



TUVALU SHIP REGISTRY

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MARINE CIRCULAR

MC-12/2012/1

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FOR: Ship Owners, Ship Managers, Ship Operators, Ship Masters, Ship Officers, Classification Societies

SUBJECT: PROVISIONS FOR SEAFARERS WAGES

DEFINITIONS:

The following abbreviations stand for:

- "MLC 2006" – Maritime Labour Convention, 2006;
- "MSA 2008" – Merchant Shipping Act 2008 Revised Edition; and
- the term "Administration" shall mean the Tuvalu Ship Registry.

PURPOSE:

The marine circular provides additional guidance and clarification for seafarers' wages as required by MLC 2006.

APPLICATION:

This Marine Circular applies to all seafarers employed on board Tuvalu flagged vessels.

REFERENCES:

- (a) MLC 2006 – Regulation 2.2
- (b) Merchant Shipping Act 2008 (Section 85 to 87, and 89)

CONTENTS:

1. Terms Used

- 1.1. Basic pay or wages means the pay, however composed, for normal hours of work and does not include payments for overtime worked, bonuses, allowances, paid leave or any other additional remuneration;
- 1.2. Consolidated wage means a wage or salary which includes the basic pay and other pay-related benefits that may include compensation for all overtime hours which are worked and all other pay-related benefits, or it may include only certain benefits in a particular consolidation.
- 1.3. These arrangements should be reflected as an addendum to the Articles of Agreement between the Master and Seafarers.

2. Payment of Wages

- 2.1. Wages shall commence on the day specified and agreed to in the Articles or at the time of presence on board the vessel for the purpose of commencing work, whichever first occurs, and shall terminate on the day of discharge or termination of the Articles.
- 2.2. The ship owner shall ensure that payments due to seafarers working on vessels are made at no greater than monthly intervals and in accordance with any applicable collective agreement.
- 2.3. In the absence of any agreement to the contrary the shipowner or the Master of the vessel shall pay to every seafarer his wages within two (2) days after the termination of the Articles, or at the time when the seafarer is discharged, whichever is first.

- 2.4. A seafarer is entitled to receive in local currency, on demand, from the Master one-half of his wages actually earned and payable at every intermediate port where the vessel shall load or deliver cargo before the voyage is ended, but not more than once in any ten (10) day period. In case of wrongful failure to pay a seafarer wages on demand, the seafarer becomes entitled to a payment of full wages earned.
- 2.5. Seafarers shall be given a monthly account of the payments due and the amounts paid, including wages, additional payments and the prevailing market rate or official published rate of exchange used where payment has been made in a currency or at a rate different from the one to which agreed.
- 2.6. Every Master shall deliver to the seafarer, before paying off, a full and true account of his wages and all deductions to be made therefrom on any account whatsoever, and in default shall, for each offence, be liable to a penalty of not more than one hundred dollars (US\$100).
- 2.7. In lieu of sub-sections 2.1 to 2.6 above, the shipowner may implement a fixed salary plan which establishes a practical, modern salary system that will ensure a regular monthly income while the officer/seafarer is on active service, as well as during leave periods, and at the same time simplify the accounting system by reducing the administrative workload on board the ship.
- 2.8. For the purpose of the penalty provision in Section 125 of the MSA 2008, it shall be deemed that no default has occurred under the following controlled circumstances:
 - 2.8.1. There exists an offshore based account system which utilizes an electronic transfer of wage payments to perform the wage accounting function, provided that individual wage account slips are transmitted to the ship electronically for the seafarer and mailed to the seafarer's mailing address by a specified date, and
 - 2.8.2. The seafarer receives a shipboard transaction statement before signing off the ship, which shall be followed by a final wage account slip to the seafarer's mailing address by a specified date in the month following the date on which the sign-off occurs.
 - 2.8.3. These arrangements should be reflected as an addendum to the Articles of Agreement between the Master and Seafarers.
- 2.9. The ship owner shall take measures to provide seafarers with a means to transmit all or part of their earnings to their families or dependents or legal beneficiaries.
- 2.10. Any charge of service to transmit seafarer earnings shall be of reasonable amount, and the rate of currency exchange, unless provided otherwise, shall be at the prevailing market rate or the official published rate and not unfavourable to the seafarer.

3. Overtime

- 3.1. For the purposes of calculating overtime compensation:
 - 3.1.1. Normal working hours in port and at sea shall mean eight (8) hours per day.
 - 3.1.2. Overtime shall mean work performed over and above normal working hours.
- 3.2. The rate or rates of compensation for overtime shall be for no less than one and one-quarter times the basic pay or wages per hour, unless otherwise stipulated in a seafarer's employment agreement or collective bargaining agreement.
- 3.3. Work performed outside of normal working hours shall not be compensated for as overtime when necessary for the safety of the vessel, its passengers, officers, crew, cargo or for the saving of other vessels, lives or cargo, or for the performance of fire, lifeboat, or other emergency drills. Such work shall be conducted in a manner that minimizes the disturbance of rest periods and does not induce fatigue.
- 3.4. In the special circumstances of lightering, drilling, offshore supply or other specialized maritime operations not constituting an international voyage of more than 24 hours duration, the shipowner may agree with the crew in writing that overtime is to be compensated by additional paid vacation or by additional tangible benefits other than money.

4. Wages for Unjustifiable Discharge

Any seafarer who has signed Articles and is afterward discharged before the commencement of the voyage or before one month's wages are earned, without fault on his part justifying such discharge and without consent, shall be entitled to receive in addition to his earned wages a sum equal in amount to one month's wages as compensation.

5. Advances and allotment of wages

- 5.1. It shall be unlawful to pay any seafarer wages in advance of the time when they are actually earned, or to pay such advance wages or make any order or note or other evidence of the indebtedness therefor to any other person, or to pay to any person for the shipment of any seafarer when payment is deducted or to be deducted from a seafarer's wages.
- 5.2. It shall be lawful for the Master and any seafarer to agree that an allotment of a portion of the seafarer's earnings may be payable to a spouse, children, grandchildren, parents, grandparents, brothers or sisters, or to a bank account in the name of the seafarer.
- 5.3. The provisions of this Section shall not apply to, or render unlawful:
 - 5.3.1. deductions from the wages of a seafarer pursuant to the laws of the country at whose port the seafarer signed on or of which he is a national;
 - 5.3.2. requirements of a labour organization of which the seafarer is a member if such deductions represent dues or other obligations to a labour organization of which the seafarer is a member and are remitted to such organization; or
 - 5.3.3. the written consent of the seafarer, if such deductions are paid into a fund established for the exclusive benefit to seafarers and their families and dependents or for the purpose of providing medical or hospital care, pensions on retirement or death of the seafarer, life insurance, unemployment benefits or compensation for illness or injuries.
- 5.4. The wages and clothing of a seafarer shall not be subject to attachment or arrestment from any Court; and any assignment or sale of wages or of salvage made prior to the accruing thereof shall not bind the seafarer, except for allotments.

6. Vacation Allowance and Holidays

- 6.1. Every Master and seafarer shall be entitled to receive an annual vacation allowance equivalent to not less than 2.5 calendar days per month of employment.
- 6.2. Every seafarer shall be entitled to a minimum of five (5) paid holidays per year.

7. Agreements as to Loss of Lien or Right to Wages

No seafarer shall by any agreement forfeit his lien upon the ship or be deprived of any remedy for recovery of his wages to which he would otherwise have been entitled; and every stipulation by which any seafarer consents to abandon his right to his wages in the case of the loss of the ship or to abandon any right which he may have obtained in the nature of salvage, shall be wholly void and inoperative.

8. Wages Not Dependent on Freight Earned

No right to wages on the part of any seafarer shall be dependent on the earning of freight by the vessel. This however, shall not be construed to prevent any profit-sharing plan by which the officers and crew are to be compensated with profits in addition to their established wages.

9. Wages, Maintenance and Cure for Sick and Injured Seafarer

- 9.1. In the event of disabling sickness or injury, while a seafarer is on board a vessel under signed Articles, or off the vessel pursuant to an actual mission assigned to him by, or by the authority of the Master, the seafarer shall be entitled to:
 - 9.1.1. full wages, as long as he is sick or injured and remains on board the vessel;
 - 9.1.2. medical and surgical treatment and supply of proper and sufficient medicines and therapeutical appliances, until medically declared to have reached a maximum cure or to be incurable, but in no event more than twenty-four (24) weeks from the day of the injury or commencement of the sickness;
 - 9.1.3. an amount equal to board and lodging up to a maximum period of twenty-four (24) weeks, and one-third of his base wages during any portion of such period subsequent to his landing from the vessel but not to exceed a maximum period of sixteen (16) weeks commencing from the day of injury or commencement of the sickness; and
 - 9.1.4. repatriation inclusive of all charges for his transportation, accommodation and food during the journey and maintenance up to the time fixed for his departure.
- 9.2. The shipowner or his representative shall take adequate measures for safeguarding property left on board by a sick, injured or deceased seafarer.
- 9.3. The seafarer shall not be entitled to any of the foregoing benefits:
 - 9.3.1. if such sickness or injury resulted from his wilful act, default or misconduct;
 - 9.3.2. if such sickness or injury developed from a condition which was intentionally concealed from the employer at or prior to his engagement under the Articles;
 - 9.3.3. if he refuses medical treatment for such sickness or injury or is denied such treatment because of misconduct or default; or
 - 9.3.4. if at the time of his engagement he refused to be medically examined.
- 9.4. The seafarer shall have a maritime lien against the vessel for any wages due him under this Section.

Yours sincerely,

Deputy Registrar
Tuvalu Ship Registry