

**NOTICE 1696 OF 2007****DEPARTMENT OF TRANSPORT****Draft Merchant Shipping (Seafarer Recruitment and Placement) Regulations: For comment**

The Minister of Transport, publishes for public comment the proposed Regulations set out in the set out in the accompanying Schedule. Written submissions should reach Department of Transport **on or before 4 January 2008** (Note: late submissions may be disregarded). These should be addressed to the Chief Director: Maritime Regulation (for the attention of Ms N Sobekwa ) and may be either:

- hand-delivered to Department of Transport at 159 Forum Building, Pretoria; or
- mailed to Private Bag X 193, 0001; or
- faxed to (012) 309 3124; or
- e-mailed to [mabuelat@dot.gov.za](mailto:mabuelat@dot.gov.za)

Telephonic enquiries should be directed to Mr T. Mabuela at (012) 309 3070 or Mr N Campbell at (041) 585 0051. Attention is invited to the explanatory note following the regulations.

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**Schedule**

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***Arrangement of regulations***

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## Part 1 Preliminary

### 1 Title and commencement

- (1) These regulations are called the *Merchant Shipping (Seafarer Recruitment and Placement) Regulations 2007*.
- (2) These regulations commence on the day they are published in the Gazette.

### 2 Purpose

These regulations give effect to Regulation 5.3 [Labour-supplying responsibilities] of the *Consolidated Maritime Labour Convention 2006*.

### 3 Definitions

In these regulations, unless the context indicates otherwise, an expression given a meaning by the Act has the given meaning, and—

**"approved"** means approved by the Authority;

**"Convention"** means the *Consolidated Maritime Labour Convention 2006*;

**"seafarer"** means a person who is employed or engaged or works in any capacity on a ship;

**"seafarer recruitment and placement service"** means a person that recruits seafarers or carries on business of recruiting and placing of seafarers on behalf of a shipowner or places seafarers with a shipowner;

**"shipowner"** means the owner of a ship or any person, such as a manager or bareboat charterer, who has assumed the responsibility for the operation of the ship;

**"the Act"** means the *Merchant Shipping Act 1951* (Act No. 57 of 1951).

### 4 Application

These regulations apply to any seafarer recruitment or placement service that recruits or places seafarers on ships to which the Convention applies.

## **Part 2                      Seafarer recruitment and placement services**

### **5                      Recruitment and placement**

- (1) No person may operate a seafarer recruitment and placement service unless that person holds a certificate of accreditation issued by the Authority.
- (2) The authorised representative of a ship must ensure that no person is recruited or placed for work on the ship by a seafarer recruitment and placement service unless the service—
  - (a) holds a certificate of accreditation issued by the Authority.

### **6                      Accreditation of seafarer recruitment and placement services**

- (1) For the purpose of accreditation, the seafarer recruitment and placement service must submit an application, in writing, to the Authority with the following particulars:
  - (a) name and physical address of the seafarer recruitment and placement service;
  - (b) name of each placement agent with a brief description of the agent's qualifications and experience;
  - (c) details of any quality assurance system applicable to the activities of the service.
- (2) For accreditation, a seafarer recruitment and placement service must, on receipt of reasonable notice, make available for inspection, by the Authority, the following documentation:
  - (a) the Act;
  - (b) Safe Manning Regulations;
  - (c) the Convention;
  - (d) STCW Convention; and
  - (e) for each ship to which labour is supplied—
    - (i) Maritime Labour Certificate; and
    - (ii) Declaration of Maritime Labour Compliance: Parts 1 and 2.
- (3) Every seafarer recruitment and placement service that is accredited must—
  - (a) make available, to the Authority, in reasonable time, all contracts entered into between the service and a shipowner;

- (b) make available ,to the Authority, all contracts entered into with seafarers;
  - (c) for audit purposes, preserve the documents referred to in paragraphs (a) and (b) for a period of at least five years.
- (4) A person appointed by the Authority may visit a seafarer recruitment and placement service at any reasonable time for the purpose of auditing the operations of the service.
- (5) The Authority may vary or revoke an accreditation granted under subregulation (1) if—
  - (a) the seafarer recruitment and placement service concerned fails to comply with these regulations or any of the conditions of accreditation; or
  - (b) the Authority otherwise has reasonable grounds to vary or revoke such accreditation.
- (6) Where the Authority intends to vary or revoke accreditation under subregulation (5), it shall inform the seafarer recruitment and placement service concerned accordingly, giving it at least 30 days to correct any deficiencies or to furnish reasons why accreditation should not be varied or revoked.
- (7) A list of all accreditations in force under subregulation (1), including the particulars thereof, shall be published from time to time by marine notice.

## **7 Fees and other charges**

No person shall impose, directly or indirectly, any fees or other charges on any seafarer for recruiting, placing or providing employment to the seafarer, other than the cost of obtaining a medical certificate, a seaman's record book or passport, or any training required for a particular post.

## **8 Duties of seafarer recruitment and placement service**

- (1) A seafarer recruitment and placement service must—
  - (a) maintain an up-to-date register of all seafarers recruited or placed by the service, which is to be kept available for inspection by the Authority;
  - (b) ensure that seafarers are informed of their rights and duties under their employment agreements prior to engagement and proper arrangements are made for seafarers to examine their employment agreements before and after they are signed and for them to receive a copy of the agreements;

- (c) verify that seafarers recruited or placed by them are properly qualified and hold the appropriate qualifications for the position;
  - (d) ensure that the shipowner has the means to repatriate seafarers;
  - (e) examine and respond to any complaint concerning from seafarers they have recruited or placed;
  - (f) forward to the Authority all complaints that are received concerning on-board working or living conditions;
  - (g) establish a system of protection, by way of insurance or an equivalent system, to compensate seafarers for any monetary loss that they may incur as a result of the failure of the seafarer recruitment and placement service to meet its obligations to them;
  - (h) advise the seafarer if the vessel is registered in a country, in which the seafarer is to be placed, has not ratified the Convention and of any possible problems;
  - (i) advise the seafarer of any particular conditions applicable to the job, and the shipowner's policies relating to employment;
  - (j) ensure that requests for information or advice by the families of seafarers, while at sea, are dealt with promptly and sympathetically at no cost;
  - (k) ensure that the shipowner has in place financial protection to cover—
    - (i) medical costs in the event of an accident;
    - (ii) funeral and death benefit cover, including the repatriation of the body;
    - (iii) loss of personal belongings due to an accident to the ship; and
    - (iv) repatriation costs in the event of the seafarer being stranded in any port;
  - (l) ensure the confidentiality of documents submitted by a seafarer.
- (2) No seafarer recruitment or placement service shall use any means, mechanisms or lists intended to prevent or deter any person from gaining employment for which they are qualified.

## **Part 3 Conditions of employment**

### **9 Articles of agreement**

Where a seafarer is placed on a ship registered in the Republic to which the Convention applies, section 102 of the Act applies.

### **10 Contracts of employment**

- (1) Where a seafarer is placed on a ship to which either section 102 of the Act does not apply or the ship is not registered in the Republic, a contract of employment is to be entered into and must contain the following information:
  - (a) the full names of the contracting parties;
  - (b) the full names, passport and identity numbers of the seafarer;
  - (c) the names and contact details of the seafarer's next of kin;
  - (d) the place and date at which the contract was entered into;
  - (e) the date on which the contract terminates;
  - (f) the capacity in which the seafarer is to be employed;
  - (g) the amount of the crew members wages, including overtime payments and any other financial compensation;
  - (h) the amount of the crew members leave entitlement;
  - (i) any deductions that can be made from wages;
  - (j) the frequency of payment of wages;
  - (k) details of any collective bargaining agreement that may be in place;
  - (l) notice periods by either party;
  - (m) accident and death insurance cover;
  - (n) any other obligations or rights that either party may agree.
- (2) A copy of the contract must be given to the seafarer.

### **11 Visas**

The owner of a ship is liable for the cost of any visa required by a seafarer when joining or leaving the ship and, if required, when the ship calls at a port.

## **Part 4                      Supplementary**

### **12              Offences and penalties**

- (1) Every person commits an offence who, without reasonable excuse, contravenes regulation 5, 6 (3), 7, 8, 10 or 11.
- (2) The offence is punishable on conviction by a fine or by imprisonment for a period not exceeding 12 months.

## **Explanatory note**

*(This note is not part of the regulations)*

1. The purpose of these regulations is to introduce into domestic legislation a regime that gives effect to Article IV (2) and regulation 5.3 (1) of the Convention.
2. To ensure that South African seafarers employed on South African and foreign registered vessels, recruited in the republic, enjoy at least the minimum employment conditions and protection envisaged in the Convention.
3. To ensure that South African employment agencies placing seafarers on foreign flagged vessels can demonstrate compliance with the relevant provisions of the Convention.

# **ANNEXURE: E**