

3.4 – Seafarers’ employment agreement

Seafarers’ Employment Agreement (SEA) (Reg. 2.1)
Basic requirements
<ul style="list-style-type: none">• Where a shipowner has used a private seafarer recruitment and placement service,* it must be licensed or certified or regulated in accordance with the MLC, 2006.• Seafarers shall not be charged for use of these services.• Shipowners using services based in States not party to the MLC, 2006, must ensure, as far as practicable, that these services meet the requirements of the MLC, 2006 (Standard A1.4, paragraph 9).** <p><i>* If private seafarer recruitment and placement services are operating in their territory, flag States are responsible for establishing an effective inspection and monitoring system with respect to those services (Regulation 5.3; Standard A5.3, paragraph 1).</i></p> <p><i>** Flag States are responsible for ensuring that shipowners have a proper system for verifying that the recruitment and placement services conform to the national requirements implementing Standard A1.4 if they use recruitment and placement services based in States not party to the MLC, 2006. This responsibility may be fulfilled by continuously monitoring shipowners’ compliance with those requirements, by monitoring recruitment and placement services in relevant non-MLC countries through a quality management system, and by providing information on the extent to which services in such countries have been found to meet the requirements of Standard A1.4.</i></p>

4. Seafarer employment agreements – Regulation 2.1

A.2.1.1.a Confirmation that all seafarers are provided with a seafarer employment agreement.

Verification that SEAs are consistent with the national requirements of the Flag State.

Document: Seafarers Employment Agreement/ Collective Bargaining Agreement

Requirement: Each Member shall adopt laws or regulations requiring that ships that fly its flag comply with the following requirements seafarers working on ships that fly its flag shall have a seafarers' employment agreement signed by both the seafarer and the shipowner or a representative of the shipowner (or, where they are not employees, evidence of contractual or similar arrangements) providing them with decent working and living conditions on board the ship as required by this Convention

FS/PS Guidelines - A SEA must, at a minimum, address the matters set out in Standard A2.1, paragraph 4(a)–(k) of the MLC, 2006 (Standard A2.1, paragraph 1(a)).

A copy of the SEA and any applicable collective bargaining agreements for seafarers and, at a minimum, a standard form of the SEA (in English) for the ship shall be available on board for all seafarers

A.2.1.1.b Confirmation by interview that seafarers have a sufficient understanding of their rights and responsibilities.

Verification through interview that the seafarers have been given the opportunity to examine their agreement before signing

Verification through interview that the seafarers are able to fully understand the contents of the agreement before being requested to sign the agreement.

Requirement: Each Member shall adopt laws or regulations requiring that ships that fly its flag comply with the following requirements seafarers signing a seafarers' employment agreement shall be given an opportunity to examine and seek advice on the agreement before signing as well as such other facilities as are necessary to ensure that they have freely entered into an agreement with a sufficient understanding of their rights and responsibilities

A.2.1.1.c Verification that a copy of the SEA is available on board and is signed by both the seafarer and the shipowner.

Document: SEA/CBA

Requirement: Each Member shall adopt laws or regulations requiring that ships that fly its flag comply with the following requirements:

The shipowner and seafarer concerned shall each have a copy of the seafarers' employment agreement;

A.2.1.1.d Confirmation that clear information as to the conditions of their employment can be obtained on board by seafarers

Requirement: Each Member shall adopt laws or regulations requiring that ships that fly its flag comply with the following requirements:

Measures shall be taken to ensure that clear information as to the conditions of their employment can be easily obtained on board by seafarers, including the ship's master, and that such information, including a copy of the seafarers' employment agreement, is also accessible for review by officers of a competent authority, including those in ports to be visited

A.2.1.1.e Verification that seafarers are given a record of their employment on board the ship

Document: Record of employment

Requirement: Each Member shall adopt laws or regulations requiring that ships that fly its flag comply with the following requirements:

Seafarers shall be given a document containing a record of their employment on board the ship.

Comment: The form of the document, the particulars to be recorded and the manner in which such particulars are to be entered, shall be determined by national law (eg. a recording in the seaman's book). The document shall not contain any statement as to the quality of the seafarers' work or as to their wages. The document must be available on board.

FS/PS Guidelines - Evidence, where possible, given the timing of the inspection relative to employment period, of possession by seafarers of a record of their employment (or records to be submitted to the inspector at a later date).

A.2.1.2 Verification that a copy of the collective bargaining agreement is available on board, when forms part of seafarers employment agreement

Document: SEA/CBA

Requirement: Where a collective bargaining agreement forms all or part of a seafarers' employment agreement a copy of that agreement shall be available on board. Where the language of the seafarers' employment agreement and of any applicable collective bargaining agreement is not English, the following shall also be available in English (except for ships engaged only in domestic voyages)

A.2.1.2.a Confirmation, when applicable, that a copy of the standard form of the agreement is available on board in English language

Document: Standard form of the agreement

Requirement: The following shall also be available in English: a copy of a standard form of the agreement

A.2.1.2.b Confirmation, when applicable, that a copy of the collective bargaining agreement that are subject to port state inspection is available on board in English language.

Document: SEA/CBA

Requirement: The following shall also be available in English: the portions of the collective bargaining agreement that are subject to a port state inspection under Regulation 5.2.

A.2.1.3 Verification that the record of employment does not contain any statement as to the quality of the seafarers' work or as to their wages.

Verification that the record is under an approved format (such as a discharge book) and that an English translation is available.

Document: Record of employment

Requirement: The document referred to in paragraph 1(e) of this Standard shall not contain any statement as to the quality of the seafarers' work or as to their wages. The form of the document, the particulars to be recorded and the manner in which such particulars are to be entered in it shall be determined by national law.

A.2.1.4.a to d Verification that the SEA contains:

- the seafarer's full name, date of birth or age, and birthplace
- the shipowner's name and address;
- the place where and date when the seafarers' employment agreement is entered into
- the capacity in which the seafarer is to be employed

Document: SEA/CBA

Requirement: Each Member shall adopt laws and regulations specifying the matters that are to be included in all seafarers' employment agreements governed by its national law. Seafarers' employment agreements shall in all cases contain the following particulars:

- (a) the seafarer's full name, date of birth or age, and birthplace;
- (b) the shipowner's name and address;
- (c) the place where and date when the seafarers' employment agreement is entered into;
- (d) the capacity in which the seafarer is to be employed

Comment: MLC Convention Standard A2.1 item 4 provides details of the minimum information to be contained within the SEA.

Art II (j) shipowner means the owner of the ship or another organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with this Convention, regardless of whether any other organization or persons fulfil certain of the duties or responsibilities on behalf of the shipowner.

A.2.1.4.e & f Verification that the seafarer's agreement contains:

- the amount of the seafarer's wages or, where applicable, the formula used for calculating them
- the amount of paid annual leave or, where applicable, the formula used for calculating it

Document: SEA/CBA

Requirement: Seafarers' employment agreements shall in all cases contain the following particulars:

- (e) the amount of the seafarer's wages or, where applicable, the formula used for calculating them
- (f) the amount of paid annual leave or, where applicable, the formula used for calculating it

Guideline B2.2.2*: For seafarers whose wages are fully or partially consolidated:

- (a) the seafarers' employment agreement should specify clearly, where appropriate, the number of hours of work expected of the seafarer in return for this remuneration, and any additional allowances which might be due in addition to the consolidated wage, and in which circumstances;
- (b) where hourly overtime is payable for hours worked in excess of those covered by the consolidated wage, the hourly rate should be not less than one and one quarter times the basic rate corresponding to the normal hours of work as defined in paragraph 1 of this Guideline; the same principle should be applied to the overtime hours included in the consolidated wage;
- (c) remuneration for that portion of the fully or partially consolidated wage representing the normal hours of work as defined in paragraph 1(a) of this Guideline should be no less than the applicable minimum wage; and
- (d) for seafarers whose wages are partially consolidated, records of all overtime worked should be maintained and endorsed as provided for in paragraph 1(d) of this Guideline.

* Part B Guidelines are not mandatory part of Maritime Labour Convention. Their intention is to help the Flag States to establish the system which is adequate to implement the responsibilities under Part A of the respective Guideline. The Flag States will define their national requirements related to Maritime labour Convention in DMLC part I.

A.2.1.4.g Verification that the seafarer's agreement contains the termination of the agreement and the conditions thereof

Document: SEA/CBA

Requirement: Seafarers' employment agreements shall in all cases contain the following particulars:

(g) the termination of the agreement and the conditions thereof

Comment:

(i) if the agreement has been made for an indefinite period, the conditions entitling either party to terminate it, as well as the required notice period, which shall not be less for the shipowner than for the seafarer;

(ii) if the agreement has been made for a definite period, the date fixed for its expiry; and

(iii) if the agreement has been made for a voyage, the port of destination and the time which has to expire after arrival before the seafarer should be discharged;

A.2.1.4.h Verification that the seafarer's agreement indicates the social security protection to be provided by the shipowner

Document: SEA/CBA

Requirement: Seafarers' employment agreements shall in all cases contain the following particulars:

(h) the health and social security protection benefits to be provided to the seafarer by the shipowner

A.2.1.4.i Verification that the seafarer's agreement contains the seafarer's entitlement to repatriation

Document: SEA/CBA

Requirement: Seafarers' employment agreements shall in all cases contain the following particulars:

(i) the seafarer's entitlement to repatriation

Guideline B2.5.1.1* – 1 Seafarers should be entitled to repatriation:

(a) in the case covered by Standard A2.5, paragraph 1(a), upon the expiry of the period of notice given in accordance with the provisions of the seafarers' employment agreement;

(b) in the cases covered by Standard A2.5, paragraph 1(b) and (c):

(i) in the event of illness or injury or other medical condition which requires their repatriation when found medically fit to travel;

(ii) in the event of shipwreck;

(iii) in the event of the shipowner not being able to continue to fulfil their 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;

(iv) 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; and

(v) in the event of termination or interruption of employment in accordance with an industrial award or collective agreement, or termination of employment for any other similar reason.

* Part B Guidelines are not mandatory part of Maritime Labour Convention. Their intention is to help the Flag States to establish the system which is adequate to implement the responsibilities under Part A of the respective Guideline. The Flag States will define their national requirements related to Maritime labour Convention in DMLC part I.

A.2.1.4.j Confirmation that the seafarer's agreement contains reference to the collective bargaining agreement, if applicable

Document: SEA/CBA

Requirement: Seafarers' employment agreements shall in all cases contain the following particulars:

(j) reference to the collective bargaining agreement, if applicable;

A.2.1.4.k Confirmation that the seafarer's agreement contains any other particulars which national law may require

Document: SEA/CBA

Requirement: Seafarers' employment agreements shall in all cases contain the following particulars:

(k) any other particulars which national law may require.

A.2.1.5 Verification that the minimum notice period is clearly mentioned in the seafarer's agreement and that is not shorter than seven day

Document: SEA/CBA

Requirement: Each Member shall adopt laws and regulations establishing minimum notice periods to be given by the seafarers and shipowners for the early termination of a seafarers' employment agreement. The duration of these minimum periods shall be determined after consultation with the shipowners' and seafarers' organizations concerned, but shall not be shorter than seven days.

Comment: The duration of the minimum periods shall not be shorter than seven days.

A.2.1.6 In case of shorter notice period or without notice termination specified, verification that the reasons are recognised under national laws and regulations or collective bargaining agreement

Requirement: Each Member shall adopt laws and regulations establishing minimum notice periods to be given by the seafarers and shipowners for the early termination of a seafarers' employment agreement. The duration of these minimum periods shall be determined after consultation with the shipowners' and seafarers' organizations concerned, but shall not be shorter than seven days.

A.2.1.6 A notice period shorter than the minimum may be given in circumstances which are recognized under national law or regulations or applicable collective bargaining agreements as justifying termination of the employment agreement at shorter notice or without notice. In determining those circumstances, each Member shall ensure that the need of the seafarer to terminate, without penalty, the employment agreement on shorter notice or without notice for compassionate or other urgent reasons is taken into account.

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