contractual arrangements.

Third party contractual arrangements for repatriation

- Seafarer property
10. (1) This regulation applies where -
- (a) a shipowner is under a duty under regulation 5 in respect of a seafarer; and
 - (b) property belonging to that seafarer has been left behind on a ship belonging to the shipowner.
- (2) The master shall take charge of that property and enter a description of each item in the official log book.
- (3) Subject to paragraph (4), the master and the shipowner shall cause reasonable care to be taken of the property pending its delivery in accordance with paragraph (7).
- (4) The master may at any time -
- (a) sell any part of the property which is of a perishable or deteriorating nature; or
 - (b) destroy or otherwise dispose of any part of the property considered a potential risk to the health or safety of any person.
- (5) The proceeds of any sale under paragraph (4)(a) shall be the property of the seafarer and details of the sale shall be entered in the official log book.
- (6) Details of any destruction or disposal under paragraph (4)(b) shall be entered in the official log book.
- (7) Subject to paragraphs (8) and (9), the shipowner shall cause the property and a document containing the information entered in the log book pursuant to paragraphs (5) and (6) to be delivered to the seafarer or to the seafarer's next of kin.
- (8) The duty in paragraph (6) is discharged if the shipowner causes the delivery to be made to the last known address of the seafarer or the next of kin, as the case may be.
- (9) The seafarer or the next of kin, as the case may be, shall reimburse the shipowner for the reasonable delivery costs if demanded.
- Duty to carry documents
11. (1) A shipowner shall ensure that a copy of these Regulations is held on board the ship and are available to seafarers.

(2) If the working language of the ship is not English, the shipowner shall ensure that the documents referred to in paragraph (1) are translated into the working language of the ship and that copies of those translated versions are also held on board the ship and available to seafarers.

(3) A person who fails to comply with the obligation imposed under paragraph 1 commits an offence and is liable -

- (a) on summary conviction to a fine of ten thousand dollars; and
- (b) on conviction on indictment, to a fine of fifteen thousand dollars.

12. (1) A shipowner shall not allow a ship to enter or leave a port or remain at sea unless it complies with the requirement in paragraph (2).

Financial security
requirement

(2) The requirement referred to in paragraph (1) is that there is in force a contract of insurance or other security in respect of the liabilities arising from the shipowner's duty to make provision for the repatriation of seafarers under regulation 7.

(3) A shipowner who fails to comply with the obligation imposed under paragraph 1 commits an offence and is liable -

- (a) on summary conviction to a fine of ten thousand dollars; and
- (b) on conviction on indictment, to a fine of fifteen thousand dollars.

13. (1) If a shipowner of a Cayman Islands ship fails to make provision required under regulation 4 or 7, the Chief Executive Officer shall ensure the required provision is made and may recover costs incurred from the shipowner.

Repatriation in case of
owner of default

(2) If a shipowner of a ship which is not a Cayman Islands ship fails to make provision required under regulation 4 or 7, the Chief Executive Officer may make the required provision (or ensure that it is made) and may recover costs incurred from the shipowner.

(3) The costs which the Chief Executive Officer may recover under paragraphs (1) and (2) include -

- (a) costs incurred by the Chief Executive Officer in making the relevant provision; and
- (b) costs incurred by the Chief Executive Officer in reimbursing another person (including a State which has made provision pursuant to Standard A2.5.5 of the Maritime Labour Convention) for having made the relevant provision, whether or not the Chief Executive Officer has requested or required that other person to do so.

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Inspection of ships

14. (1) For the purpose of checking compliance with these Regulations, an authorized person may at all reasonable times go on board a ship and inspect the ship, its equipment, any article and any document carried on it.

(2) Sections 421(2) and (4) of the Law apply in relation to paragraph (1) as if references in those subsections to “subsection (1)” were references to paragraph (1).

(3) Sections 422(1), (2), (3) and (5) to (8) and 423(1) and (2) of the Law apply in relation to the inspection of a ship for the purposes of checking compliance with these Regulations as they apply in relation to the inspection of a ship for the purposes of checking compliance with the Law, as if -

- (a) references in those sections to “this Law” were to these Regulations;
- (b) for section 422(1)(b) there were substituted a reference to any ship to which this regulation applies; and
- (c) in section 422(2)(h)(iii) the words “or any instrument made under it” were omitted.

(4) Sections 423 to 429 of the Law apply for the purposes of these Regulations as if the relevant statutory provisions included these Regulations.

Detention of ships

15. (1) Where an authorized person has clear grounds for believing that, in relation to a ship to which these Regulations apply -

- (a) requirements in one or more of regulations 4, 7 or 12 have not been complied with; and
- (b) the non-compliance represents a serious breach or the latest in a series of repeated breaches of the requirements of regulations 4, 7 and 12,

the ship is liable to be detained.

(2) The power under this regulation to detain a ship may only be exercised if the ship in question is -

- (a) a Cayman Islands ship; or
- (b) a non-Cayman Islands ship without a Maritime Labour Certificate whilst in a Cayman Islands port or Cayman Islands waters.

(3) Section 444 of the Law applies where a ship is liable to be or is detained under this regulation as if references to the detention of a ship under the Law were references to these Regulations.

(4) Where a ship is liable to be detained under these Regulations an authorized person shall serve on the master of the ship or other person for the time being in charge of the ship a detention notice which states the grounds for detention and the requirements to be complied with in respect of the notice in order for the ship to be released from the detention.

(5) Where a ship which is detained under these Regulations is not a Cayman Islands ship, the Chief Executive Officer shall immediately inform the Consul or a diplomatic representative of the State whose flag the ship is entitled to fly, or the appropriate maritime authorities of that State, of the detention and the grounds therefor.

(6) Where a ship is detained under these Regulations, an authorized person shall release the ship in accordance with the applicable provisions of section 444 of the Law.

(7) It is prohibited for a ship on which a detention notice has been served to proceed to sea or attempt to proceed to sea unless a release from the detention has been issued in writing by an authorized person.

(8) Notwithstanding that a detained ship may be eligible for release where any applicable fine, cost and expenses have been paid by the master or owner of the ship, or a security paid, in accordance with section 444 of the Law, the ship shall not be released until any deficiency for which the vessel was detained has been rectified to the satisfaction of the Chief Executive Officer.

16. (1) An authorized person may as respects a ship to which this regulation applies -

- (a) review the Ship's Maritime Labour Certificate and Declaration of Maritime Labour Compliance or the ship's interim Maritime Labour Certificate; and
- (b) where standard A5.2.1 of the Maritime Labour Convention applies, carry out a more detailed inspection in accordance with that standard.

(2) Where an authorized person has power to inspect a ship under paragraph (1)(b), regulation 14 applies to that ship.

Inspection of non-Cayman Islands ships with Maritime Labour Certificates

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Detention of non-Cayman Islands ships with Maritime Labour Certificates

17. (1) Where an authorized person inspects a ship under regulation 14 and has clear grounds for believing that -

- (a) the ship does not comply with the requirements of the Maritime Labour Convention; and
- (b) the non-compliance represents a serious or repeated breach of the requirements of the Maritime Labour Convention,

the ship is liable to be detained.

(2) Where a ship is liable to be detained under this regulation, section 444 of the Law applies as if -

- (a) references to detention of a ship under the Law were references to detention of the ship in question under this regulation; and
- (b) subsection (7) were omitted.

(3) Where a ship is detained under this regulation, the Chief Executive Officer shall immediately inform the consul or diplomatic representative of the State whose flag the ship is entitled to fly, or the appropriate maritime authorities of that State.

(4) Where a ship is detained under this regulation but the failure to comply referred to in paragraph (1) has ceased, a person having power to detain the ship shall, at the request of the shipowner or master, immediately release the ship.

Right of appeal and compensation

18. Regulations 12 and 13 of the Merchant Shipping (Port State Control) Regulations, 2003 shall have effect in relation to a detention notice served under these Regulations subject to the reference in those Regulations to inspector being taken to include a reference to a surveyor.

Defence

19. It is a defence for a person charged with an offence under these Regulations to show that the offence was committed without that person's knowledge or, where the person had such knowledge, that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Made in Cabinet the 19th day of August, 2014.

Meredith Hew

Acting Clerk of the Cabinet.