

Standard Clauses For Crew Agreement For Hong Kong Registered Sea-Going Ship

Notes:

- (a) "Crew Agreement" is a mandatory document made between shipowner and each seafarer on Hong Kong registered sea going ship in accordance with Merchant Shipping (Seafarers) Ordinance Cap. 478, Laws of Hong Kong.
- (b) This 'Standard Clauses' is set out as a guidance for the minimum requirements for the terms and conditions with respect to the employment of a seafarer. 'Standard Clauses' shall be referred to while making of Crew Agreement.
- (c) Any kind of crew agreements developed by unions, associations or seafarer's national standards which meets the requirements of Maritime Labour Convention 2006, as amended (MLC 2006), if any, may be annexed to and form part of the "Crew Agreement".
- (d) For details of statutory and convention requirements, please refer : -

Merchant Shipping (Seafarers) Ordinance (Chapter 478), Merchant Shipping (Seafarers) (Crew Agreements, Lists of Crew and Discharge of Seafarers) Regulation (Chapter 478L) and the MLC 2006.

Name of Ship: _____

Official Number: _____

IMO Number: _____

1. A sea-going ship shall be as defined in Part I, Section 2, of the Merchant Shipping (Seafarers) Ordinance, Chapter 478 of the Laws of Hong Kong.

2. For the purposes of this agreement, the shipowner shall be (name of shipowner):

3. It is hereby agreed between the master/shipowner and the seafarers whose names and descriptions are contained in the crew list annexed hereto that the seafarers shall serve on the said ship of which _____ is at present master, or whoever shall become master during the period of the seafarers' employment for a period not exceeding _____ calendar months.

4. In this agreement :

- (i) The master in performing this agreement represents the shipowner.
- (ii) The master includes any officer (other than a pilot) for the time being in charge

of the ship and any officer acting for the master within his authority in a particular matter.

- (iii) Shipowner means the owner of the ship or another organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners, regardless of whether any other organization or persons fulfil certain of the duties or responsibilities on behalf of the shipowner.

5. The persons whose names are or the person whose name is contained in the crew list annexed hereto, agree(s) :

- (A) To conduct themselves/himself in an orderly, faithful, honest and sober manner and at all times to be diligent in their/his respective duties, and obedient to the lawful commands of the master, or of any person who shall lawfully succeed him, and of the ship's officers and petty officers in everything relating to the said ship, its stores and cargo, whether on board, in boats or on shore. In consideration of this service being duly performed, the master acting for the shipowner agrees to pay each seafarer as wages the sum shown against his name in the list of crew.
- (B) That the employment relationship, involving both the duty to serve and the right to receive wages, shall commence when the seafarer signs this agreement, unless some other time for the commencement of the employment relationship has been mutually agreed.
- (C) That the seafarer shall join the ship or be available for duty at the date and time specified by the shipowner, and if required to join at a port other than the place at which he was employed to join the ship, shall travel by air or as otherwise directed. On any subsequent occasion within the period of his employment when he is away from the ship on authorised leave, he shall rejoin the ship by the time specified by the master. Otherwise the master shall have the option of shipping a substitute.
- (D) That if a seafarer considers himself aggrieved he shall make his complaint in a quiet and orderly manner in accordance with the procedure approved by his shipowner and attached hereto as Annex.
- (E) That all stores and provisions issued to the seafarer are only for use and consumption on board ship, and any unused or unconsumed stores or provisions remain the property of the shipowner. A seafarer shall not take ashore, sell, destroy or give away any such stores and provisions.
- (F) That the seafarer shall not secrete or be party or privy to secreting a stowaway or goods of any description not forming part of his own declared personal effects on board the ship, that if any seafarer is convicted of any act of smuggling or found in possession of dangerous drugs, and thereby any loss is occasioned to the master or the shipowner, the seafarer concerned shall be liable to pay that master or shipowner a sum sufficient reimburse the loss or damage sustained by the master or shipowner, and the whole or a proportionate part of his wages may be retained in the satisfaction or on account of that liability, without prejudice to any further remedy.

- (G) (a) That the employment shall be terminated on the expiry of the engagement, or when the master and the seafarer have mutually consented to the termination, or by the death of the seafarer, or by the total loss or total unseaworthiness of the ship, or otherwise in accordance with this terms of service.
- (b) That the master shall only be entitled to discharge the seafarer at any place abroad in accordance with the laws of Hong Kong.
- (c) That the master shall be entitled to dismiss a seafarer from employment in accordance with the laws of Hong Kong and
- (i) If the seafarer is incompetent, or continuously incapacitated, by reason of illness or injury sustained out of a previous employment, intentionally concealed from the shipowner, for the duties for which he has been employed, or
 - (ii) If the seafarer's conduct shows that his continued presence on board is likely to be prejudicial to the safety of the ship or those on board or to the maintenance of good order, or
 - (iii) If the seafarer fails to join or rejoin the ship as and when he is lawfully required to do so, or
 - (iv) If the seafarer organises or engages in gambling on board.
- (d) That if the seafarer through careless or other wrongful conduct is absent without leave or misses the sailing of the ship, his liability to the shipowner shall be as provided in the laws of Hong Kong.
- (e) That wages will not accrue for any hours during which a seafarer refuses or neglects to work when required, or is absent without leave, or for any period during which a seafarer is incapable of performing his duties by reason of illness or injury which has been caused by his own wilful act or default.

6. **Rights, Obligations & Disputes**

All rights and obligations of the parties who are signatories to this agreement shall be bound by the provisions of the laws of Hong Kong. Any disputes arising therefrom shall be referred to the Superintendent of the Mercantile Marine Office in Hong Kong.

7. **Female Employed as Seafarer**

If a female signs on this agreement to be employed in the capacity of a seafarer, the terms "he", "him", "his", "himself" used therein shall be read respectively "she", "her", "hers", "herself".

8. **Termination**

8.1 A minimum notice period of not shorter than seven days applies to both the seafarers and master/shipowner for early termination of this agreement.

8.2 Without penalty to the seafarers, a termination notice shorter than the minimum notice period or without notice for compassionate or other justifying urgent reasons may be considered.

8.3 In case the seafarer is held captive on or off the ship as a result of an act of piracy or armed robbery against the ships, the seafarer's employment agreement and entitlements under this agreement shall continue to have effect during the entire period of captivity, regardless whether this agreement's expiry date has passed, or whether either party to the agreement has given notice to suspend or terminate this agreement.

9. **Minimum hours of rest**

9.1 Subject to subsection 9.2 and 9.4, a seafarer employed to work on board a ship must have least—

- (a) 10 continuous hours of rest in any 24-hour period; and
- (b) 77 hours of rest in any 7-day period.

9.2 The hours of rest in a 24-hour period may be divided into 2 periods if—

- (a) one of them is at least 6 hours in duration; and
- (b) the interval between 2 consecutive periods of rest does not exceed 14 hours.

9.3 Emergency drills on board the ship must be conducted in a manner—

- (a) that minimizes the disruption of any rest period; and
- (b) that does not induce fatigue to any seafarer on board the ship.

9.4 Authority may permit exceptions—

The Authority may, in accordance with Standard A2.3 of the MLC 2006 and Section A-VIII/1 of the STCW Convention, permit an exception to the requirements on hours of rest under subsection 9.1 and 9.2.

10. **Overtime**

10.1 Any hours worked in excess of eight hours, or in excess of the total normal working hours, except hours necessary in case of sailing from or arriving at a port or of emergency (see note (i) below), shall be compensated by the rates shown as follows, by *(a) overtime payment, or *(b) time off in lieu of overtime payment, or *(c) lump-sum allowance.

- Note (i) **Emergency Duty** - Any hours of duty necessary in the case of emergency affecting the safety of the ship, passengers, crew or cargo, of which the master shall be the sole judge, or for fire, boat or emergency drill, or work required to give assistance to other ships or person in immediate peril.
- (ii) A statement of overtime hours worked shall be provided to and agreed with each seafarer at intervals not exceeding one month if the seafarer is entitled to (a) and/or (b) above.

11. Allotments and Remittances

11.1 The seafarer shall be provided with a means to transmit all or part of their earnings to their families or dependants or legal beneficiaries.

11.2 The seafarer shall have the right to remit money, at the time of their employment or during it, to allot, if they so desire, a proportion of their wages for remittance at regular intervals to their family by regular bank transfer or similar means on time directly to the person or account nominated by the seafarer.

11.3 Any charge for the service of the above 11.1 and 11.2 shall be reasonable in amount, and the rate of currency exchange, unless otherwise provided, shall be at the prevailing market rate or the official published rate and not unfavourable to the seafarer.

11.4 In case the seafarer employed on the ship is held captive on or off the ship as a result of acts of piracy or armed robbery against ships, wages and other entitlements under this agreement including the remittance of any allotments as provided in paragraph 4 of Standard A2.2 of the MLC 2006, must continue to be paid and given to the seafarer by the company during the entire period of captivity and until the seafarer is released and duly repatriated in accordance with Clause 18 of this agreement or, where the seafarer dies while in captivity, until the date of death.

12. Advance of Wages

12.1 The seafarer shall be entitled to not more than one month's advance of wages on employment. The shipowner has the right to retain possession of the seafarer's employment registration book until the advance on employment has been repaid. Subsequent advances of wages shall be at the master's discretion, and will be subject to the laws of Hong Kong, to currency control regulations at ports abroad, if applicable, and to the official rate of exchange pertaining at the time of payment of the advance.

13. Annual Leave with Pay

13.1 The annual leave with pay entitlement shall be calculated on the basis of a minimum of 2.5 calendar days per month of employment. Justified absences from work shall not be considered as annual leave. Any agreement to forgo the minimum annual leave with pay shall be prohibited except in cases provided for by the Flag State.

14. Public Holidays

14.1 The following shall be regarded as public holidays. There shall be a minimum of 12 such holidays in a calendar year and where any of them fall on Sundays, the day following shall be treated as public holiday :-

15. Shore Leave

15.1 No shore leave shall be granted and no seafarer is allowed to leave the ship without the consent of the master or his deputy and the local authorities, but such leave will be permitted where possible on completion of a seafarer's normal working hours.

16. Accounts of Wages

16.1 The seafarer, not later than 24 hours before the time of discharge, shall be provided with a true account in writing of his wages and of all deductions therefrom. Where a seafarer is discharged without notice or at less than 24 hours' notice, his account of wages shall be provided at the time of discharge.

17. Victualling

17.1 Seafarer on board shall be provided with sufficient quantities of food and drinking water free of charge during the period of engagement.

17.2 Food and drinking water of appropriate quality, nutritional value and quantity that adequately covers the requirements of the ship and shall take into account the differing cultural and religious backgrounds.

18. Repatriation

18.1 A seafarer discharged for any reason, at a port abroad, shall be accommodated ashore when necessary and where it is not intended that he should rejoin his ship, shall be returned as soon as practicable by air or by any other appropriate and expeditious means that is agreed between the seafarer and the employer of the seafarer, to the following repatriation destination: -

- (a) in the case of a seafarer who is resident in Hong Kong, to Hong Kong;
- (b) in the case of a seafarer who is not resident in Hong Kong, to a place in the country in which he is resident being—
 - (i) if he joined the ship in that country, the place where he joined the ship; or
 - (ii) if he did not join the ship in that country, the place in that country at which he was employed to join the ship; or
- (c) to any other place which may be agreed between the seafarer and his employer.

18.2 A seafarer is entitled to repatriation at no cost to him in the following circumstances:

- (a) if the seafarer's employment agreement expires while he is abroad;
- (b) when the seafarer's employment agreement is terminated :
 - (i) by the shipowner; or
 - (ii) by the seafarer for justified reasons; and also
- (c) when the seafarer is no longer able to carry out his duties under his employment agreement or cannot be expected to carry them out in the specific circumstances.

18.3 Shipowner is prohibited to require a seafarers to make an advance payment towards the cost of repatriation at the beginning of their employment, and also from recovering the cost of repatriation from the seafarers' wages or other entitlements except where the seafarer has been found,

in accordance with Merchant Shipping (Seafarers) Ordinance, Cap 478 and Cap 478Q, to be in serious default of the seafarer's employment obligations.

18.4 A seafarer discharged, except in accordance with clause (5)(G)(c)(iii) of the Service Agreement shall be entitled to wages until the date of arrival in the place at which he was employed to join the ship, provided that he is repatriated as directed by the shipowner.

18.5 A seafarer travelling by air to join a ship or a seafarer repatriated by air, who has not been discharged for disciplinary reasons, shall be entitled to carry up to 30 kilos of baggage.

18.6 A financial security shall be provided in respect of the ship to ensure that any seafarer employed to work on board ship is provided with assistance when the seafarer is abandoned as defined in paragraph 2 of Standard A2.5.2 of the MLC 2006 with its 2014 amendments. The financial security must be in the form of insurance and must be in compliance with the requirements set out in paragraphs 4, 8, 9, 10 and 12 of Standard A2.5.2 of the MLC 2006 with its 2014 amendments.

18.7 The financial security must not be terminated before the expiry date of the security, unless the financial security provider has given to the Authority at least 30 days prior notice in writing; and must not prejudice any right of recourse of the provider of the security against third parties.

19. War or Warlike Operations Allowance

19.1 During the currency of this agreement a seafarer shall be given full information of the war zone's inclusion in the ship's trading pattern and shall have the right not to proceed to a warlike operation area, in which event the seafarer shall be repatriated at company's cost with benefits accrued until date of return to his country of residence.

19.2 Where a ship is in any of the war zones or zones of warlike operations, a seafarer serving thereon shall be entitled to an allowance equivalent to _____% of his basic wages, excluding food allowance, as long as war or warlike operations exist. The allowance shall be payable for the day of arrival in a port of the zone, for all subsequent days the ship is in port and for the day of sailing, with a minimum of _____days, but no day shall count more than once.

19.3 A seafarer shall have the right to accept or decline the assignment without risking losing their employment or suffering any other detrimental effects.

20. Loss of Effects, or Damage by Marine Peril

20.1 The scale of maximum compensation as may be current and agreed shall apply in every case where a seafarer suffers total or partial loss of or damage to his personal effects, as a result of the wreck or loss or stranding or abandonment of the ship on which he was employed, or as result of fire, flooding or collision thereon, excluding loss or damage occasioned (i) by the claimant's own fault and (ii) by misappropriation larceny or theft; and will entitle the seafarer to recover from the shipowner compensation to the value of the effects lost or damaged as specified in 20.2 below, whichever is less.

20.2 Payment for maximum compensation for loss of effects shall be entitled to _____, is conditional on production of a certificate signed by the Master or his Deputy that the loss was not occasioned, under subparagraphs (i) and (ii) above.

20.3 In the event of a seafarer losing his life at the time, compensation for loss of effects will be paid to his spouse or child or other person entitled to his personality.

21. Discipline and Fines

21.1 Discipline shall be exercised in accordance with the provisions laid down in the Merchant Shipping (Seafarers) (Disciplinary Offences On Board Ships) Regulation as will also the prescribed level of fines therein. Fines imposed by the master and not cancelled subsequently shall be disposed of in accordance with these regulations.

22. Hygiene, Vaccination and Inoculations

22.1 A seafarer shall submit to the orders of the master or to the laws of any country within the territorial jurisdiction of which the ship may enter, to have such vaccination or inoculations or to take such medicine or precautionary measures for the safeguarding of the health of himself and the whole crew.

22.2 A seafarer shall keep his quarters and communal spaces such as messroom, toilets, bathrooms, alleyways and recreation rooms clean, to the satisfaction of the master. This work is to be performed outside normal working hours and no overtime shall be claimed.

23. Seafarer's Unemployment Indemnity

23.1 Where a Hong Kong ship is wrecked or lost and a seafarer whose employment in the ship is thereby terminated, or a seafarer's employment in a Hong Kong ship is terminated other than for disciplinary reasons, before the date contemplated in the crew agreement under which he is so employed he shall be entitled to wages at the rate payable under that agreement at the date of the wreck, loss or termination of employment other than for disciplinary reasons, for every day on which he is unemployed in the 2 months following that date.

23.2 Where a Hong Kong ship is sold or ceases to be a Hong Kong ship and a seafarer's employment in the ship is thereby terminated before the date contemplated in the crew agreement under which he is so employed, then he shall be entitled to wages at the rate payable under that agreement at the date on which his employment is terminated for every day on which he is unemployed in the 2 months following that date.

23.3 However, where there are arrangements for the seafarer to continue his service with the company, the seafarer shall continue to receive the same wages and no unemployment compensation shall be payable. Should the seafarer refuse to continue his service when offered employment on another ship at the same rating and wages, for the remainder of his contract, no unemployment compensation shall be payable.

24. Shipowner's Liability

24.1 Shipowner shall be liable to bear the costs for seafarers working on Hong Kong ships in respect of sickness and injury of the seafarers occurring between the date of commencing duty and the date upon which they are deemed duly repatriated, or arising from their employment between those dates.

24.2 Shipowner shall provide financial security to assure compensation in the event of the death or long-term disability of seafarers due to an occupational injury, illness or hazard. The financial security must be in the form of an insurance policy and must be in compliance with the

requirements set out in paragraphs 8(a), (b), (c), (d) and (e) and 13 of Standard A4.2.1 of the MLC 2006 with its 2014 amendments.

24.3 The financial security must not be terminated before the expiry date of the security, unless the financial security provider has given to the Authority at least 30 days prior notice in writing; and must not prejudice any right of recourse of the provider of the security against third parties.

24.4 Shipowner shall be liable to defray the expense of medical care, including medical treatment and the supply of the necessary medicines and therapeutic appliances, and board and lodging away from home until the sick or injured seafarer has recovered, or until the sickness or incapacity has been declared of a permanent character.

24.5 The liability of the shipowner to defray the expense of medical care and board and lodging are limited to a period which shall not be less than 16 weeks from the day of the injury or the commencement of the sickness.

24.6 Where the sickness results in incapacity for work, the shipowner shall be liable:

- (a) to pay full wages as long as the sick seafarer remain on board or until the seafarer has been repatriated;
- (b) to pay fourth-fifths of the wages from the time when the seafarer is repatriated or landed until their recovery; and the liability of the shipowner to pay fourth-fifths of the wages in respect of a sick seafarer no longer on board may be limited to a period which shall not be less than 16 weeks from the day of the commencement of the sickness

24.7 Compensation for death or injury by accident (or occupational disease) arising out of and in the course of employment, including employment on warlike operations while serving as a seafarer of the ship, shall be payable by the shipowner in accordance with the Employees' Compensation Ordinance, Cap. 282 of the Laws of Hong Kong.

24.8 The shipowner is excluded from liability in respect of:

- (a) injury incurred otherwise than in the service of the ship;
- (b) injury or sickness due to the wilful misconduct of the sick, injured or deceased seafarer; and
- (c) sickness or infirmity intentionally concealed when the engagement is entered into.

24.9 The shipowner shall be liable to pay the cost of burial expenses in the case of death occurring on board or ashore during the period of engagement.

24.10 The shipowner shall take measures for safeguarding property left on board by sick, injured or deceased seafarers and for returning it to them or to their next of kin.

24.11 The shipowner shall provide the seafarer the social security protection benefits.

Note: The Employment Ordinance (Cap. 57) of the Laws of Hong Kong does not apply to all seafarers employed under this agreement.

Annex

A model on-board complaint-handling procedures for Hong Kong registered ships

A seafarer who wishes to express a grievance should follow the procedures as listed hereunder :

1. The seafarer should first approach the head of the section in which he is employed and explain his grievance.
2. The seafarer should make his complaint verbally and in an orderly manner and at a time when the complaint or grievance can be heard properly.
3. The head of the section should resolve the complaint or grievance if that is possible, or refers the complaint or grievance to the head of Department.
4. The head of Department should interview the complainant as soon as convenient, after each complaint or grievance has been referred to him.
5. If the seafarer concerned is not satisfied with the way his grievance has been handled, he may request an interview with the Master. The Head of Department should arrange for the seafarer to see the Master, who should then handle the case personally.
6. Seafarer should at all times has the right to be accompanied and to be represented by another seafarer of their choice on board the ship concerned as well as safeguards against the possibility of victimization of seafarers for filing complaints. The term “victimization” covers any adverse action taken by any person with respect to a seafarer for lodging a complaint which is not manifestly vexatious or maliciously made.
7. All complaints and the decisions on them should be recorded and a copy provided to the seafarer concerned.
8. If a complaint cannot be resolved on board, the matter should be referred ashore to the shipowner, who should be given an appropriate time limit for resolving the matter, where appropriate, in consultation with the seafarers concerned or any person they may appoint as their representative.
9. In all cases seafarer should have a right to file his complaints directly with the Master and the shipowner and competent authorities - the Superintendent of the Mercantile Marine Office of the Hong Kong Marine Department. The Master shall afford the seafarer such facilities as necessary for the seafarer to transmit his appeal to an organization of his choice. The procedures also apply to the Master when the same is the complainant. In that case, the shipowner or shipowner’s representative shall afford the Master the facilities as necessary for the Master to transmit his appeal to an organization of his choice.

The Mercantile Marine Office (MMO) of the Hong Kong Marine Department is one of the competent authorities with contact details as :

Address :Mercantile Marine Office, Hong Kong Marine Department, 3/F.,
Harbour Building, 38 Pier Road, Central, Hong Kong.

Tel : (852) 2852 3075

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