

Circular 79 / 2014 *(This circular has been revoked and is superseded by Circular 234)*

To: Vessel Managers, Masters, Officers, Deputy Registrars and Other Interested Parties

Subject: Seafarer Employment Agreement

Date: 15 January 2014

Summary

Attached below is a Seafarer Employment Agreement (SEA) should Owners / Seafarers wish to use in order to meet the Maritime Labour Convention 2006 (MLC, 2006), Standard 2.1.

The SEA is not mandatory; It is intended to be a guideline and is provided for the benefit and use of any owner who is employing or engaging persons to work on board vessels to which the MLC, 2006 applies.

The SEA in word format is available from fleet@maritimecookislands.com on request.

For further information or clarification please contact the Registrar of Ships, a Deputy Registrar or Fleet Manager at Maritime Cook Islands; alternatively you may contact Maritime Cook Islands Head Office at +682 23848 Phone, +682 23846 Fax, fleet@maritimecookislands.com

Please ensure this has been forwarded to interested parties.

SEAFARER'S EMPLOYMENT AGREEMENT			
SEAFARERS INFORMATION			
Seafarers full name:		Seafarer capacity/ position ⁱ :	
Commencement Date of Agreement:		End Date of Agreement:	
Date of Birth ⁱⁱ :		Place of Birth:	
Citizenship:		City and Country of Repatriation:	
Passport Number:		Passport Expiry	
Email Address:		Mobile Number:	
Next of Kin Name:		Next of Kin Address:	
Next of Kin Mobile:		Next of Kin Email:	
SEAFARER'S WAGES AND BANK INFORMATION:			
Name on Account:		Monthly Wage:	
Bank Name:		Bank Address:	
Account Number:		US Bank Check Routing Number (if applicable):	
US Bank Wire Routing Number (if applicable):		Foreign Bank IBAN# (if applicable):	
Foreign Bank Sort Code (if applicable):		Foreign Bank BIC/ Swift Code (if applicable):	
VESSEL & REGISTERED OWNER'S INFORMATION:			
Name of Vessels:		IMO number:	
Official Number:		Appointed Representative:	
Name of Registered Owner:		IMO Number:	
Registered Owner Address:		Registered Owner Representative:	
Registered Owner Mobile:		Registered Owner Email:	
Dispute Settlement Jurisdiction			
Mutually agreed jurisdiction: ⁱⁱⁱ			

Employment Terms:

The seafarer accepts employment by the Owner for the employment period and capacity specified above. If no end date of the agreement is specified, the seafarer will be employed without time limit until such time as the agreement is terminated by either party in accordance with this agreement.

1. Wages and Account of Wages:

The Seafarers wages^{iv} on commencement will be specified in the table contained on page 1 of this agreement payable by _____^v on the last business day of the

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month. The seafarer will be provided with a monthly account of all payments due, and the amounts to be paid, including wages, additional payments, permitted/statutory deductions and the rate of exchange used where payment has been made in a currency which is different from that agreed above. Partial month payments will be calculated as follows –

Annual wages divided by 365 multiplied by days worked (wages ÷ 365 x days worked).

- 2. Hours of Work and Rest:** A minimum of 10 hours of rest will be made available in each 24 hour period and a minimum of 77 hours rest in each seven day period. The seafarers hours of rest may be divided in to no more than two periods, one of which shall be at least six hours in length, and the interval between consecutive periods of rest shall not be exceed 14 hours. Flag State Administration requires that Master or a person authorised by the Master to maintain a record of the seafarers daily hours of rest. The records shall be kept in English or the working language of the yacht if that is not English. Where the records of the seafarers rest are maintained by someone authorised by the Master, the Master is required to endorse those records. The records of rest are also required to be endorsed by the seafarer. A copy of the endorsed records of rest shall be presented to the seafarer. The seafarer may be required, at the absolute discretion of the Master, to work additional hours during an emergency affecting the safety of the ship, its passengers, crew or cargo or the marine environment or to give assistance to other ships or persons in peril. In such circumstance you will be provided subsequently with compensatory rest period(s).
- 3. Paid Annual Leave^{vi}:** the seafarer is entitled to take 30^{vii} in each year of employment. The seafarer will be paid normal basic remuneration during such leave. If employment commenced or terminates part way through the year, entitlement to leave will be calculated at 2.5 days per month. Deductions from final salary due to the seafarer, on termination of employment will be made in respect of any paid annual leave taken in excess of your entitlement. All paid annual leave must be taken in the year in which it accrues. There is also no provision for payment to be made in lieu of undertaken leave except where paid annual leave has accrued but has not been taken at the date of termination of employment.
- 4. Health and Social Security Benefits^{viii}:** if the seafarer is on a voyage at the time that s/he becomes sick or injured, the seafarer will be paid 100% of normal basic remuneration up to a maximum of 16 weeks. The seafarer will be provided with any medical care on-board should that become necessary, free of charge including access to necessary medicines, medical equipment and facilities for diagnosis and treatment and medical information and expertise. Where practical and appropriate, the seafarer will be given leave to visit a qualified medical doctor or dentist in ports of call for the purposes of obtaining treatment. In the event of sickness or incapacity, the seafarer, will be provided with medical care, including medical treatment and the supply of necessary medicines and therapeutic devises and on board lodging away from home until recovery or until sickness or incapacity has been declared of a permanent character, subject to a maximum of 16 weeks. In addition the Owner will meet the cost of the return of the seafarer's property left on board, to the seafarer or seafarer's

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next of kin. In the event of the seafarer's death occurring on board or ashore during voyage, the Owner will meet the cost of burial expenses up to \$20,000.00^{ix}, and the return of property left on board to the seafarer's next of kin.

5. **Exclusion of liability:** the Owner shall be excluded from liability in the following –
 - 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 this engagement was entered into.
6. **Repatriation^x:** the entitlement to repatriation entails transport and related accommodation if necessary, to the place stipulated in this agreement on page 1 at the expense of the Owner, if the seafarer is away from their home city, country when this SEA is terminated;
 - a. In accordance with section 9 of this SEA;
 - b. In the event of illness or injury or other medical condition requiring the seafarers repatriation, in the event the ship is proceeding to a Warlike Operations Area r the event of termination or interruption of employment;
 - c. In circumstances where the seafarer is no longer able to carry out their duties under this agreement or cannot be expected to do so e.g. shipwreck, sale of the ship or change in the ships registration.

The maximum duration of service periods on board following which a seafarer is entitled to repatriation shall be 12 months^{xi}.

Note: the seafarer shall not be entitled to repatriation at the expense of the Owner in circumstances where they have been dismissed on disciplinary grounds or have breached their obligations under this agreement. In such circumstances the Owner will still be liable to repatriate the seafarer, but shall be entitled to recover from any wages up to \$1,000.00^{xii} due to the seafarer.

7. **Seafarer's Compliant Procedure:** If the seafarer has a complaint regarding conditions of employment, she/he shall follow the "Seafarers Complaint Procedure"^{xiii}. The Procedure shall be made available to the Seafarer before signing the SEA, if so requested. It will also be provided to the seafarer when they join the vessel.
8. **Compensation in respect to the termination of employment as a result of the loss or foundering of the vessel^{xiv}:** Where the seafarer becomes unemployed due to the loss or foundering of the vessel the Owner shall compensate the seafarer for the days, at the seafarer's normal rate of wages under this SEA, for which they remain unemployed. The total indemnity payable to any one seafarer shall be limited to two months wages. Where the seafarer loses personal property, as a result of the vessel, on which she/he is serving, foundering or being lost, the Owner will pay compensation up to the maximum specified in the vessels insurance policy.
9. **Disciplinary Rules and Procedure^{xv}:** Where an employment dispute arises between the seafarer and Owner, the affected party shall notify the other of the dispute within 60^{xvi}

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days of the date of commencement of the dispute. The parties must try to negotiate a resolution between them, in the first instance.

Where the parties are unable to find a satisfactory resolution to the dispute, they may refer the dispute to an agreed mediator for mediation.

Where the dispute is not resolved by agreement or mediation the seafarer and/or may take additional action in the jurisdiction specified on page 1.

Should Cook Islands Jurisdiction be elected, the dispute will be adjudicated under the provisions of the Cook Islands Employment Relations Act 2012 (available at www.maritimecookislands.com)

10. Termination of Employment: this SEA may be terminated in the following circumstances

- a. By mutual.
- b. Immediate termination in the case of breach by either party to comply with the obligations under this SEA.
- c. Seafarer needs to terminate SEA for compassionate or other urgent reasons. In such circumstances the Seafarer shall not be penalised.
- d. If in the opinion of the Master the continued employment of the seafarer would be likely to endanger the vessel or any person on board.
- e. By appropriate notice in accordance with the following
 - i. The length of notice which each party is obliged to give is 7^{xvii} days.

Should the vessel be lost, sold or otherwise cease to be a Cook Islands registered vessel and the seafarers employment is terminated before the date indicated on page 1 of this agreement, the seafarer will be paid the greater of, either two months'^{xviii} salary or notice period.

11. Additional provisions^{xix}:

12. Declarations:

I confirm that I have freely entered this agreement with sufficient understanding of my rights and responsibilities, and I have been given an opportunity to review and seek advice on this agreement before signing.	
Seafarer signature:	Date:
I confirm that the seafarer has been informed of their rights and duties under this agreement prior to or in the process of the seafarer's engagement on the vessel	
Owner or Appointed Representative's signature:	Date:
Place where this Agreement is entered into ^{xx} :	Date:

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ⁱ Capacity in which seafarer is to be employed – this will be the capacity in which the seafarer is to be employed at the time the SEA (Seafarer Employment Agreement) is signed by the parties to it. Given that an SEA may run for a considerable length of time, if the seafarer remains with the same Owner, it is possible that the capacity in which the seafarer is employed could change over time. The Owner / Seafarer may wish to consider whether a new SEA shall be established at such time or alternatively any existing SEA be amended to include any provisions how the capacity change shall be dealt with e.g. by means of letter setting out the new capacity and the relevant wage scale.

ⁱⁱ Insert date of birth – date of birth should be inserted in full dd/mm/yyyy.

ⁱⁱⁱ Should Cook Islands Jurisdiction be elected, the dispute will be adjudicated under the provisions of the Cook Islands Employment Relations Act 2012 (available at www.maritimecookislands.com)

^{iv} Wages – As with “Capacity” (note i above) wages payable to the seafarer are likely to change if employed by the same Owner over a period of time. When completing the “Wages” entry in the SEA, the Owner or Appointed Representative will therefore need to bear this in mind and include appropriate wording to cover any future wage increases e.g. by providing for the wage to increase as notified to the seafarer in writing.

^v Specify method of payment – direct deposit / cash etc.

^{vi} Paid annual leave – the period of paid annual leave must not be less than that specified in the Maritime Labour Convention, 2006 (MLC) standard 2.4. Where it is more appropriate to do so, the formula to be used for calculating annual leave e.g. 2.5 days per month of employment, may be inserted instead of an actual number of days.

^{vii} Shall not be less than 30 days MLC Standard 2.4

^{viii} Social Security Benefits – these include payment by the Owner of any costs incurred in respect of any sickness or injury occurring between the date on which they commenced duty on board a ship and the date on which they are deemed to have been duly repatriated. This also includes payments that Owner are required to make in respect of death or long term disability of a seafarer due to an occupational injury, illness or hazard occurring while the seafarer is serving under a SEA or arising from their employment under such agreement.

^{ix} USD currency

^x Repatriation – the entitlement to repatriation entails transport to the place specified in page 1 of this agreement, or any other city, country mutually agreed to by Owner and Seafarer or representatives thereof.

^{xi} Such periods shall be less than 12 months.

^{xii} USD currency

^{xiii} MLC Standard 5.1.5

^{xiv} MLC Standard 2.6

^{xv} Seafarer employment Agreements must contain a disputes settlement clause that includes the following stages -

- (i) The parties in the first instance shall try to resolve the situation between them.
- (ii) Where the parties cannot find a suitable resolution, the parties shall refer the dispute to mediation. The parties shall mutually agree to the mediator, and any mediation guidelines
- (iii) Where a resolution is not reached, the parties may refer the dispute to a mutually agreed jurisdiction for resolution.

^{xvi} Insert number of calendar days

^{xvii} Number of minimum days not less than 7

^{xviii} May be changed to a suitable period

^{xix} Additional provisions may be added. It is recognised that there will be occasions on which owners wish to include provisions additional to those set out in the MLC. There is no objection to the inclusion of such additional provisions; however any such provisions must not conflict with the provisions of the Flag State Administrations Circulars, Cook Islands legislation or IMO conventions. Maritime Cook Islands will not be checking and approving additional provisions; it will therefore be the responsibility of Owners and appointed Representatives to ensure that there is no conflict. Where such conflict exists interpretation shall be given to

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the provisions that are in line with the MLC, Flag State Administrations Circulars, Cook Islands legislation or IMO conventions

^{xx} Village/ town/ city and country where parties signed this agreement

Revoked

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