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**Merchant Shipping (Seafarers) (Working and Living
Conditions) (Amendment) Regulation 2019**

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Merchant Shipping (Seafarers) (Working and Living Conditions) (Amendment) Regulation 2019

(Made by the Secretary for Transport and Housing under sections 86, 89, 96, 104 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) (Working and Living Conditions) Regulation amended

The Merchant Shipping (Seafarers) (Working and Living Conditions) Regulation (Cap. 478 sub. leg. AF) is amended as set out in sections 3 to 11.

3. Section 2 amended (interpretation)

Section 2(1)—

Add in alphabetical order

“*armed robbery against ships* (武装搶劫船舶) has the meaning given by Standard A2.1 of the ML Convention;

piracy (海盜) has the meaning given by Standard A2.1 of the ML Convention;”.

4. Part 2, Division 5A added

Part 2, after Division 5—

Add

**“Division 5A—Seafarers’ Employment Agreements in
Case of Piracy or Armed Robbery against Ships**

**16A. Seafarers’ employment agreements remain effective in case
of piracy or armed robbery against ships**

- (1) Subsection (2) applies if—
 - (a) a seafarer is employed to work on board a ship;
and
 - (b) the seafarer is held captive on or off the ship as
a result of an act of piracy or armed robbery
against ships.
- (2) The seafarer’s employment agreement continues to
have effect during the period of captivity, regardless
of whether—
 - (a) the date fixed for the agreement’s expiry has
passed; or
 - (b) either party to the agreement has given notice
to suspend or terminate the agreement.”.

**5. Section 25 amended (sufficient number of seafarers to ensure
safety of ship etc.)**

Section 25(2)—

Repeal

“(Minimum Safe Manning Certificate)”

Substitute

“(Ship’s Manning)”.

6. Section 55A added

After section 55—

Add

“55A. Must pay wages despite capture following piracy or armed robbery against ships

- (1) This section applies if—
 - (a) a seafarer is employed to work on board a ship;
and
 - (b) the seafarer is held captive on or off the ship as a result of an act of piracy or armed robbery against ships.
- (2) Without limiting section 55, wages and other entitlements under the employment agreement, including the remittance of any allotments as provided in paragraph 4 of Standard A2.2 of the ML Convention, must continue to be paid and given to the seafarer by the seafarer’s employer during the periods specified in subsection (3), regardless of whether—
 - (a) the date fixed for the agreement’s expiry has passed; or
 - (b) either party to the agreement has given notice to suspend or terminate the agreement.
- (3) The following periods are specified for subsection (2)—
 - (a) the period from the start of the captivity until—
 - (i) the seafarer’s release; or
 - (ii) if the seafarer dies while in captivity—the seafarer’s date of death; and
 - (b) the period from the seafarer’s release until the seafarer is duly repatriated in accordance with Standard A2.5.1 of the ML Convention.”.

7. Section 69 amended (Authority may issue maritime labour certificates)

Section 69(2)—

Repeal

“section 75”

Substitute

“sections 72A and 75”.

8. Section 72 amended (renewal of maritime labour certificate)

Section 72(2)—

Repeal

“section 75”

Substitute

“sections 72A and 75”.

9. Part 3, Division 3, Subdivision 2A added

Part 3, Division 3, after Subdivision 2—

Add

**“Subdivision 2A—Temporary Extension of Current
Maritime Labour Certificate**

72A. Temporary extension of current maritime labour certificate

(1) This section applies to a ship if the Authority is satisfied that—

- (a) an inspection of the ship has been carried out by a Government surveyor before the date of expiry of the current maritime labour certificate issued in respect of the ship;

- (b) based on the result of the inspection, all the Part 2 requirements applicable to the ship are complied with; and
- (c) on or before the date of expiry of the current maritime labour certificate, a new maritime labour certificate cannot be—
 - (i) issued in respect of the ship; and
 - (ii) made available on board the ship.
- (2) The Authority may extend the validity period of the current maritime labour certificate issued in respect of the ship by making an endorsement to that effect on the current certificate.
- (3) The period extended under subsection (2) must be specified in the endorsement, which must not exceed 5 months from the date of expiry of the current maritime labour certificate.”.

10. Section 111 amended (Authority may recognize organizations)

After section 111(2)(a)(i)—

Add

“(ia) to extend a validity period under section 72A;”.

11. Schedule 4 amended (staffing requirements for catering department)

Schedule 4, section 1—

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Section 11

B4665

Repeal

“(Minimum Safe Manning Certificate)”

Substitute

“(Ship’s Manning)”.

Frank CHAN Fan
Secretary for Transport and
Housing

26 November 2019

Explanatory Note

The Maritime Labour Convention, 2006, as amended (*ML Convention*) regulates and protects the working and employment conditions, as well as other entitlements of seafarers. Certain amendments made to the ML Convention in 2016 and 2018 are to be implemented in Hong Kong by amending the Merchant Shipping (Seafarers) (Working and Living Conditions) Regulation (Cap. 478 sub. leg. AF) (*principal Regulation*).

2. This Regulation amends the principal Regulation to—
- (a) provide that a seafarer's employment agreement and his or her wages and other entitlements under the agreement must not be affected by the seafarer's being held captive as a result of an act of piracy or armed robbery against ships;
 - (b) provide that the validity period of a ship's current maritime labour certificate may be extended temporarily before the issue of a new maritime labour certificate in respect of the ship; and
 - (c) make consequential amendments to the title of the Merchant Shipping (Safety) (Minimum Safe Manning Certificate) Regulation (Cap. 369 sub. leg. AS).