



BERMUDA

MERCHANT SHIPPING (SEAFARER'S EMPLOYMENT) REGULATIONS 2013

BR 107 / 2013

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SCHEDULE 1

Annex A4-I of the Maritime Labour Convention

The Minister responsible for Maritime Administration, in exercise of the power conferred by sections 3, 7, 38, 39, 40 and 45 of the Merchant Shipping Act 2002, makes the following Regulations:

Citation

- 1 These Regulations may be cited as the Merchant Shipping (Seafarer's Employment) Regulations 2013.

Interpretation

- 2 In these Regulations—

“Authority” means the Bermuda Shipping and Maritime Authority (BSMA);

“collective bargaining agreement” means an agreement in writing between the company and a recognised trade union which is independent and which is recognised in its country of domicile and which has validity for not more than 5 years;

“commercial activity” means any activity or employment of the vessel for which a contract or charter party is in force and includes the carriage of any cargo or persons for reward;

“independent” in relation to a trade union means not under the domination or control of an employer or a group of employers or of one or more employer's associations and not liable to interference by an employer or any such group or association arising out of financial or material support or any other means tending towards such control;

“International Bargaining Forum” means the committee set up by the International Maritime Employer's Committee and including representatives of the seafarer's trades unions and shipping employers;

“Load Line Convention” means the International Convention on Loadlines 1966 as amended;

“Maritime Labour Certificate” means the certificate issued under Title 5 of the Maritime Labour Convention 2006;

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“Maritime Labour Convention” means the Maritime Labour Convention 2006, adopted at a general conference of the International Labour Organization in Geneva on 7 February 2006;

“MARPOL Convention” means the International Convention for the Prevention of Pollution from Ships 1973 as modified by the protocol of 1978 and as amended;

“pleasure vessel” means–

- (a) a vessel which, at the time it is being used, is–
 - (i) in the case of a vessel wholly owned by an individual or individuals, used only for the sport or pleasure of the owner or immediate family or friends of the owner; or in the case of a vessel owned by a body corporate, used only for sport or pleasure and on which the passengers are employees or officers of the body corporate, or their immediate family or friends; and
 - (ii) on a voyage or excursion which is one for which the owner does not receive money for or in connection with operating the vessel or carrying any person, other than as a contribution to the direct expenses of the operation of the vessel incurred during the voyage or excursion, and no payments are made by or on behalf of the users of the vessel other than by the owner; or
- (b) any vessel wholly owned by or on behalf of a member's club formed for the purpose of sport or pleasure which, at the time it is being used, is used only for the sport or pleasure of members of that club or their immediate family; and for the use of which any charges levied are paid into club funds for the general use of the club; and no other payments are made by or on behalf of users of the vessel other than by the owner, and for the purposes of this definition “immediate family” means in relation to an individual, the husband or wife of the individual and a relative of the individual or the individuals husband or wife and “relative” means brother, sister, ancestor or lineal descendant;

“Port State Control Authority” means the authority in any country assigned the responsibility under Article V of the Maritime Labour Convention for the inspections of ships in its territory;

“seafarer” means any person, including a master, who is employed or engaged or works on any capacity on board a ship, on the business of the ship and where there is doubt as to whether a person working or engaged on a ship is a seafarer and subject to these Regulations the Minister shall make a determination and in doing so he shall be guided by the advice and guidance provided by the International Labour Organization;

“shipowner” means the owner of the ship or another organization or person such as a manager, an agent, or a bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner;

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“SOLAS” means the International Convention for the Safety of Life at Sea 1974 and its Protocol of 1988 as amended;

“STCW Convention” means the Standards of Training, certification and Watchkeeping Convention 1978 as amended in 1995 and including any amendments subsequently;

“voyage” means—

- (a) the time beginning when a seafarer starts work on board a ship and the time when his seafarers employment agreement, for work on board a ship, is terminated; or
- (b) the time beginning when a seafarer starts work on board a ship and the time when a seafarer goes on leave (including vacation leave or sick leave).

[Regulation 2 definition "Authority" inserted by BR 21 / 2019 reg. 2 effective 18 February 2019]

Application

3 These Regulations apply to—

- (a) Bermuda ships, wherever they may be, other than—
 - (i) fishing vessels;
 - (ii) vessels owned and operated by the Bermuda Government or an Agency of the Bermuda Government for non-commercial purposes;
 - (iii) pleasure vessels in which no seafarers are employed; and
- (b) to the extent specified in regulation 23, these Regulations apply to ships that are not Bermuda ships when in a port in Bermuda other than—
 - (i) fishing vessels;
 - (ii) pleasure vessels; and
 - (iii) warships, naval auxiliaries and other ships owned or operated by a state and not engaged in commercial activity.

Ambulatory reference

3A (1) In these Regulations, any reference to the Maritime Labour Convention shall be construed as a reference to the Convention as modified from time to time and if that Convention is replaced by another instrument, as a reference to that instrument.

(2) For the purposes of paragraph (1), the Maritime Labour Convention is modified if—

- (a) omissions, additions or other alterations to the text take effect in accordance with Article XIV of the Convention; or

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- (b) supplementary provisions made under Article XIV of the Maritime Labour Convention take effect.

[Regulation 3A inserted by BR 109 / 2021 reg. 2 effective 8 July 2021]

Seafarer's to have employment agreements

4 It shall be the duty of a shipowner to ensure that every seafarer employed in a ship for which he is responsible is provided with a seafarer's employment agreement which shall be in writing and which shall comply with the requirements of these Regulations and which may be—

- (a) an agreement for a single voyage;
- (b) an agreement for a determinate period of time covering more than one voyage on a ship or ships operated by the shipowner, or
- (c) a continuous agreement for an indeterminate period of time covering multiple voyages on one or more ships operated by the shipowner.

Maximum length of a seafarer's employment agreement

5 (1) A single voyage agreement shall be for a maximum period of 9 months and shall clearly indicate the date on which the voyage is expected to commence and the date on which the agreement is expected to terminate.

(2) A single voyage agreement may be terminated by the shipowner and the seafarer repatriated on a date within the period one month before or one month after the termination date in paragraph (1) where the nature of the voyage is such that it places an unnecessary burden on the shipowner to terminate the agreement on the exact termination date in paragraph (1).

(3) An agreement for a determinate time or a continuous agreement shall state clearly the maximum length of any voyage that the seafarer is expected to undertake during the time of the agreement and that length shall not exceed [6 months] provided that where it is not readily possible for the shipowner to repatriate the seafarer at the end of the stated period the voyage length may be extended for a maximum of one month.

Record of employment

6 (1) At the termination of every period of employment on a ship it shall be the duty of the master to ensure that each seafarer, on leaving the ship, is provided with a written record of his employment on that ship.

(2) The record of employment shall not contain any statement referring to the quality of the seafarer's work or the amount of the seafarer's wages and shall be signed by a representative of the shipowner and stamped with the ship's stamp and shall, as a minimum include the—

- (a) date of starting employment on board;
- (b) capacity in which the seafarer was employed;
- (c) name of the ship;

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- (d) IMO number of the ship; and
- (e) date on which the seafarer ceased to be employed in the ship.

(3) Where the seafarer holds a discharge book, the record of employment may be entered in that book provided that the minimum information stated in paragraph (2) is included. Where the seafarer does not hold a discharge book the record of employment shall be issued in a form approved by the Minister.

[Regulation 6 paragraph (3) amended by BR 21 / 2019 reg. 3 effective 18 February 2019]

List of crew

7 (1) Whenever a seafarer commences employment in any Bermuda ship his name, the capacity in which he is employed, his passport or seaman's identity document number, his date of birth and the date of starting work on board shall be recorded on a list of crew.

(2) Whenever a seafarer's employment terminates on the ship for any reason the date on which he ceases employment on board shall be recorded on the list along with a note of the reason for the termination of employment.

(3) The list of crew required by paragraph (1) may be in electronic form provided that if it is, it shall be duplicated ashore and secure from loss and shall be available on board for a period of at least 3 years following the departure of the last seafarer on it and may be inspected at any time by an officer authorised by the Minister.

Carriage of employment agreements

- 8 (1) Every seafarer on commencing employment in a Bermuda ship—
- (a) shall have in his possession an original copy of his employment agreement signed by himself and by the shipowner or a representative of the shipowner; or
 - (b) shall have access at any reasonable time during working hours to an electronic copy of the original signed agreement which is also available to the master of the ship and to any officer authorised by the Minister or an authorised Port State Control Authority officer.

(2) Where any of the terms included in a seafarer's employment agreement are set out in a separate set of conditions of employment or in a collective bargaining agreement these shall be referred to in the seafarer's employment agreement and shall form part of that employment agreement and a copy of those conditions or that collective bargaining agreement shall be available on board to all seafarers including the master at any reasonable time during working hours and available for review by an officer authorised by the Minister or by a duly authorised Port State Control Authority officer in a port outside Bermuda.

Collective bargaining agreements

9 (1) Where some or all of the content of a seafarer's employment agreement is formed by a collective bargaining agreement a copy of that agreement shall be carried

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aboard the ship and available to any of the seafarer's at any reasonable time during working hours.

(2) Where a collective bargaining agreement is not expressed in English there shall be available on board an English translation of any of those parts that address—

- (a) minimum age;
- (b) medical certification;
- (c) qualifications of seafarers;
- (d) seafarers employment agreements;
- (e) use of licensed or certified or regulated private recruitment and placement service;
- (f) hours of work or rest;
- (g) manning levels for the ship;
- (h) on-board recreational facilities;
- (i) food and catering;
- (j) health and safety and accident prevention;
- (k) on-board medical care;
- (l) on-board complaint procedures; and
- (m) payment of wages.

Notice periods in seafarer's employment agreements

10 (1) Every seafarer's employment agreement shall contain a clear statement of the conditions under which the agreement may be terminated early by either party on giving notice and the length of notice required to terminate the agreement.

(2) The period of notice required by either party to terminate a seafarer's employment agreement during the time that the seafarer is serving on board a ship shall be not less than—

- (a) 7 days in the case of seafarers employed on a voyage agreement;
- (b) 7 days in the case of seafarers employed on an agreement for a determinate time or a continuous agreement during their first voyage under that agreement;
- (c) one calendar month in the case of seafarers employed on an agreement for a determinate time or a continuous agreement during the second and subsequent voyages under that agreement.

(3) Every seafarer's employment agreement shall include terms specifying the circumstances set out in regulation 11 when the agreement may be terminated by mutual consent and without penalty at shorter notice than that specified in paragraph (2) or

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without notice if the details of such circumstances are not contained in an applicable collective bargaining agreement.

Termination of a seafarer's employment agreement

- 11 (1) A seafarer's employment agreement shall terminate—
- (a) in the case of a single voyage agreement or an agreement for a determinate time on the agreed date for termination, or
 - (b) in every case on the expiry of the notice period when either party gives notice in accordance with the seafarer's employment agreement.
- (2) Every seafarer's employment agreement shall provide for its termination without notice in cases where—
- (a) there is the death or serious illness of a spouse, a partner or a child;
 - (b) there is the death or serious illness of a parent in the case of a single seafarer; or
 - (c) the seafarer is unable to continue to perform his duties on board due to injury or illness.
- (3) A seafarer may terminate a seafarer's employment agreement without notice and without penalty on any occasion when—
- (a) the ship in which he is serving is detained for non-compliance with any of the provisions of SOLAS, the Load Line Convention, the STCW Convention, MARPOL Convention, or the Maritime Labour Convention and remains so detained for a period of 30 days;
 - (b) the ship in which he is serving is arrested and remains under arrest for a period of 30 days; or
 - (c) the vessel in which he is serving is about to sail into a warlike area as defined by the ship's insurers and to which the seafarer does not consent to go.
- (4) The shipowner may terminate a seafarer's employment agreement without notice on any occasion when—
- (a) the ship has been laid up for a continuous period of at least 30 days;
 - (b) the ship is sold;
 - (c) the ship is lost; or
 - (d) the seafarer is unable to continue to perform his duties on board as a result of injury or illness.
- (5) On any occasion that a seafarer's employment agreement is terminated in accordance with paragraphs (3)(a), (3)(b), (3)(c) or (4)(a), (4)(b), (4)(c) or the seafarer shall be entitled to compensatory payments amounting to not less than two months wages at the rate of basic pay expressed in his seafarer's employment agreement and to the

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amount of paid leave accrued during his period of service on board to the date of termination.

[Regulation 11 paragraph (5) amended by BR 21 / 2019 reg. 4 effective 18 February 2019]

Termination of a seafarer's employment agreement due to serious misconduct or incompetence

12 (1) A shipowner may terminate a seafarer's employment agreement without notice on any occasion when it is established through an agreed disciplinary process that the seafarer has been involved in any of the following matters—

- (a) smuggling;
- (b) possession of narcotics, explosives, weapons or similar items;
- (c) desertion;
- (d) assault on a passenger or another seafarer;
- (e) inability of the seafarer to perform his duties on board through misuse of alcohol or drugs;
- (f) failure of a drugs test;
- (g) theft, or wilful damage to the ship or its equipment;
- (h) smoking in an area where smoking is prohibited;
- (i) failure to comply with a public health requirement;
- (j) the provision of any assistance to stowaways, or other persons attempting to breach the ship's security arrangements;
- (k) a refusal of the seafarer to obey a lawful order, provided that a refusal to sail shall not be serious misconduct where the circumstances in regulation 11(3)(a) or 11(3)(b) apply; or
- (l) the seafarer is unable to perform his duties through incompetence.

(2) When a seafarer's employment agreement is created the shipowner may include additional matters that are to be regarded as serious misconduct and these shall have effect provided that the approved Declaration of Maritime Labour Compliance Part 2 specifies the additional items and they are included in the seafarer's employment agreement or in the conditions attached to it.

(3) When a seafarer's employment agreement is terminated in accordance with these Regulations the seafarer shall not be entitled to the compensatory wages in regulation 10 and may be liable of the costs of repatriation in accordance with the Merchant Shipping (Repatriation) Regulations 2013 and the Merchant Shipping (Seafarer's Wages) Regulations 2013.

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Content of seafarers employment agreements

13 (1) Every seafarer's employment agreement shall be expressed in English and any other documents such as the terms and conditions, disciplinary procedures, or complaints procedures shall also be in English, but where the seafarer's first language is not English, a translation into the seafarer's language may be provided but in such a case the definitive version shall be the English version.

(2) Every seafarer's employment agreement shall include the—

- (a) seafarer's full name, date of birth or age and place of birth;
- (b) shipowner's name and address;
- (c) place where the seafarer's employment agreement is entered into and the date on which it is entered into,
- (d) capacity in which the seafarer is to be employed,
- (e) amount of wages to be paid under the agreement and, where overtime is separate from basic pay, the rate for overtime payments;
- (f) amount of annual leave, or paid leave due under the employment agreement or the method to be used to calculate it;
- (g) hours of work to be undertaken by the seafarer;
- (h) in the case of a single voyage, agreement on the intended port of destination where this is known and the date on which the agreement is to terminate;
- (i) in the case of an agreement for a determinate time, the date on which it is agreed the agreement will terminate;
- (j) the conditions under which either party may terminate the agreement and the required notice period which shall be not less than that specified in regulation 9; or
- (k) where a separate set of terms and conditions or a collective bargaining agreement form part of the employment agreement a reference to the fact that those terms and conditions or collective bargaining agreement are to be read as forming part of the employment agreement.

(3) In addition to the particulars in paragraph (1) every seafarer's employment agreement or the terms and conditions forming part of it shall include—

- (a) the health and social security protection benefits to be provided to the seafarer by the shipowner; and
- (b) details of the seafarer's right to repatriation.

(4) A seafarer's employment agreement shall continue to have effect while a seafarer is held captive on or off a ship as a result of acts of piracy or armed robbery against a ship, regardless of whether the date fixed for its expiry has passed or either party has given notice to suspend or terminate it.

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(5) For the purposes of this regulation, the term—

- (a) piracy shall have the same meaning as in the United Nations Convention on the Law of the Sea, 1982; and
- (b) armed robbery against a ship means any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a State's internal waters, archipelagic waters or territorial sea, or any act of inciting or of intentionally facilitating an act described in this subparagraph.

[Regulation 13 paragraphs (4) and (5) inserted by BR 109 / 2021 reg. 3 effective 8 July 2021; Regulation 13 paragraph (2)(a) deleted and substituted by BR 111 / 2021 reg. 2 effective 8 July 2021]

Contractual compensation

13A (1) The contractual compensation, where set out in the seafarer's employment agreement and without prejudice to paragraph (3), shall be paid in full and without delay.

(2) There shall be no pressure to accept a payment less than the contractual amount.

(3) Where the nature of the long-term disability of a seafarer makes it difficult to assess the full compensation to which the seafarer may be entitled, an interim payment or payments shall be made to the seafarer so as to avoid undue hardship.

(4) The seafarer shall receive payment without prejudice to other legal rights, but such payment may be offset by the shipowner against any damages resulting from any other claim made by the seafarer against the shipowner and arising from the same incident.

(5) The claim for contractual compensation may be brought directly by the seafarer concerned.

[Regulation 13A inserted by BR 21 / 2019 reg. 5 effective 18 February 2019]

Financial security

13B (1) Bermuda registered ships shall carry on board a certificate or other documentary evidence of financial security issued by the financial security provider.

(2) A copy of the certificate or other documentary evidence of financial security shall be posted in a conspicuous place on board, where seafarers have access.

(3) Where more than one financial security provider provides cover, the document provided by each provider shall be carried on board.

(4) The financial security shall not cease before the end of the period of validity of the financial security unless the financial security provider has given prior notification of at least 30 days to the Registrar, of the Authority.

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(5) The financial security shall provide for the payment of all contractual claims covered by it which arise during the period for which the document is valid.

(6) The certificate or other documentary evidence of financial security shall contain the information required in Annex A4-I of the Maritime Labour Convention, prescribed in the Schedule; it shall be in English or accompanied by an English translation.

[Regulation 13B inserted by BR 21 / 2019 reg. 5 effective 18 February 2019]

Duty on employment agencies and businesses to provide financial system of protection

13BA (1) This regulation applies to an employment agency or employment business where—

- (a) the employment agency or employment business has introduced or supplied a work-seeker to a hirer for the purposes of employment as a seafarer on a sea-going ship; and
- (b) the work-seeker is or has been employed as a seafarer as a result of that introduction or supply.

(2) The employment agency or employment business must establish a system of protection, by way of insurance or an equivalent appropriate measure, to compensate the seafarer for monetary loss which the seafarer may incur as a result of—

- (a) a failure of the employment agency or employment business to meet its obligations to the seafarer; and
- (b) a failure of the shipowner who is party to the seafarer employment agreement to meet its obligations to the seafarer.

(3) References in paragraph (2) to “obligations to the seafarer” include contractual obligations and statutory obligations.

(4) The employment agency or employment business must establish a system to ensure that seafarers are informed, prior to or in the process of engagement, of their rights under that system.

[Regulation 13BA inserted by BR 33 / 2024 reg. 2 effective 28 March 2024]

Treatment of Contractual Claims

13C (1) The term “contractual claim” means any claim which relates to death or long-term disability of seafarers due to an occupational injury, illness or hazard as set out in national law, the seafarers’ employment agreement or a collective agreement.

(2) The system of financial security, may be in the form of a social security scheme or insurance or fund or other similar arrangements; its form shall be determined by the Authority after consultation with the shipowners’ and seafarers’ organisations concerned.

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(3) Any dispute relating to contractual claims relating to compensation referred to in Standard A4.2.1 paragraph 8 of the Maritime Labour Convention may be submitted by the parties to an arbitrator appointed under the Arbitration Act 1986, for decision.”.

[Regulation 13C inserted by BR 21 / 2019 reg. 5 effective 18 February 2019]

Entitlement to leave

14 (1) Every seafarer shall receive at least two and a half days paid leave for every calendar month of service paid at no less than the rate of basic pay stated in the seafarer's employment agreement or the paid leave agreed in any applicable collective bargaining agreement covering the seafarer provided that it amounts to not less than two and a half days for every calendar month of service paid at the rate of basic wages.

(2) Where a period of service is less than one month, a seafarer shall be entitled to the proportion of paid annual leave in paragraph (1) equal to the proportion the period of employment bears to one month, the proportion to be determined in whole days and a fraction of a day shall be treated as a whole day.

(3) Where there is no collective bargaining agreement in addition to the paid leave specified in paragraph (1) every seafarer shall receive an additional 10 days of paid leave in each year of employment, for public holidays.

(4) Leave due to a seafarer may be taken in instalments but shall not be replaced by a payment in lieu except where the seafarer's employment agreement is terminated.

(5) Temporary shore leave shall be granted to each seafarer whenever practicable during the course of his employment on board a ship and shall not be counted as a part of leave.

(6) On any occasion that a seafarer is absent from work to attend a maritime training course agreed by the shipowner or is absent from work for reasons of illness, maternity or injury, the time accrued shall not be deducted from the paid leave due to the seafarer.

[Regulation 14 paragraph (3) deleted and substituted by BR 33 / 2024 reg. 3 effective 28 March 2024]

Entitlement to medical care

14A (1) In addition to medical care provided on board a ship under regulation 6 of the Merchant Shipping (Manning of Ships) Regulations 2011, and the Merchant Shipping (Medical Stores) Regulations 2005, seafarers are entitled to visit a qualified medical doctor or dentist, without delay and where practicable, in ports of call, at no cost to the seafarer.

(2) The Minister shall ensure prompt disembarkation of seafarers in need of immediate medical care from ships in Bermuda and access to medical facilities ashore, for the provision of appropriate treatment.

(3) Where a seafarer has died during a ship's voyage, or if the death has occurred in Bermuda territorial waters, the Minister shall facilitate the repatriation of the body or

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ashes by the shipowner, in accordance with the wishes of the seafarer or their next of kin, as appropriate.

[Regulation 14A inserted by BR 53 / 2014 reg. 2 effective 30 June 2014; Regulation 14A deleted and substituted by BR 33 / 2024 reg. 4 effective 28 March 2024]

Medical care ashore

14AB (1) The Minister should ensure that seafarers are not prevented from disembarking for public health reasons, and that they are able to replenish ships' stores, fuel, water, food and supplies.

(2) Seafarers should be considered to be in need of immediate medical care in cases of, but not limited to—

- (a) any serious injury or disease;
- (b) any injury or disease which might lead to temporary or permanent disability;
- (c) any communicable disease which poses a risk of transmission to other members of the crew;
- (d) any injury involving broken bones, severe bleeding, broken or inflamed teeth or severe burns;
- (e) severe pain which cannot be managed on board ship, taking account of the operational pattern of the ship, the availability of suitable analgesics and the health impacts of taking these for an extended period;
- (f) suicide risk; or
- (g) a tele-medical advisory service recommending treatment ashore.

[Regulation 14AB inserted by BR 33 / 2024 reg. 4 effective 28 March 2024]

Social security protection

14B (1) In accordance with the Maritime Labour Convention, seafarers shall be entitled the following social security protection benefits—

- (a) medical care benefit;
- (b) sickness benefit;
- (c) unemployment benefit;
- (d) old-age benefit;
- (e) employment injury benefit;
- (f) family benefit;
- (g) maternity benefit;
- (h) invalidity benefit; and

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- (i) survivors benefit,

as prescribed by paragraph 1 of the Standard A4.5 of the Code, in a progressive manner.

(2) From the date on which the Maritime Labour Convention comes into force shipowners shall provide, as a minimum, three branches of social security protection to seafarers employed on their ships. Two of the three branches of social security benefit must be—

- (a) medical care benefit; and
- (b) protection from financial consequences of—
 - (i) sickness;
 - (ii) injury; or
 - (iii) death,

occurring in connection with the seafarer's employment and the third could be any one of the other seven branches of social security benefit.

[Regulation 14B inserted by BR 53 / 2014 reg. 2 effective 30 June 2014]

Shipowner's liability

15 (1) The costs of medical care for any seafarer arising from sickness or injury during the period from the date a seafarer commences work on board a ship to the date when the seafarer is repatriated shall be paid by the shipowner.

(2) The shipowner shall be liable in the case of every seafarer to provide financial security sufficient to ensure compensation to any seafarer in the event of the death or long term disability of the seafarer as a result of an occupational illness, injury or hazard. The extent of compensation shall be set out in either an applicable collective bargaining agreement or in the seafarer's employment agreement and shall be not less than the current terms agreed by the International Bargaining Forum.

(3) Evidence of the financial security required by paragraph (2) shall be carried on board the ship and shall be available for inspection by any of the seafarers at any time.

(4) Subject to regulation 16 the expenses of medical care, medical treatment, medications and therapeutic appliances as well as the cost of accommodation away from the seafarer's place of domicile, shall be borne by the shipowner until the seafarer has recovered, or until any sickness or incapacity has been established to be of a permanent nature or until the seafarer is able to claim medical benefits available to him under a scheme of compulsory sickness insurance, accident insurance or other scheme available in his country of domicile.

- (5) The liabilities set out in paragraphs (1), (2) and (3) shall not arise when—
 - (a) an injury has occurred other than in the service of the ship;
 - (b) an injury or sickness due to the willful misconduct of the sick, injured or deceased seafarer; or

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- (c) an injury or an illness is deliberately and intentionally concealed by the seafarer when the employment contract is entered into.
- (6) The costs of burial in the case of a seafarer who dies either aboard the ship or ashore during the period of his employment on board shall be met by the shipowner.
- (7) On every occasion when sickness or injury for which the shipowner is liable to pay costs occurs the shipowner shall be liable to pay the costs set out in an applicable collective bargaining agreement or, where there is no collective bargaining agreement, to—
 - (a) pay the seafarer's wages at the basic rate of wages in the employment agreement for as long as the seafarer remains on board the ship or until the seafarer has been repatriated in accordance with the Merchant Shipping (Repatriation) Regulations 2013; and
 - (b) pay wages at the basic rate in the seafarer's employment agreement from the time when the seafarer is repatriated until the time when the seafarer has recovered.
- (8) Every shipowner shall have in place a system of financial security to cover any liabilities arising from the requirements of this regulation and shall ensure that evidence of such financial security which may be a policy of insurance is available on board the ship and available for inspection by an official authorised by the Minister or an authorised Port State Control Authority official.
- (9) Where a seafarer is held captive on or off a ship as a result of acts of piracy or armed robbery against a ship, wages and other entitlements under the seafarer's employment agreement, relevant collective bargaining agreements and these Regulations, in particular, the remittance of any allotments in regulation 4, shall continue to be paid during the entire period of captivity, until the seafarer is released and repatriated in accordance with the Merchant Shipping (Repatriation) Regulations 2013 or, where the seafarer dies while in captivity, until the date of death.

[Regulation 15 paragraph (9) inserted by BR 109 / 2021 reg. 4 effective 8 July 2021; Regulation 15 paragraph (5)(b) deleted and substituted by BR 111 / 2021 reg. 3 effective 8 July 2021]

Limitation of shipowner's liability

16 (1) A shipowner who incurs liability for the costs of medical care, medical treatment, medications and therapeutic appliances as well as the cost of accommodation away from the seafarer's place of domicile in accordance with regulation 15 shall not be liable for these costs beyond a period of 16 weeks from the date of the injury or the commencement of the illness.

(2) A shipowner who incurs liability to pay wages in accordance with regulation 15(5) shall not be liable to pay wages beyond a period of 16 weeks from the date of the injury or the commencement of the illness.

Entry into a seafarer's employment agreement

17 On every occasion when it is contemplated that a seafarer will enter into a seafarer's employment agreement the seafarer shall be provided with a copy of the terms

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and conditions of that agreement and with the details of the capacity in which employment is offered and the amount of wages and leave to be included sufficiently in advance of signing the agreement so that the seafarer has the opportunity to examine the agreement and if necessary seek advice on it before signing it.

Recruitment of seafarers

18 (1) A shipowner shall not make use of a seafarer recruitment and placement services based in a country which is not a Party to the Maritime Labour Convention unless the recruitment and placement services satisfies the shipowner that it operates in compliance with the Maritime Labour Convention.

(2) The assessment to ascertain that the recruitment and placement services operates in compliance with the Maritime Labour Convention is to be done by the shipowner through an independent audit of the agency by an external body recognised by the Minister or the administration of another Party to the Convention.

[Regulation 18 deleted and substituted by BR 111 / 2021 reg. 4 effective 8 July 2021]

Seafarer compensation for ship's loss or foundering

18A (1) In every case of loss or foundering of a ship, the shipowner shall pay each seafarer on board such ship an indemnity against unemployment resulting from such loss or foundering.

(2) The provision made under paragraph (1) shall be without prejudice to any other rights a seafarer may have under Bermuda law for losses or injuries arising from a ship's loss or foundering.

(3) The indemnity paid under paragraph (1) shall be paid for the days during which the seafarer remains unemployed, at the same rate as the wages payable under a seafarer's employment agreement, but the total indemnity payable to any one seafarer may be limited to an amount equal to two months wages.

(4) Legal remedies for recovering indemnities shall follow the same procedure as for recovery of arrears of wages earned during the course of employment.

[Regulation 18A inserted by BR 53 / 2014 reg. 3 effective 30 June 2014]

Property of deceased, injured or sick seafarers

19 (1) Whenever a seafarer dies in the course of his employment on board a ship or leaves a ship due to injury or illness and leaves property on board the master shall arrange for the property belonging to that seafarer to be collected and for a full list of the property to be prepared.

(2) The list of property shall be signed as a correct and true list by the master and countersigned by another seafarer and the master shall retain one copy of the list.

(3) With the exception of any property that is perishable or which cannot be transmitted as a consequence of it being prohibited or illegal the shipowner shall ensure that all the property belonging to a deceased seafarer as well as a copy of the signed list of property is returned to the seafarer's next of kin.

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(4) The shipowner shall ensure that property left on board a ship and belonging to a seafarer who leaves a ship due to illness or injury shall be collected and listed in accordance with paragraph (2) and depending on the circumstances either—

- (a) retained on board until the seafarer's return;
- (b) delivered to the seafarer at his accommodation ashore; or
- (c) returned to the seafarer's place of domicile.

Complaints

20 (1) Every ship to which these Regulations apply shall have in place, procedures that may be used by any seafarer serving in the ship, to make a complaint relating to any matter that is alleged to constitute a breach of the requirements of the Maritime Labour Convention.

(1A) The procedures shall be set out in writing and made available to every seafarer and they shall include—

- (a) the contact details for the Authority;
- (b) the contact details of the competent authority in the seafarer's country of residence; and
- (c) the identity of a person on board who can, on a confidential basis, provide impartial advice on a complaint or otherwise assist in following the procedures.

(2) The complaints procedures shall seek to ensure that any complaint is dealt with at the lowest level possible but in every case the procedure shall allow for the seafarer raising the complaint, if the complaint is not satisfactorily resolved initially, to complain directly to the ship's master.

(3) The use of the complaints procedure shall not prejudice any other legal rights that the seafarer may have to seek redress elsewhere.

(4) The complaints procedure shall provide for a seafarer who is unable to obtain satisfactory resolution to a complaint on board or through his employer to make a complaint directly to the Authority and any complaint made to the Authority shall—

- (a) be in writing;
- (b) clearly identify the complainant;
- (c) include sufficient evidence to justify the complaint and show that it is not vexatious, malicious or frivolous;
- (d) list the steps that have already been taken through the on-board complaints procedure to deal with it including the responses to each step; and
- (e) be made within 3 months of the final failure to achieve resolution.

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(5) Any seafarer shall also have the right, when a complaint has not been effectively dealt with by the complaints procedure and where it relates to compliance with the Maritime Labour Convention, to make a complaint to an authorised Port State Control Authority officer.

(6) It shall be an offence for any person to victimise or otherwise penalise any seafarer for making a complaint.

(7) Every on-board complaints procedure shall include the right of the seafarer to be accompanied or represented during the procedure and shall be designed to include safeguards against the possibility of any adverse action being taken by any person against the seafarer for making a complaint which is not vexatious or malicious.

[Regulation 20 amended by BR 21 / 2019 reg. 6 effective 18 February 2019]

Disciplinary procedures to be created

21 (1) Every shipowner shall establish a disciplinary procedure for dealing with serious misconduct and the details of that procedure shall be available to each seafarer.

(2) A disciplinary procedure established in accordance with paragraph (1) shall provide at least that—

- (a) the matter shall be dealt with only by the master or by an officer appointed by him;
- (b) the matter shall be dealt with within 24 hours of it coming to the attention of the master unless it is not practicable for him to deal with it in that time or the investigation of the matter is not complete, in which case, it shall be dealt with at the first opportunity thereafter;
- (c) the master shall keep a record of the nature of the offence, the evidence presented, the responses of the seafarer accused, the evidence of any witnesses and his decision after hearing all the evidence;
- (d) the seafarer accused shall have an opportunity to be accompanied by a friend or representative;
- (e) nothing in the process removes the seafarer's legal right to seek redress elsewhere; and
- (f) the seafarer is to be presented with a written record of the proceedings.

Penalties

22 (1) A shipowner who contravenes regulations 4 or 18 commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

(2) A master who contravenes regulations 6(1) or 7 commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

(3) Any person who victimises or attempts to victimise any seafarer ("victimise" includes any adverse action taken by a person against the seafarer) for making a

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complaint or attempting to do so commits an offence and shall be liable on summary conviction, to a fine not exceeding \$50,000.

Inspection

23 (1) Any person duly authorised by the Minister may inspect any ship to which these Regulations apply when in a port in Bermuda, and if he is satisfied that the arrangements for seafarer's employment are not in accordance with those stated in the Declaration part 1 to the ship's Maritime Labour Certificate, or in the case of a vessel which does not carry a Maritime Labour Certificate, the Maritime Labour Convention, he may detain the ship until the deficiency is rectified, but in the exercise of these powers he shall not detain the ship unreasonably.

(2) An authorised officer of the Authority who discovers that a Bermuda ship to which these regulations apply does not comply with the regulations may—

- (a) withdraw the vessel's Maritime Labour Certificate until such time as the deficiency is rectified; or
- (b) if the vessel is in a port outside Bermuda, inform the Port State Control Authority for that port of the deficiency.

[Regulation 23 paragraph (2) amended by BR 21 / 2019 reg. 7 effective 18 February 2019]

Revocation

24 The following Regulations are revoked—

- (a) Merchant Shipping (Property of Deceased Seamen) Regulations 1980 (BR 6/1980);
- (b) Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991 (BR 1/1992);
- (c) Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Amendment Regulations 2000 (BR 58/2000); and
- (d) Merchant Shipping (Disciplinary Offences) Regulations 1980 (BR 28/1980).

Commencement

25 These Regulations shall come into operation on the same date on which the Merchant Shipping (ILO) Amendment Act 2012 comes into operation.

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SCHEDULE 1

(Regulation 13B)

ANNEX A4-I OF THE MARITIME LABOUR CONVENTION

Evidence of financial security under Regulation 4.2 of the Maritime Labour Convention

The certificate or other documentary evidence of financial security required under Standard A4.2.1, paragraph 14, shall include the following information:

- (a) name of the ship;
- (b) port of registry of the ship;
- (c) call sign of the ship;
- (d) IMO number of the ship;
- (e) name and address of the provider or providers of the financial security;
- (f) contact details of the persons or entity responsible for handling seafarers' contractual claims;
- (g) name of the shipowner or of the registered owner, if different from the shipowner;
- (h) period of validity of the financial security; and
- (i) an attestation from the financial security provider that the financial security meets the requirements of Standard A4.2.1.

[Schedule 1 inserted by BR 21 / 2019 reg. 8 effective 18 February 2019; Schedule 1 subparagraph (g) deleted and substituted by BR 33 / 2024 reg. 5 effective 28 March 2024]

Made this 12th day of December 2013

Minister of Tourism Development and Transport

[Amended by:

BR 53 / 2014
BR 21 / 2019
BR 109 / 2021
BR 111 / 2021
BR 33 / 2024]