



TUVALU SHIP REGISTRY

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MARINE CIRCULAR

MC-10/2012/1

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FOR: Ship Owners, Ship Managers, Ship Operators, Ship Masters, Ship Officers, Classification Societies

SUBJECT: ONBOARD COMPLAINT PROCEDURES

DEFINITIONS:

The following abbreviations stand for:

- “DPA” – Designated Person Ashore
- “HOD” – Head of Department
- “MLC 2006” – Maritime Labour Convention, 2006
- “MSA 2008” – Merchant Shipping Act 2008 Revised Edition

The term “Flag Administration ” shall mean the Tuvalu Ship Registry.

PURPOSE:

This marine circular serves to address the key elements of an onboard complaint procedure with the objective to ensure that there is a fair, effective and expeditious handling of seafarer complaints.

As such, the contents of this document provides the ship owner / operator with a better understanding of the requirements that must be met in implementing an onboard complaint procedure, and also provides the seafarer in understanding his/her rights and the procedures involved in filing a complaint.

APPLICATION:

This marine circular applies to all Tuvalu ships.

REFERENCES:

- (a) Merchant Shipping Act 2008 (Section 94)
- (b) MLC 2006 – Regulation 5.1.5

CONTENTS:

1. General Requirements

- 1.1. A ship owner / operator shall provide a seafarer a copy of the onboard complaint procedures applicable to the ship together with a copy of their seafarers’ employment agreement.
- 1.2. Any seafarer onboard a Tuvalu flagged vessel shall have the right to lodge a complaint and to have that complaint investigated, provided it is specific in nature and is alleged to constitute a breach of seafarers’ rights under the MLC 2006 or Tuvalu MSA 2008 and/or Regulations.
- 1.3. Any victimization of a seafarer for filing a complaint is strictly prohibited. Victimization is defined as any adverse action taken or threatened by any person with respect to a seafarer for lodging a complaint which is not manifestly vexatious or maliciously made.

2. Complaint Procedures

- 2.1. Notwithstanding procedures laid down in an individual seafarer's contract of employment, the following procedures shall be observed.
- 2.2. The onboard complaint procedures shall include:
 - 2.2.1. Contact information for the Company DPA or his/her designee;
 - 2.2.2. Contact information for the Office of the Flag Administration (i.e. Tuvalu Ship Registry);
 - 2.2.3. Contact information for the Competent Authority of the seafarers' country of residence; and
 - 2.2.4. The name of the person(s) onboard ship who can, on a confidential basis, provide seafarers with impartial advice on their complaint and assist them in following the complaint procedures. Such assistance rendered by this person may include attending meetings or hearings, if requested by the complainant seafarer.
- 2.3. Any seafarer with a complaint shall have the ability to have the matter addressed by bringing it to the attention of the proper authority on board, as provided below:
 - 2.3.1. Superior Office (i.e. Immediate Supervisor)
 - 2.3.2. HOD
 - 2.3.3. Master
- 2.4. Complaints should be sought to be resolved at the lowest level possible; and only when the matter cannot be resolved to the satisfaction of both parties, should it be elevated to the next level.
- 2.5. Officers and/or crew members shall, within seven (7) days from the date of the alleged cause of the complaint, bring the matter to their Immediate Supervisor, HOD, the Master, or his/her appointee, who in the chain of command dealing with the complaint have a further seven (7) days each to bring about a solution to the matter, provided that this time limit is appropriate to the seriousness of the matter.
- 2.6. Notwithstanding, in all cases, seafarers shall have the right to complain directly to the Master and, where they consider it necessary, to the Company DPA or his/her designee for conciliation.
- 2.7. Should a complaint reach the level of the Master, the Master shall:
 - 2.7.1. Conduct an investigation or inquiry, as appropriate;
 - 2.7.2. Reference the terms and conditions of employment; and
 - 2.7.3. Seek the advice of the Company DPA or his/her designee where necessary.
- 2.8. If the Master cannot reconcile the complaint, the matter should be formally referred within 14 days to the Company DPA or his/her designee who must conciliate the matter in accordance with the terms and conditions of employment.
- 2.9. If a matter is to the prejudice of the Master, then a seafarer should present his/her case directly to the Company DPA or his/her designee.

2.10. Until such time as the Company DPA's decision is received, the Master's decision shall be binding on all parties.

3. External Authorities

3.1. Seafarers shall have the right to file a complaint directly to an appropriate external authority, such as, but not limited to:

3.1.1. a Flag State Inspector;

3.1.2. a Flag Administration Recognized Organization Inspector;

3.1.3. a port State control officer;

3.1.4. a local seafarer labour organization representative; or

3.1.5. other seafarer welfare assistance services.

3.2. Should a complaint reach the level of external authorities, that authority shall be provided with the contact information of the Flag Administration and requested to communicate the complaint to the Flag Administration.

3.3. The Flag Administration shall communicate the complaint to the Company DPA who shall then be expected to resolve the matter in accordance with the terms and conditions of employment to the satisfaction of both parties.

4. Unresolved Disputes & Arbitration Rules

4.1. It is Tuvalu's policy to place the primary responsibility to settle any dispute or difference on the ship owners / operators and ship owner organizations, and seafarers and labour organizations in order to avoid unnecessary interruption in maritime commerce.

4.2. As per section 2 above, seafarers shall present their case to the ship owner / operator through the Master or his/her appointee, or, if the matter is to the prejudice of the Master, then directly to the ship owner / operator. Seafarers may be represented in the matter by a labour organization (e.g. Seafarer's Union) which is a party to the labour agreement that covers wages and other terms and conditions of employment. Efforts shall be made to conciliate the matter and to find an agreeable solution.

4.3. If the dispute cannot be resolved through the on board complaint procedure in the appropriate timeframe allotted, the crew members shall have 14 days thereafter to bring it through the Master or his or her appointee to the employer; or if the matter may be to the prejudice of the Master, then directly to the employer (in accordance to sub-section 2.8 and 2.9 above). From here, the employer and the seafarers shall have a period of 30 days to reach a settlement.

4.4. If the dispute cannot be resolved after 30 days in accordance to sub-section 4.3 above, then either party shall have a further 30 days to call upon the Flag Administration, or an agent appointed by the Flag Administration, to act as mediator to endeavour to find a solution to the matter satisfactory to both parties. The conciliation and mediation procedures shall be informal.

4.5. If the Flag Administration, or its appointed agent is unable to successfully mediate the matter, either party shall have a further 30 days to serve a notice of demand for arbitration and therein designate a proposed arbitrator. In the event that an arbitrator cannot be mutually agreed upon and appointed within 30 days after service of said demand, each party shall appoint an arbitrator and those two (2) shall choose the third arbitrator, who will

act as the presiding arbitrator of the panel. Should one (1) party fail to appoint an arbitrator, then the first moving party shall thereafter have 14 days to bring the matter to the Flag Administration, or its appointed agent, who shall at his or her discretion appoint an arbitrator on behalf of the party failing to respond, or, alternatively, shall himself or herself act as sole arbitrator.

- 4.6. The arbitrator or arbitrators shall have 30 days from the receipt of a written request for arbitration to make a final determination in the matter.
- 4.7. The time periods above may be extended by the Flag Administration, or its appointed agent with consent of the parties.
- 4.8. The parties to the arbitration may agree as to the place where the arbitration proceeding shall be held, the language in which the proceeding shall be conducted and, subject to the requirements of section 4 hereof, the rules which will govern the arbitration proceeding. In default of agreement as to the place of the arbitration, the place shall be decided by the arbitrator(s). In default of agreement as to the rules, the proceeding shall be conducted in the English language under the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules, insofar as consistent with the requirements of the Merchant Shipping Act.
- 4.9. The arbitration proceeding shall be informal, and testimony shall be given orally and in person to the extent possible. All oral testimony shall be recorded unless the parties agree in writing to waive recording. The arbitration award shall be in writing, in the English language, and shall briefly state the reason for the award. The costs of the arbitration, as determined by the arbitrator(s), shall be borne by both parties unless otherwise awarded by the arbitrator(s). A payment on account of costs shall be made by both parties at the commencement of the arbitration
- 4.10. Any arbitration award may be enforced, if necessary, by any Court of competent jurisdiction.

5. Record Keeping

- 5.1. Subject to sub-section 2.9 above, any correspondence from the seafarer to the Company DPA or his/her designee should be signed by the Master where seen.
- 5.2. All complaints and the decisions on them shall be recorded and a copy provided to the seafarer or seafarers concerned.

Yours sincerely,

Deputy Registrar
Tuvalu Ship Registry