

	<p>MLC (2006) 2014 Amendments Financial Security Directive 2017</p>	<p>Directive 001 - 2017</p>
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The Director of the Department of Marine Services and Merchant Shipping (ADOMS), in exercise of the powers conferred by Section 7, sub-section (3) of the Merchant Shipping Act 2006, and of all other powers enabling him in that behalf, makes the following Directive.

1. Citation and commencement.

This Directive may be cited as the MLC (2006) 2014 Amendments, Financial Security Directive 2017 and shall come into force on 18th January 2017. On that date paragraphs 9 and 15 of the schedule to the Merchant Shipping (Maritime Labour Convention, 2006) Regulations 2012 Statutory Instrument 2012, No. 15 shall be considered to be updated as outlined below.

2. Purpose.

This directive is intended to give effect to the Maritime Labour Convention (2006) 2014 amendments until such time as the schedule to the Merchant Shipping (Maritime Labour Convention, 2006) regulations, 2012 Statutory Instrument 2012, No. 15 has been amended. These amendments are currently under consideration by the Government of Antigua and Barbuda.

3. To comply with MLC (2006) Standard A2.5.2 – financial security in the event of abandonment of a seafarer;

SI 2012 No. 15 Schedule, paragraph 9 – Repatriation – is to be considered replaced with the following text;

- (a) Every ship subject to these Regulations shall have financial security which covers the cost of repatriation of seafarers in accordance with these Regulations. There shall be financial security to cover abandonment of seafarers which shall provide direct access, sufficient coverage and expedited financial assistance.
- (b) For the purposes of this Standard, a seafarer shall be deemed to have been abandoned where in violation of the requirements of this Convention or the terms of the seafarers' employment agreement, if the shipowner:
 - I. Fails to cover the cost of the seafarer's repatriation; or
 - II. Has left the seafarer without the necessary maintenance and support; or
 - III. Has otherwise unilaterally severed their ties with the seafarer including failure to pay contractual wages for a period of at least two months.

- (c) The ship shall carry on board a certificate or other documentary evidence of financial security issued by a financial security provider acceptable to ADOMS. A copy shall be posted in a conspicuous place on board where it is available to the seafarers.
- (d) Assistance provided by the financial security system shall be granted promptly upon request made by the seafarer or the seafarer's nominated representative and supported by the necessary justification of entitlement.
- (e) Assistance provided by the financial security system shall be sufficient to cover the following:
 - I. Outstanding wages and other entitlements due from the shipowner to the seafarer under their employment agreement, the relevant collective bargaining agreement or the national law of Antigua and Barbuda, limited to four months of any such outstanding wages and four months of any such outstanding entitlements;
 - II. All expenses reasonably incurred by the seafarer, including the cost of repatriation referred to in paragraph 10; and
 - III. The essential needs of the seafarer including such items as: adequate food, clothing where necessary, accommodation, drinking water supplies, essential fuel for survival on board the ship, necessary medical care and any other reasonable costs or charges from the act or omission constituting the abandonment until the seafarer's arrival at home.
- (f) The cost of repatriation shall cover travel by appropriate and expeditious means, normally by air, and include provision for food and accommodation of the seafarer from the time of leaving the ship until arrival at the seafarer's home, necessary medical care, passage and transport of personal effects and any other reasonable costs or charges arising from the abandonment.
- (g) The financial security shall not cease before the end of the period of validity of the financial security unless the financial security provider has given prior notification of at least 30 days to ADOMS.
- (h) The certificate or other documentary evidence referred to in Standard A2.5.2, paragraph 7, shall contain the information required in APPENDIX A2-1.
- (i) Seafarers are entitled to repatriation at no cost to themselves:-
 - I. When the seafarer's employment agreement expires while the seafarer is abroad,
 - II. When the seafarer's employment agreement is terminated by the employer in accordance with its terms,

- III. When the seafarer's employment agreement is terminated by the seafarer for justified reasons,
 - IV. In the event of illness or injury or other medical condition which requires their repatriation when found medically fit to travel,
 - V. In the event of shipwreck,
 - VI. In the event of the shipowner not being able to continue to fulfil his legal or contractual obligations as an employer of the seafarers by reason of insolvency, sale of ship, change of ship's registration or any other similar reason, and
 - VII. In the event of a ship being bound for a war zone, as defined by national laws or regulations or seafarers' employment agreements, to which the seafarer does not consent to go.
- (j) The maximum duration of service periods on board following which a seafarer is entitled to repatriation in accordance with sub-paragraph (i) (III) shall be specified in his employment agreement, but in every case shall not exceed 9 months.
- (k) The costs to be borne by a ship owner for repatriation under sub-paragraph (i) shall include the following;
- I. Passage to the repatriation destination,
 - II. Accommodation and food from the moment the seafarer leaves the ship until he reaches the repatriation destination,
 - III. Pay and allowances from the moment the seafarer leaves the ship until he reaches the repatriation destination,
 - IV. Transportation of 30 kg of the seafarer's personal luggage to the repatriation destination; and
 - V. Medical treatment when necessary until the seafarer is medically fit to travel to the repatriation destination.
- (l) The repatriation destination shall be the place where the seafarer was recruited unless the employment agreement specifies otherwise or the seafarer and the shipowner agree an alternative and the mode of transport to that destination shall normally be by air.
- (m) Seafarers shall not be required to make any contribution towards the cost of repatriation at the commencement of, or in advance of, their employment and the costs of repatriation shall not be recovered from a seafarer's wages or other entitlements except in a case where the seafarer is found to have been in serious default of his employment obligations.
- (n) Nothing in these Regulations shall prejudice the right of a shipowner to recover the cost of repatriation under third party contractual arrangements.
- (o) If a shipowner fails to make arrangements for, or to meet the cost of repatriation of seafarers serving in an Antigua and Barbuda ship who are entitled to be repatriated –

- I. ADOMS shall arrange for the repatriation of the seafarers involved; and
 - II. Costs incurred by ADOMS in meeting this obligation shall be recoverable from the shipowner;
 - (p) The expense of repatriation shall in no case be a charge upon seafarers except as provided in sub-paragraph (m).
 - (q) The right of repatriation in accordance with these regulations shall not be refused because of the financial circumstances of a shipowner or because of a shipowner's inability or unwillingness to replace a seafarer.
 - (r) If ADOMS has repatriated a seafarer pursuant to sub-paragraph (o), and costs incurred have not been recovered, it may arrest the ship until such costs are reimbursed, subject to any provisions in the Act relating to arrest of ships.
 - (s) Where the details of requirements governing repatriation are not set out exactly in the seafarer's employment agreement, each seafarer shall have access at any time and in an appropriate language, to the Antigua and Barbuda provisions in these regulations.
4. To comply with MLC (2006) Standard A4.2 – financial security in case of a contractual claim which relates to death or long-term disability of seafarers due to an occupational injury, illness or hazard;

SI 2012 No. 15 Schedule, paragraph 15 - Shipowners liability – is to be considered replaced with the following text:

- (a) Shipowners shall meet the standards set out in Standard A4.2.1 paragraph 1, sub-paragraphs (a)-(d).
- (b) The liability of the shipowner under Standard A4.2.1, paragraph 1 (c) for the expense of medical care and board and lodging is limited to a period of 16 weeks from the day of the injury or the commencement of the sickness, and may cease if and when the seafarer is in a position to claim medical benefits under any scheme of compulsory sickness insurance, compulsory accident insurance, or workers compensation for accidents.
- (c) Where the sickness or injury results in incapacity for work the shipowner shall be liable:
 - I. To pay full wages as long as the sick or injured seafarers remain on board or until the seafarers have been repatriated in accordance with these Regulations; and
 - II. To pay wages at the seafarer's basic rate of pay or at the rate specified in any applicable collective bargaining agreement from the time when the seafarers are repatriated or landed until their

recovery or until they are entitled to cash benefits under the legislation of Antigua and Barbuda if earlier.

- (d) The ship owner shall not be liable to pay wages under sub-paragraph (b) in respect of a seafarer no longer on board for a period longer than 16 weeks from the day of the injury or the commencement of the sickness.
- (e) The ship owner is not liable under sub-paragraphs (b) or (c) in respect of:
 - I. Injuries incurred otherwise than in the service of the ship;
 - II. Injury or sickness due to the willful misconduct of the sick, injured or deceased seafarer; and
 - III. Sickness or infirmity intentionally concealed when the engagement is entered into.
- (f) The ship owner is not liable for the expense of medical care and board and lodging and burial expenses in so far as such liability is assumed by any public authority.
- (g) Shipowners shall take measures for safeguarding property left on board by sick, injured or deceased seafarers and shall be liable for the reasonable costs of returning it to them or to their next of kin.
- (h) There shall be a system of financial security acceptable to ADOMS which assures compensation as provided by paragraph 1(b) of Standard A4.2.1 for contractual claims, as defined in Standard A4.2.2, meeting the following minimum requirements:
 - I. The contractual compensation, where set out in the seafarer's employment agreement and without prejudice to subparagraph (iii) of this paragraph, shall be paid in full and without delay;
 - II. There shall be no pressure to accept a payment less than the contractual amount;
 - III. Where the nature of the long-term disability of a seafarer makes it difficult to assess the full compensation to which the seafarer may be entitled, an interim payment or payments shall be made to the seafarer so as to avoid undue hardship;
 - IV. In accordance with Regulation 4.2, paragraph 2, the seafarer shall receive payment without prejudice to other legal rights, but such payment may be offset by the shipowner against any damages resulting from any other claim made by the seafarer against the shipowner and arising from the same incident; and
 - V. The claim for contractual compensation may be brought directly by the seafarer concerned, or their next of kin, or a representative of the seafarer or designated beneficiary.
- (i) Seafarers shall receive prior notification if a shipowner's financial security is to be cancelled or terminated.

- (j) ADOMS shall be notified by the provider of the financial security if a shipowner's financial security is cancelled or terminated.
- (k) Ships shall carry on board a certificate or other documentary evidence of financial security issued by the financial security provider. A copy shall be posted in a conspicuous place on board where it is available to the seafarers.
- (l) The financial security shall not cease before the end of the period of validity of the financial security unless the financial security provider has given prior notification of at least 30 days to ADOMS.
- (m) The financial security shall provide for the payment of all contractual claims covered by it which arise during the period for which the document is valid.
- (n) The certificate or other documentary evidence of financial security shall contain the information required in Appendix A4-I. It shall be in English or accompanied by an English translation. A copy shall be posted in a conspicuous place on board where it is available to the seafarers.
- (o) For the purposes of Standard A4.2.1, paragraph 8, the term "contractual claim" means any claim which relates to death or long-term disability of seafarers due to an occupational injury, illness or hazard as set out in national law, the seafarers' employment agreement or collective agreement.
- (p) The system of financial security, as provided for in Standard A4.2.1, paragraph 1(b), may be in the form of a social security scheme or insurance or fund or other similar arrangements. Its form shall be determined by ADOMS after consultation with the shipowners' and seafarers' organizations concerned.
- (q) Contractual claims relating to compensation referred to in Standard A4.2.1, paragraph 8, will be dealt with in a similar manner to seafarers complaints.
- (r) Parties to the payment of a contractual claim may use the Model Receipt and Release Form set out in Appendix B4-I.

5. Revocation

This directive will be considered revoked once the 2017 amendments to the Merchant Shipping (Maritime Labour Convention, 2006) regulations, 2012 Statutory Instrument 2012, No. 15 are published and enter into force.

January, 2017

Signed by the authority of the
Director of the Department of Marine Services and Merchant Shipping