



TUVALU SHIP REGISTRY

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MARINE CIRCULAR

MC-8/2012/1

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

SUBJECT: STANDARDS FOR SEAFARER RECRUITMENT AND PLACEMENT SERVICES IN NON-CONVENTION COUNTRIES

DEFINITIONS:

The following abbreviations stand for:

- “MLC 2006” – Maritime Labour Convention, 2006
- “SRPS” – Seafarer Recruitment and Placement Service(s)

The term “Seafarer Recruitment and Placement Service(s)” means any person, company, institution, agency or other organization, in the public or private sector, which is engaged in recruiting seafarers on behalf of shipowners or placing seafarers with shipowners.

PURPOSE:

The purpose of this marine circular is to implement MLC 2006 Regulation 1.4.3 which was developed to ensure seafarers have access to efficient and well-regulated recruitment and placement systems in countries and territories that are not a party to the MLC 2006.

APPLICATION:

This marine circular applies to all shipowners / operators of Tuvalu flagged vessels, except those engaged in fishing.

BACKGROUND:

The Government of Tuvalu, on 16 February 2012, ratified the MLC 2006 which requires each Member State to address the use of SRPS by shipowners / operators to recruit seafarers to man vessels under its flag.

REFERENCES:

- (a) MLC 2006, Regulation 1.4.3

CONTENTS:

1. General Requirements

- 1.1. All ship owners / operators of a Tuvalu flagged vessel that uses SRPS in countries or territories which have not ratified to MLC 2006 must ensure, as far as practicable, that those services conform to the requirements established by the MLC 2006.
- 1.2. A ship owner / operator using SRPS in non-Convention countries or territories may demonstrate compliance with MLC 2006 by utilizing the SRPS that meets the standards contained in ANNEX I of this marine circular as verified by a third-party audit.

- 1.3. A ship owner / operator must maintain a copy of the SRPS certification ashore in company records.

Yours sincerely,

Deputy Registrar
Tuvalu Ship Registry

ANNEX I

Standards to be Applied by Ship Owners / Operators when using SRPS Based in Non-Maritime Labour Convention, 2006 (Convention) Countries or Territories

Ship owners / operators who use SRPS based in countries or territories in which MLC 2006 does not apply must ensure, as far as practicable, that those services meet the requirements provided below.

1. General

The SRPS may not use means, mechanisms or lists intended to prevent or deter seafarers from gaining employment for which they are qualified.

2. Fees

2.1. The SRPS may not charge the seafarer directly or indirectly, in whole or in part, any fees or other charges for seafarer recruitment or placement or for providing employment to seafarers, other than the cost of the seafarer obtaining a national statutory medical certificate, the national seafarer's book and a passport or other similar personal travel documents, not including, however, the cost of visas, which shall be borne by the shipowner.

2.2. The following should be observed:

2.2.1. The SRPS should issue a statement from its top management that it does not charge the seafarer any fees for seafarer recruitment or placement or for providing employment to seafarers.

2.2.2. The SRPS should clearly publicize costs, if any, which the seafarer will be expected to bear in the recruitment process.

3. Data Register

3.1. The SRPS should maintain an up-to-date register, available for inspection, of seafarers recruited or placed. The following guidelines to be observed:

3.1.1. The SRPS should maintain full and complete records of the seafarers covered by its recruitment and placement system while keeping in mind the right to privacy and the need to protect confidentiality. These records should include, but should not be limited to:

3.1.1.1. the seafarers' qualifications;

3.1.1.2. record of employment;

3.1.1.3. personal data relevant to employment; and

3.1.1.4. medical data relevant to employment.

3.1.2. The SRPS should ensure that requests for information or advice by families of seafarers while the seafarers are at sea are dealt with promptly and sympathetically and at no cost.

3.1.3. The RPS should maintain up-to-date lists of the ships for which they provide seafarers and ensure that there is a means by which the agency can be contacted in an emergency at all hours (i.e. 24 hrs contact number).

4. Age Limit

The SRPS must prohibit the engagement or work on board a ship of any person under the age of 16 and of any person under the age of 18 for engagement or work as a ship's cook.

5. Rights and Duties of Seafarers

The SRPS must inform seafarers of their rights and duties under their employment agreements before signing. This should include advising the seafarer of any particular conditions applicable to the job for which they are to be engaged and of the particular ship owner's policies relating to their employment.

6. Employment Agreements

6.1. Seafarer employment agreements must be in accordance with applicable laws and regulations as well as any collective bargaining agreement that forms part of the employment agreement.

6.2. The SRPS must verify that labour conditions on ships where seafarers are placed are in conformity with applicable collective bargaining agreements concluded between a ship owner and a representative seafarers' organization, and, as a matter of policy, supply seafarers only to shipowners that offer terms and conditions of employment to seafarers which comply with applicable laws or regulations or collective agreements.

6.3. Employment agreements, at a minimum, must contain the following:

6.3.1. The seafarer's full name, date of birth or age, and birthplace;

6.3.2. The ship owner's name and address;

6.3.3. The place where and date when the seafarer's employment agreement is entered into;

6.3.4. The capacity in which the seafarer is to be employed;

6.3.5. The amount of the seafarer's wages or, where applicable, the formula used for calculating them;

6.3.6. The amount of paid annual leave or, where applicable, the formula used for calculating it;

6.3.7. The termination of the agreement and the conditions thereof, including:

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

6.3.7.2. if the agreement has been made for a definite period, the date fixed for the termination of the agreement; and

6.3.7.3. if the agreement has been made for a voyage, the port of destination and the time period for discharge of the seafarer after completion of the voyage.

6.3.8. The health and pension benefits to be provided to the seafarer by the ship owner;

6.3.9. The seafarer's entitlement to repatriation;

- 6.3.10. Reference to a collective bargaining agreement, if applicable; and
- 6.3.11. Any other particulars which national law may require.
- 6.4. The SRPS must make proper arrangements for seafarers to examine their employment agreements before and after they are signed.
- 6.5. Seafarers must be provided with a signed copy of the agreement.

7. Qualifications

The SRPS shall not recruit or place seafarers to work on a ship unless they are trained or certified as competent or otherwise found qualified to perform their duties and have successfully completed training for personal safety on board ship. In general, the seafarer must hold the documents necessary for the job concerned.

8. Medical Certificate

- 8.1. Prior to beginning work on a ship, seafarers must hold a valid medical certificate attesting that they are medically fit to perform the duties they are to carry out at sea.
- 8.2. Practitioners shall have full professional independence in exercising their medical judgment when carrying out medical examination procedures.
- 8.3. The medical certificate must be issued by a duly qualified medical practitioner or, in the case of a certificate solely concerning eyesight, by a person recognized by the government of country, where the eyesight test was taken, as qualified to issue such a certificate.

9. Capability of Ship owners

The SRPS must, as far as practicable, ensure that the ship owner has the capability to protect seafarers from being stranded in a foreign port.

10. Complaints

The SRPS must examine and respond to any complaint arising from their activities and advise the Tuvalu Ship Registry of any unresolved complaint.

11. Compensation for Monetary Loss

The SRPS must establish a system of protection by way of insurance or other equivalent appropriate measures to compensate seafarers for monetary loss that they may incur as a result of the failure of the agency or the relevant shipowner under the seafarer's employment agreement to meet its obligations to the seafarer.

12. Employment on Non-Convention Ships

The SRPS should, in so far as practicable, advise seafarers on the possible problems of signing on a ship that flies the flag of a State which has not ratified the MLC 2006 unless the SRPS is satisfied that standards equivalent to those contained in the MLC 2006 are being applied.

13. Prevention of Exploitation

- 13.1. The SRPS must have procedures in place to:
 - 13.1.1. ensure that seafarers are not subject to exploitation with regards to the offer of engagement on a particular ship or by particular companies; and

13.1.2. prevent the opportunities for exploitation of seafarers arising from the issue of joining advances or any other financial transaction between the ship owner and the seafarers which are handled by the SRPS.

14. Seafarer Documents

The SRPS shall, as far as practicable, ensure that all mandatory certificates and documents submitted for employment are up-to-date, have not been fraudulently obtained and that employment references are verified.