

L.N. 76 of 2016

**Merchant Shipping (Seafarers) (Repatriation)
(Amendment) Regulation 2016**

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Merchant Shipping (Seafarers) (Repatriation) (Amendment) Regulation 2016

(Made by the Secretary for Transport and Housing under sections 86, 96, 104, 119 and 134 of the Merchant Shipping (Seafarers) Ordinance (Cap. 478))

1. Commencement

This Regulation comes into operation on a day to be appointed by the Secretary for Transport and Housing by notice published in the Gazette.

2. Merchant Shipping (Seafarers) (Repatriation) Regulation amended

The Merchant Shipping (Seafarers) (Repatriation) Regulation (Cap. 478 sub. leg. Q) is amended as set out in sections 3 to 15.

3. Section 2 amended (interpretation)

(1) Section 2—

Repeal the definitions of *employer* and *master*.

(2) Section 2—

Add in alphabetical order

“*repatriation destination* (遣返目的地), in relation to a seafarer who is entitled to be repatriated, means the place of return ascertained under section 7;”

4. Section 3 substituted

Section 3—

Repeal the section

Substitute

“3. Application

This Regulation applies to a seafarer who is employed to work on board a ship.”.

5. Sections 3A to 3D added

After section 3—

Add

“3A. Seafarer’s entitlement to repatriation

- (1) Subject to section 3B, a seafarer employed to work on board a ship is entitled to be repatriated under any of the circumstances specified in subsection (2).
- (2) The circumstances are—
 - (a) the seafarer’s crew agreement expires;
 - (b) the seafarer’s crew agreement is terminated—
 - (i) by the employer of the seafarer; or
 - (ii) by the seafarer for justifiable reasons;
 - (c) the seafarer has served on board the ship consecutively for—
 - (i) 11 months; or
 - (ii) any longer period agreed to by the seafarer in writing;
 - (d) the employer is unable to fulfil the employer’s legal or contractual obligations to the seafarer because—
 - (i) the employer is insolvent;
 - (ii) the ownership of the ship has changed; or
 - (iii) the ship has ceased to be registered in Hong Kong;

- (e) the seafarer—
 - (i) is unable to or cannot be expected to carry out the duties under the crew agreement due to illness, injury or other medical conditions; but
 - (ii) is medically fit to travel;
- (f) the ship is on its way to a war zone to which the seafarer does not consent to go;
- (g) the ship is wrecked.

3B. Circumstances under which seafarer’s entitlement to repatriation ceases

A seafarer’s entitlement to repatriation ceases if—

- (a) the seafarer, without reasonable cause, fails to comply with any reasonable arrangement made by the employer of the seafarer for the seafarer’s repatriation;
- (b) the seafarer informs the employer in writing that the seafarer does not wish to be repatriated; or
- (c) the employer does not know and could not reasonably have known of the seafarer’s whereabouts within 3 months after the date when the seafarer becomes entitled to be repatriated under section 3A.

3C. Employer’s obligations to make provision for repatriation

- (1) If a seafarer is entitled to be repatriated under section 3A, the employer of the seafarer must make provision—

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- (a) for the seafarer to be returned to the repatriation destination as soon as practicable;
 - (b) for the seafarer's relief and maintenance from the time the seafarer is entitled to be repatriated until the seafarer is returned to the destination; and
 - (c) if the seafarer dies before the seafarer is returned to the destination, for the burial or cremation of the seafarer.
 - (2) For subsection (1)(a), the seafarer must be returned to the repatriation destination—
 - (a) by air; or
 - (b) by any other appropriate and expeditious means that is agreed between the seafarer and the employer of the seafarer.
 - (3) For subsection (1)(b), the seafarer's relief and maintenance includes—
 - (a) food and lodging; and
 - (b) surgical, medical, dental or optical treatment (including the repair or replacement of any appliance) for any condition of the seafarer which requires immediate medical care.
 - (4) For subsection (1)(b), if the seafarer is entitled to be repatriated because the ship on which the seafarer is employed to work is wrecked, the seafarer's relief and maintenance also includes—
 - (a) clothing;
 - (b) toilet and other personal necessities;
 - (c) if the seafarer is not entitled to legal aid, or legal aid is insufficient, reasonable costs for

- defending the seafarer in any criminal proceedings in respect of any act or omission in connection with the shipwreck that is within the scope of the seafarer's employment; and
- (d) sufficient money to meet any minor ancillary expenses necessarily incurred or likely to be so incurred by the seafarer for relief and maintenance.
- (5) Subsection (4)(c) does not apply if the employer of the seafarer or the employer's agent is a party to the criminal proceedings.
 - (6) An employer who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.

3D. Contribution from seafarer prohibited

- (1) The employer of a seafarer must not—
 - (a) require the seafarer to make an advance payment towards the cost of repatriation at the beginning of the seafarer's employment; or
 - (b) recover the cost of repatriation from the seafarer's wages or other entitlements.
- (2) Subsection (1)(b) does not apply if the seafarer is in serious default of the seafarer's obligations under the crew agreement concerned.
- (3) An employer who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.”.

6. Section 4 repealed (return and relief of seafarers left behind or shipwrecked)

Section 4—

Repeal the section.

7. Section 5 amended (other provisions relating to seafarers left behind and shipwrecked seafarers)

(1) Section 5, heading—

Repeal

“Other provisions relating to seafarers left behind and shipwrecked seafarers”

Substitute

“Superintendent to be informed of particulars of repatriated seafarer”.

(2) Section 5(1)—

Repeal

everything before “of the particulars”

Substitute

“(1) As soon as practicable after a seafarer has, for the purpose of repatriation, left the ship on which the seafarer is or was employed to work, the employer of the seafarer must inform the Superintendent”.

(3) Section 5—

Repeal subsection (2)

Substitute

“(2) The particulars are—

(a) the name of the seafarer;

(b) the seafarer’s home address as stated in the list of crew;

- (c) the name and address of the seafarer’s next of kin as stated in the list of crew;
 - (d) the name of the ship;
 - (e) the date when the seafarer left the ship;
 - (f) the circumstances under which the seafarer was entitled to be repatriated;
 - (g) the name and address of the employer; and
 - (h) if the ship was wrecked—
 - (i) the date of the shipwreck;
 - (ii) the date when the seafarer was brought ashore;
 - (iii) the place where the seafarer was brought ashore; and
 - (iv) the present whereabouts of the seafarer.
- (2A) Subsection (1) does not apply if a notice of the seafarer’s discharge has been given to the Superintendent in accordance with section 21 of the Merchant Shipping (Seafarers) (Crew Agreements, Lists of Crew and Discharge of Seafarers) Regulation (Cap. 478 sub. leg. L).”.

- (4) Section 5(3)—

Repeal

“master shall make entries, in relation to any seafarer left behind”

Substitute

“master of the ship must make entries, in relation to the repatriated seafarer”.

- (5) Section 5(3)(a)—

Repeal

everything after “log book”

Substitute

“and in the list of crew—

- (i) the date when the seafarer left the ship; and
- (ii) the circumstances under which the seafarer was entitled to be repatriated; and”.

8. Section 6 amended (obligation to keep Superintendent informed of arrangements made in respect of seafarer)

- (1) Section 6, Chinese text, heading—

Repeal

“通知”

Substitute

“告知”.

- (2) Section 6(1)—

Repeal

“for the seafarer’s return, relief and maintenance specified in section 4”

Substitute

“for a seafarer under section 3C”.

9. Section 7 amended (place of return)

- (1) Section 7—

Repeal

“returned pursuant to this Regulation shall be returned”

Substitute

“repatriated under this Regulation must be returned”.

- (2) Section 7(b)(i)—

Repeal

“from which he was left behind or shipwrecked”.

10. Section 8 amended (provision for a seafarer’s return, relief and maintenance by Superintendent)

Section 8—

Repeal

“section 4”

Substitute

“section 3C”.

11. Section 9 amended (conveyance orders and directions)

(1) Section 9(1)—

Repeal

“section 4”

Substitute

“section 3C”.

(2) Section 9(1)(a)—

Repeal

“place ascertained under section 7 to which he is to be returned”

Substitute

“repatriation destination”.

12. Section 12 amended (wages of seafarers, employed in ships, who are left behind)

(1) Section 12, heading—

Repeal

“Wages of seafarers, employed in ships, who are left behind”

Substitute

“Wages and account of wages etc.”.

(2) Section 12—

Repeal subsection (1)

Substitute

“(1) If a seafarer is returned to a repatriation destination under section 3C, the employer of the seafarer must, within 28 days after the date of return—

(a) pay the outstanding wages in full to the seafarer; and

(b) deliver to the seafarer and the Superintendent an account of the wages paid.

(1A) Subsection (1) does not apply if the seafarer is discharged from the ship on which the seafarer is employed to work and is entitled to receive wages and an account of the wages under sections 84 and 85 of the Ordinance.”.

(3) Section 12—

Repeal subsections (3) and (4)

Substitute

“(3) If a seafarer’s entitlement to repatriation ceases under section 3B, the employer of the seafarer must, within 28 days after the date of cessation—

(a) if the employer knows the seafarer’s current address—

(i) pay the outstanding wages in full to the seafarer; and

- (ii) deliver to the seafarer and the Superintendent an account of the wages paid; or
- (b) if the employer does not know the seafarer's current address, deliver to the seafarer's last known address and the Superintendent—
 - (i) an account of the outstanding wages; and
 - (ii) a notice to the effect that the seafarer may contact the employer regarding the payment of wages.
- (4) An employer who contravenes subsection (1)(a) or (3)(a)(i) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 2 years.”.

(4) After section 12(4)—

Add

- “(5) An employer who contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 3.
- (6) An employer who contravenes subsection (1)(b) or (3)(a)(ii) or (b) commits an offence and is liable on conviction to a fine at level 1.”.

13. Section 14 amended (other records and accounts)

Section 14(2)—

Repeal

“regulations made under section 86(a) of the Ordinance to be made”

Substitute

“the Merchant Shipping (Seafarers) (Wages and Accounts) Regulation (Cap. 478 sub. leg. S)”.

14. Section 15 amended (property of seafarers left behind and of shipwrecked seafarers)

- (1) Section 15, heading—

Repeal

“Property of seafarers left behind and of shipwrecked seafarers”

Substitute

“Property left on ship by sick seafarer etc.”.

- (2) Section 15—

Repeal subsection (1)

Substitute

“(1) This section applies to any property (including money) left on board a ship by—

(a) a sick or injured seafarer who has been repatriated; or

(b) a seafarer who was to be repatriated, but has died before the repatriation.”.

- (3) Section 15—

Repeal subsection (2).

- (4) Section 15(3), after “The master”—

Add

“of the ship on which the seafarer is or was employed to work”.

- (5) Section 15(5)(a)—

Repeal

everything after “by the employer”

Substitute

“of the seafarer, cause the property to be delivered to the employer at an address in the repatriation destination; and”.

15. Section 17 added

After section 16—

Add

“17. Copy of Regulation to be kept on ship etc.

- (1) A copy of this Regulation must be kept on board a ship.
- (2) The master of a ship must, if requested by a seafarer employed to work on board the ship, make a copy of this Regulation available to the seafarer.
- (3) If subsection (1) is contravened, the master of the ship concerned and the master’s employer each commits an offence and is liable on conviction—
 - (a) for the master, to a fine at level 1; and
 - (b) for the employer, to a fine at level 2.
- (4) The master of a ship who contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 1.”.

Anthony B. L. CHEUNG
Secretary for Transport and
Housing

16 May 2016

Explanatory Note

The Maritime Labour Convention, 2006 (*Convention*) was adopted by the International Labour Conference of the International Labour Organization in 2006. It sets out a comprehensive set of global standards for the working and living conditions of seafarers on seagoing ships and seeks to protect the right of seafarers to decent employment. The Convention will apply to Hong Kong after China has ratified the Convention and extended it to Hong Kong.

2. The Merchant Shipping (Seafarers) (Repatriation) Regulation (Cap. 478 sub. leg. Q) (*principal Regulation*) provides for, among others, the repatriation of seafarers in cases where the seafarers are left behind and in cases of shipwreck. This Regulation amends the principal Regulation to implement the requirements of the Convention regarding repatriation of seafarers.
3. The major amendments are—
 - (a) to provide for additional circumstances under which seafarers are entitled to be repatriated and to make related amendments; and
 - (b) to require a copy of the principal Regulation, as amended, to be kept on board Hong Kong ships (see new section 17 of the principal Regulation).