



Tuvalu

**MERCHANT SHIPPING (MARITIME  
LABOUR CONVENTION 2006)  
REGULATIONS**





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# MERCHANT SHIPPING (MARITIME LABOUR CONVENTION 2006) REGULATIONS

LN No.4 of 2013

MADE UNDER SECTION 48 OF THE MERCHANT SHIPPING ACT

Commencement 24th May, 2013

## PART I – PRELIMINARY

### 1 Citation

This Regulation may be cited as the Merchant Shipping (Maritime Labour Convention 2006) Regulations

### 2 Definitions and scope

(1) For the purposes of these Regulations, unless the context otherwise requires:

“**the Convention**” means the Maritime Labour Convention, 2006 adopted by the International Labour Organization;

“**the competent authority**” means

(a) For the terms and conditions of employment, welfare and social protection and other related matters, the Commissioner of Labour or a representative designated by the Commissioner;

(b) For manning, hours of work and rest, accommodation, complaints on board a ship, and other related matters, the Director of Marine and Port Services or a representative designated by the Director;

“**declaration of maritime labour compliance**” means the declaration referred to in Regulation 22.3 above ;

**“foreign ship”** means a ship that is flying the flag of a country other than Tuvalu;

**“maritime labour certificate means the certificate”** referred to in Regulation 22.3 above;

**“seafarer”** means any person who is employed in any capacity on board a ship to which this Regulation applies. The following categories of persons, among others, are exempted:

- (i) scientists, researchers, divers, specialist off-shore technicians etc. whose work is not part of the routine business of the ship;
- (ii) harbour pilots, inspectors, surveyors, auditors, superintendents etc. Who although trained and qualified in maritime skills and perform key specialist functions, their work is not part of the routine business of the ship;
- (iii) guest entertainers, repair technicians, port workers whose work is occasional and short term with their principal place of employment being ashore;
- (iv) non-marine personnel, employed under outsourced service agreements, the terms of which determine the conditions under which the service provider will supply the necessary personnel.

**“seafarers’ employment agreement”** means any contract of employment for seafarers including articles of agreement;

**“seafarer recruitment and placement service”** means any person, company, institution, agency or other organization, which is engaged in recruiting seafarers on behalf of shipowners or placing seafarers with shipowners;

**“ship”** means a ship other than one which navigates exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply;

**“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 the Convention, regardless of whether any other organizations or persons fulfil certain of the duties or responsibilities on behalf of the shipowner;

**“STCW Convention”** means the International Convention on Standards of Training, Certification and Watch-keeping for Seafarers, 1978, as amended.

- (2) Unless provided otherwise this Merchant Shipping (Maritime Labour Convention 2006) Regulations applies to all seafarers and to all ships, whether publicly or privately owned, ordinarily engaged in commercial activities,

other than ships engaged in fishing or in similar pursuits and ships of traditional build such as dhows and junks. It does not apply to warships or naval auxiliaries.

- (3) The competent authority may, in the event of doubt, as to the application of this Merchant Shipping (Maritime Labour Convention 2006) Regulations make a determination after consultation with the shipowners' and seafarers' organizations as to whether or not a person or a category of persons comes within the definition of "seafarer" and as to whether or not a ship or a category of ships comes within the definition of "ship".
- (4) Where the competent authority determines that it would not be reasonable or practicable at the present time to apply certain details in provisions of this Merchant Shipping (Maritime Labour Convention 2006) Regulations to a ship or particular categories of ships, those details will not apply to seafarers on the ship or ships concerned to the extent that those seafarers are covered by other provisions relating to those details and that the other provisions fully implement the relevant provisions of the Regulations of the Convention. Such a determination may only be made in consultation with the shipowners' and seafarers' organizations and may only be made with respect to ships of less than 200 gross tonnage not engaged in international voyages.
- (5) Any determinations made under paragraph 3 or 4 above must be communicated by the competent authority to the Director-General of the International Labour Office.

## **PART II - MINIMUM REQUIREMENTS FOR SEAFARERS TO WORK ON A SHIP**

### **3 Minimum Age**

- (1) The employment, engagement or work on board a ship of any person under the age of 16 is prohibited.
- (2) The employment, engagement or work of seafarers under the age of 18 is prohibited where the work is likely to jeopardize their health or safety.
- (3) The activities or work likely to jeopardize the health or safety of seafarers under the age of 18 are those that shall be determined as likely to jeopardize their health or safety by the competent authority after consultation with the shipowners' or seafarers' organizations, in accordance with relevant international standards.
- (4) Night work of seafarers under the age of 18 is prohibited subject to paragraph below. For the purposes of this regulation, "night" means a period of at least nine hours starting no later than midnight ship's time and ending no earlier than 0500 hours ship's time.

- (5) An exception regarding night work may be made by the competent authority in the following situations:
  - (a) when the effective training of the seafarers concerned, in accordance with established programmes and schedules, would be impaired; or
  - (b) when the specific nature of the duty or a recognized training programme requires that seafarers under the age of 18 perform duties at night and the authority determines, after consultation with the shipowners' and seafarers' organizations, that the work will not be detrimental to their health or well-being.
- (6) No seafarer under the age of 18 shall be employed or engaged or work as a ship's cook.

#### **4 Medical Certificate**

- (1) A shipowner shall not permit a seafarer to work on board a ship except when that seafarer holds a valid medical certificate.
- (2) A seafarer who has been issued a medical certificate shall carry that certificate on board during that seafarer's employment on the ship.
- (3) The medical certificate shall be in accordance with the STCW Convention and where seafarers are not covered by the STCW Convention, the medical certificate shall have similar requirements.
- (4) The medical certificate shall state that—
  - (a) the hearing and sight of the seafarer, and the colour vision in the case of a seafarer to be employed in capacities where fitness for the work to be performed is liable to be affected by defective colour vision, are all satisfactory; and
  - (b) the seafarer is not suffering from any medical condition likely to be aggravated by service at sea or to render the seafarer unfit for such service or to endanger the health of other persons on board.
- (5) Seafarers that have been refused a certificate or have had a limitation imposed on their ability to work, in particular with respect to time, field of work or trading area, have the right to a further examination by another independent medical practitioner or by an independent medical referee.
- (6) Unless a shorter period is required by reason of the specific duties to be performed by the seafarer or is required under the STCW Convention:
  - (a) a medical certificate shall be valid for a maximum period of two years unless the seafarer is under the age of 18, in which case the maximum period of validity shall be one year;
  - (b) a certification of colour vision shall be valid for a maximum period of six years.

- (7) In urgent cases the competent authority may permit a seafarer to work without a valid medical certificate until the next port of call where the seafarer can obtain a medical certificate from a qualified medical practitioner, provided that:
  - (a) the period of such permission does not exceed three months; and
  - (b) the seafarer concerned is in possession of an expired medical certificate of recent date.
- (8) If the period of validity of a certificate expires in the course of a voyage, the certificate shall continue in force until the next port of call where the seafarer can obtain a medical certificate from a qualified medical practitioner, provided that the period shall not exceed three months.
- (9) Medical certificates for seafarers working on ships ordinarily engaged on international voyages must, as a minimum, be provided in English.

## **5 Training and Qualifications**

- (1) Seafarers must be trained or certified as competent or otherwise qualified to perform their duties.
- (2) All seafarers must have successfully completed training for personal safety on board ship.
- (3) Training and certification in accordance with the STCW Convention or other mandatory instruments adopted by the International Maritime Organization shall be considered as meeting the requirements in paragraph 1.

## **6 Recruitment and placement**

- (1) All seafarers shall have access to an efficient, adequate and accountable system for finding employment on board ship without charge to the seafarer. Any public seafarer recruitment and placement service that may be operated in Tuvalu, shall be operated in an orderly manner that protects and promotes seafarers' employment rights as provided in the Convention.
- (2) Any private seafarer recruitment and placement services operating in Tuvalu whose primary purpose are the recruitment and placement of seafarers or which recruit and place a significant number of seafarers shall be operated only in conformity with these Regulations issued by the competent authority. The competent authority shall establish, modify or change the system only after consultation with the shipowners' and seafarers' organizations. In the event of doubt as to whether this Merchant Shipping (Maritime Labour Convention 2006) Regulations applies to a private recruitment and placement service, the question shall be determined by the competent authority after consultation with the shipowners' and seafarers' organizations.

- (3) The competent authority shall closely supervise and control all seafarer recruitment and placement services operating in the territory of Tuvalu. Any licences or certificates or similar authorizations for the operation of private services in the territory may be granted or renewed only after verification that the seafarer recruitment and placement service concerned meets the requirements of this Merchant Shipping (Maritime Labour Convention 2006) Regulations.
- (4) The competent authority shall ensure that adequate machinery and procedures exist for the investigation, if necessary, of complaints concerning the activities of seafarer recruitment and placement services, involving, as appropriate, representatives of shipowners and seafarers.
- (5) The competent authority shall, in so far as practicable, advise nationals of Tuvalu on the possible problems of signing on a ship that flies the flag of a State which has not ratified the Convention, until it is satisfied that standards equivalent to those fixed by the Convention are being applied.
- (6) A shipowner that makes use of a service based in a country that has not ratified the Convention must provide information to the competent authority regarding the regulation of the service to ensure that it is operated in conformity with the standards required by this Merchant Shipping (Maritime Labour Convention 2006) Regulations.
- (7) Private seafarer recruitment and placement services must be operated in accordance with the following requirements:
  - (a) any means, mechanisms or lists intended to prevent or deter seafarers from gaining employment for which they are qualified are prohibited;
  - (b) no fees or other charges for seafarer recruitment or placement or for providing employment to seafarers may be borne directly or indirectly, in whole or in part, by the seafarer, 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 must be borne by the shipowner; in particular, procedures must be adopted to prevent opportunities for exploitation of seafarers arising from the issue of joining advances or any other financial transaction between the shipowner and the seafarers which are handled by the seafarer recruitment and placement services and for clearly publicizing costs, if any, which the seafarer will be expected to bear in the recruitment process;
  - (c) an up-to-date register of all seafarers recruited or placed through them, must be maintained and available for inspection by the competent authority; in particular, information regarding the medical examinations, seafarers' identity documents and such other items as may be required for the seafarer to gain employment; the services must maintain, with due regard to the right to privacy and the need to

protect confidentiality, full and complete records of the seafarers covered by their recruitment and placement system, which shall include but not be limited to:

- (i) the seafarers' qualifications;
  - (ii) record of employment;
  - (iii) personal data relevant to employment; and
  - (iv) medical data relevant to employment;
- (d) seafarers must be informed of their rights and duties under their employment agreements prior to or in the process of engagement and proper arrangements must be made for seafarers to examine their employment agreements before and after they are signed and for them to receive a copy of the agreements;
- (e) services must ensure that seafarers are advised of any particular conditions applicable to the job for which they are to be engaged and of the particular shipowner's policies relating to their employment;
- (f) seafarers recruited or placed must be qualified and hold the documents necessary for the job concerned, and the seafarers' employment agreements must be in accordance with applicable laws and regulations and any collective bargaining agreement that forms part of the employment agreement;
- (g) the services must have procedures:
- (i) to ensure, as far as practicable, that all mandatory certificates and documents submitted for employment are up to date and have not been fraudulently obtained and that employment references are verified,
  - (ii) to verify that labour conditions on ships where seafarers are placed are in conformity with applicable collective bargaining agreements concluded between a shipowner and a representative seafarers' organization; and
  - (iii) to supply seafarers, as a matter of policy, only to shipowners that offer terms and conditions of employment to seafarers who comply with applicable laws or regulations or collective agreements;
- (h) the services must make sure as far as practicable that shipowners have the means to protect seafarers from being stranded in a foreign port;
- (i) the services must maintain up-to-date lists of the ships for which they provide seafarers, ensuring that there is a means by which the service can be contacted in an emergency at all hours;
- (j) procedures must be in place to 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;

- (k) the services must examine and respond to any complaint concerning their activities and advise the competent authority of any unresolved complaint;
  - (l) the services must have procedures which are in accordance with the principles of natural justice for dealing with cases of incompetence or indiscipline consistent with national laws and practice and, where applicable, with collective agreements;
  - (m) the services must assume obligations to ensure the proper fulfilment by shipowners of the terms of their employment agreements concluded with seafarers, including establishing a system of protection, by way of insurance or an equivalent appropriate measure, to compensate seafarers for monetary loss that they may incur as a result of the failure of a recruitment and placement service or the relevant shipowner under the seafarers' employment agreement to meet its obligations to them.
- (8) In the case of any public seafarer recruitment and placement service, the competent authority shall consider:
- (a) taking the necessary measures to promote effective cooperation among seafarer recruitment and placement services, whether public or private;
  - (b) the needs of the maritime industry at both the national and international levels, when developing training programmes for seafarers that form the part of the ship's crew that is responsible for the ship's safe navigation and pollution prevention operations, with the participation of shipowners, seafarers and the relevant training institutions;
  - (c) making suitable arrangements for the cooperation of representative shipowners' and seafarers' organizations in the organization and operation of the public seafarer recruitment and placement services, where they exist;
  - (d) determining, with due regard to the right to privacy and the need to protect confidentiality, the conditions under which seafarers' personal data may be processed by seafarer recruitment and placement services, including the collection, storage, combination and communication of such data to third parties;
  - (e) maintaining an arrangement for the collection and analysis of all relevant information on the maritime labour market, including the current and prospective supply of seafarers that work as crew classified by age, sex, rank and qualifications, and the industry's requirements, the collection of data on age or sex being admissible only for statistical purposes or if used in the framework of a programme to prevent discrimination based on age or sex;
  - (f) ensuring that the staff responsible for the supervision of public and private seafarer recruitment and placement services for ship's crew

with responsibility for the ship's safe navigation and pollution prevention operations have had adequate training, including approved sea-service experience, and have relevant knowledge of the maritime industry, including the relevant maritime international instruments on training, certification and labour standards;

- (g) prescribing operational standards and adopting codes of conduct and ethical practices for seafarer recruitment and placement services;
- (h) exercising supervision of the licensing or certification system on the basis of a system of quality standards.

## **PART III - CONDITIONS OF EMPLOYMENT**

### **7 Seafarers' employment agreements**

- (1) Seafarers working on board a ship must have a clear written legally enforceable agreement, referred to in this Merchant Shipping (Maritime Labour Convention 2006) Regulations as a seafarers' employment agreement, which must be signed by both the seafarer and the shipowner or a representative of the shipowner (or, where the seafarers are not employees, evidence of contractual or similar arrangements) and must provide them with decent working and living conditions on board the ship as required by this Merchant Shipping (Maritime Labour Convention 2006) Regulations.
- (2) Seafarers must be given an opportunity to examine and seek advice on the seafarers' employment 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. The shipowner and seafarer concerned must each have a signed original of the seafarers' employment agreement.
- (3) Shipowners must ensure that clear information as to the conditions of employment can be easily obtained on board by the seafarers concerned, 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.
- (4) To the extent compatible with applicable law and practice, seafarers' employment agreements shall be understood to incorporate any applicable collective bargaining agreements.
- (5) Where a collective bargaining agreement forms all or part of a seafarers' employment agreement, a copy of that agreement must be available on board. Where the language of the seafarers' employment agreement and any applicable collective bargaining agreement is not in English, the following

must also be available in English except for ships engaged only in domestic voyages:

- (a) a copy of a standard form of the agreement;
  - (b) the portions of the collective bargaining agreement that are subject to a port State inspection under the Convention.
- (6) 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;
  - (e) the amount of the seafarer's wages or the formula used for calculating them;
  - (f) the amount of paid annual leave or the formula used for calculating it;
  - (g) the termination of the agreement and the conditions thereof, including:
    - (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;
  - (h) the health and social security protection benefits to be provided to the seafarer by the shipowner, including information on any mandatory social security contributions;
  - (i) the seafarer's entitlement to repatriation;
  - (j) a reference to the collective bargaining agreement, if applicable;
  - (k) any other particulars which the competent authority may, after consultation with the shipowners' and seafarers' organizations, require to be included.
- (7) The minimum notice period to be given by the seafarers and shipowners for the early termination of a seafarers' employment agreement is 30 days.
- (8) A notice period shorter than the minimum may be given by the seafarer, without penalty, for compassionate or urgent reasons or in other circumstances that are recognized under employment law or practices or in applicable collective bargaining agreements as justifying termination of the employment agreement at shorter notice or without notice.

- (9) Seafarers must be given a document containing a record of their employment on board the ship. The document must not contain any statement as to the quality of the seafarers' work or as to their wages.
- (10) The document must contain sufficient information, with a translation in English, to facilitate the acquisition of further work or to satisfy the sea-service requirements for upgrading or promotion. A seafarers' discharge book may satisfy this requirement.

## 8 Wages

- (1) Seafarers must be paid at no greater than monthly intervals and in accordance with their seafarers' employment agreement and any applicable collective agreement.
- (2) Seafarers must be given a monthly account of the payments due and the amounts paid, including wages, additional payments and the rate of exchange used where payment has been made in a currency or at a rate different from the one agreed to.
- (3) Shipowners must establish a system for enabling seafarers, at the time of their entering employment or during it, to allot, if they so desire, a proportion of their wages for remittance at regular intervals to their families by bank transfers or similar means. Allotments must be remitted in due time and directly to the person or persons nominated by the seafarers.
- (4) Any charge for the service under paragraph 3 above shall be reasonable in amount, and the rate of currency exchange, unless otherwise provided, shall be at the prevailing market rate or the official published rate and not unfavourable to the seafarer and shall comply with any other relevant requirements that may be established by law.
- (5) Any legal provisions in force at the time of the adoption of this Merchant Shipping (Maritime Labour Convention 2006) Regulations which relate to the amount of the wages to be paid and to the principles governing their calculation shall continue to apply to the extent that they are applicable to seafarers.

## 9 Hours of work and hours of rest

- (1) For the purpose of these provisions, the term:
  - (a) **“hours of work”** means time during which seafarers are required to do work on account of the ship;
  - (b) **“hours of rest”** means time outside hours of work; this term does not include short breaks of one hour or less or a break for a meal.

- (2) In accordance with these provisions, a maximum number of hours of work and a minimum number of hours of rest shall be observed for seafarers.
- (3) The normal working hours' standard for seafarers, like that for other workers, is based on an eight-hour day with one day of rest per week and rest on public holidays. The competent authority may authorize a collective agreement which determines seafarers' normal working hours on a basis no less favourable than the paragraphs below.
- (4) The maximum hours of work shall be 14 hours in any 24-hour period and 72 hours in any seven-day period or minimum hours of rest shall be ten hours in any 24-hour period and 77 hours in any seven-day period. Taking into account the dangers posed by the fatigue of seafarers, especially those whose duties involve navigational safety and the safe and secure operation of the ship, the competent authority may, after consulting the shipowners' and seafarers' organizations, make appropriate reductions in the maximum hours of work or increases to the minimum hours of rest.
- (5) Hours of rest may be divided into no more than two periods, one of which must be at least six hours in length, and the interval between consecutive periods of rest must not exceed 14 hours.
- (6) Musters, fire-fighting and lifeboat drills, and mandatory drills, must be conducted in a manner that minimizes the disturbance of rest periods and does not induce fatigue.
- (7) When a seafarer is on call, such as when a machinery space is unattended, the seafarer must have an adequate compensatory rest period if the normal period of rest is disturbed by call-outs to work.
- (8) If no collective agreement or arbitration award exists or if the competent authority determines that the provisions in the agreement or award in respect of paragraph 6 or 7 are inadequate, the competent authority shall determine such provisions to ensure the seafarers concerned have sufficient rest.
- (9) A table with the shipboard working arrangements must be posted in an easily accessible place on-board the ship. The table must contain for every position at least:
  - (a) the schedule of service at sea and service in port; and
  - (b) the maximum hours of work or minimum hours of rest required under paragraph 4 above or paragraph 12 below.
- (10) This table must be in the form approved by the competent authority and in the working language or languages of the ship and in English.
- (11) Shipowners must maintain records of seafarers' daily hours of work or of their daily hours of rest in accordance with the form approved by the competent authority. Each seafarer shall receive a copy of the record pertaining to her or him which must be endorsed by the master, or a person authorized by the master, and by the seafarer.

- (12) The competent authority may authorize or register collective agreements permitting exceptions to the limits set out. Any exceptions shall, as far as possible, follow the standards set out in this Merchant Shipping (Maritime Labour Convention 2006) Regulations but may take account of more frequent or longer leave periods or the granting of compensatory leave for watchkeeping seafarers or seafarers working on board ships on short voyages.
- (13) Nothing in the preceding paragraphs shall be deemed to impair the right of the master of a ship to require a seafarer, including a young seafarer, to perform any hours of work necessary for the immediate safety of the ship, persons on board or cargo, or for the purpose of giving assistance to other ships or persons in distress at sea. The master may suspend the schedule of hours of work or hours of rest and require a seafarer to perform any hours of work necessary until the normal situation has been restored. As soon as practicable after the normal situation has been restored, the master must ensure that any seafarers who have performed work in a scheduled rest period are provided with an adequate period of rest.
- (14) Without prejudice to the general obligation on all seafarers to work during any emergency as provided for in paragraph 13 while at sea and in port the following provisions apply to all young seafarers under the age of 18:
  - (a) working hours must not exceed eight hours per day and 40 hours per week and overtime shall be worked only where unavoidable for safety reasons;
  - (b) sufficient time must be allowed for all meals, and a break of at least one hour for the main meal of the day shall be assured; and
  - (c) a 15 minute rest period as soon as possible following each two hours of continuous work must be allowed.
- (15) Exceptionally the provisions in paragraph need not be applied if:
  - (a) they are impracticable for young seafarers in the deck, engine room and catering departments assigned to watchkeeping duties or working on a rostered shift-work system; or
  - (b) the effective training of young seafarers in accordance with established programmes and schedules would be impaired.
- (16) Any exceptional situations under paragraph 15 must be recorded, with reasons, and signed by the master.

## 10 Entitlement to leave

- (1) Seafarers must be given paid annual leave, as provided in paragraph 3 below.
- (2) Seafarers must be granted shore leave to benefit their health and well-being and consistent with the operational requirements of their positions.

- (3) Subject to any collective agreement providing for an appropriate method of calculation that takes account of the special needs of seafarers in this respect, the annual leave with pay entitlement must be calculated on the basis of a minimum of 2.5 calendar days per month of employment.
- (4) Any agreement to forgo the minimum annual leave with pay as set out above in paragraph 3, except in cases provided for by the competent authority, is prohibited.
- (5) Length of service is to be calculated on the following basis:
  - (a) absence from work to attend an approved maritime vocational training course or for such reasons as illness or injury or for maternity shall be counted as part of the period of employment.
  - (b) service off-articles shall be counted as part of the period of employment.
- (6) Annual leave with pay entitlements must be calculated on the basis set out below in paragraphs 7 and 8. Justified absences from work must not be considered as annual leave.
- (7) The following are not to be counted as part of annual leave with pay:
  - (a) public and customary holidays, whether or not they fall during the annual leave with pay;
  - (b) periods of incapacity for work resulting from illness or injury or from maternity;
  - (c) temporary shore leave granted to a seafarer while under an employment agreement;
  - (d) compensatory leave of any kind, under conditions as determined by the competent authority or through established machinery;
  - (e) time spent awaiting repatriation and repatriation travel time.
- (8) The level of pay during annual leave shall be at the seafarer's normal level of remuneration provided in the applicable seafarers' employment agreement. For seafarers employed for periods shorter than one year or in the event of termination of the employment relationship, entitlement to leave shall be calculated on a pro-rata basis.
- (9) The time at which annual leave is to be taken must, unless otherwise fixed by regulation, collective agreement, arbitration award or other means, be determined by the shipowner after consultation and, as far as possible, in agreement with the seafarers concerned or their representatives.
- (10) In principle, seafarers have the right to take annual leave in the place with which they have a substantial connection, which is normally the same as the place to which they are entitled to be repatriated. Seafarers must not be required without their consent to take annual leave due to them in another place except under the provisions of a seafarers' employment agreement.

- (11) If seafarers are required to take their annual leave from a place other than that permitted by paragraph 10, they must be entitled to free transportation to the place where they were engaged or recruited, whichever is nearer their home; subsistence and other costs directly involved must be for the account of the shipowner. The travel time involved must not be deducted from the annual leave with pay due to the seafarer.
- (12) A seafarer taking annual leave may only be recalled in cases of extreme emergency and with the seafarer's consent.
- (13) The division of the annual leave with pay into parts, or the accumulation of such annual leave due in respect of one year together with a subsequent period of leave, may be authorized by the competent authority.
- (14) Subject to paragraph 13 and unless otherwise provided in an agreement applicable to the shipowner and the seafarer concerned, a seafarer's annual leave with pay must consist of an uninterrupted period.
- (15) Seafarers under the age of 18 who have served six months or any other shorter period of time under a collective agreement or seafarers' employment agreement without leave on a foreign-going ship which has not returned to their country of residence in that time, and will not return in the subsequent three months of the voyage must be repatriated, at no expense to themselves, to the place of original engagement in their country of residence for the purpose of taking any leave earned during the voyage.

## 11 Repatriation

- (1) Seafarers have a right to be repatriated at no cost to themselves in the following circumstances:
  - (a) if the seafarers' employment agreement expires while they are abroad;  
or
  - (b) upon the expiry of the period of notice given in accordance with the provisions of the seafarers' employment agreement, when the seafarers' employment agreement is terminated:
    - (i) by the shipowner; or
    - (ii) by the seafarer for justified reasons;
  - (c) when the seafarer is no longer able to carry out her or his duties under the employment agreement or cannot be expected to carry them out in the specific circumstances;
  - (d) in any event after serving a period of 9 months on board.
- (2) The following are deemed to be circumstances covered by paragraph 1(b) and (c) above:

- (a) illness or injury or other medical condition which requires the seafarer's repatriation when found medically fit to travel;
  - (b) shipwreck;
  - (c) 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;
  - (d) the ship being bound for a war zone to which the seafarer does not consent to go; and
  - (e) termination or interruption of employment in accordance with an industrial award or collective agreement, or termination of employment for any other similar reason.
- (3) Shipowners are prohibited from requiring that seafarers make an advance payment towards the cost of repatriation at the beginning of their employment, and also from recovering the cost of repatriation from the seafarers' wages or other entitlements except where the seafarer has been found, in accordance with national laws or regulations or other measures or applicable collective bargaining agreements, to be in serious default of the seafarer's employment obligations.
- (4) All ships that fly the flag of Tuvalu must provide the competent authority with evidence of financial security to ensure that seafarers are duly repatriated.
- (5) Shipowners are responsible, as a minimum, for the following costs and seafarer's repatriation entitlements:
- (a) passage to the destination selected for repatriation in accordance with paragraph below;
  - (b) accommodation and food from the moment the seafarers leave the ship until they reach the repatriation destination;
  - (c) pay and allowances from the moment the seafarers leave the ship until they reach the repatriation destination;
  - (d) transportation of 30 kg of the seafarers' personal luggage to the repatriation destination; and
  - (e) medical treatment when necessary until the seafarers are medically fit to travel to the repatriation destination.
- (6) If, after young seafarers under the age of 18 have served on a ship that flies the flag of Tuvalu for at least four months during their first foreign-going voyage, it becomes apparent that they are unsuited to life at sea, they must be given the opportunity of being repatriated at no expense to themselves from the first suitable port of call in which there are consular services of Tuvalu or the State of nationality or residence of the young seafarer. Notification of any such repatriation, with the reasons therefore, shall be given to the authority which

issued the papers enabling the young seafarers concerned to take up seagoing employment.

- (7) The Shipowner's duty to cover the costs of repatriation continues until the seafarers concerned are landed at a destination as required under paragraph 8 below or are provided with suitable employment on board a ship proceeding to one of those destinations.
- (8) Shipowners are responsible for repatriation arrangements by appropriate and expeditious means. The normal mode of transport is by air. Seafarers have the right to be repatriated, at their choice to one of the following destinations with which the seafarers have a substantial connection:
  - (a) the place at which the seafarer agreed to enter into the engagement;
  - (b) the place stipulated by collective agreement;
  - (c) the seafarer's country of residence; or
  - (d) such other place as may be mutually agreed at the time of engagement.
- (9) The entitlement to repatriation may lapse if the seafarers concerned do not claim it within two years from the date when the seafarers were repatriated or a reasonable period of time determined by an applicable collective agreement.
- (10) The provisions in this Merchant Shipping (Maritime Labour Convention 2006) Regulations are without prejudice to any right of the shipowner to recover the cost of repatriation under third-party contractual arrangements.
- (11) If a shipowner fails to make arrangements for or to meet the cost of repatriation of seafarers:
  - (a) the competent authority will arrange for repatriation of the seafarers concerned;
  - (b) costs incurred in repatriating seafarers shall be recoverable from the shipowner concerned;
  - (c) the expenses of repatriation shall in no case be a charge upon the seafarers, except as provided above in paragraph 3;
  - (d) the ship or other ships of the shipowner concerned may be detained by the competent authority until the reimbursement has been made.
- (12) A copy of the present provisions regarding repatriation written in an appropriate language must be carried on board a ship that flies the flag of Tuvalu and must be available to seafarers.
- (13) Every possible practical assistance shall be given to a seafarer stranded in a foreign port pending repatriation and in the event of delay in the repatriation of the seafarer. Where foreign seafarers are stranded in a port of Tuvalu, the competent authority shall ensure that the consular or local representative of the flag State and the seafarer's State of nationality or State of residence, as appropriate, are informed immediately.

## 12 Seafarer compensation for the ship's loss or foundering

- (1) Shipowners must pay each seafarer employed on board an indemnity, as provided under paragraph 2 below, against unemployment resulting from the ship's loss or foundering.
- (2) The indemnity must be paid for the days during which the seafarer remains in fact unemployed at the same rate as the wages payable under the seafarers' employment agreement. The total indemnity payable to any seafarer is limited to 2 months' wages.
- (3) The requirement in paragraph 1 is without prejudice to any other rights a seafarer may also have for losses or injuries arising from a ship's loss or foundering.
- (4) Seafarers have the same legal remedies for recovering the indemnity as they have for recovering arrears of wages earned during the service.

## 13 Manning levels

- (1) Ships must have a sufficient number of seafarers on board to ensure that they operated safely, efficiently and with due regard to security. Every ship shall be manned by a crew that is adequate, in terms of size and qualifications, to:
  - (a) ensure the safety and security of the ship and its personnel, under all operating conditions in accordance with a safe manning document issued or designated by the competent authority, and
  - (b) comply with the standards provided for in this Merchant Shipping (Maritime Labour Convention 2006) Regulations.
- (2) The competent authority shall determine or approve or revise manning levels taking into account the need to avoid or minimize excessive hours of work to ensure sufficient rest and to limit fatigue, the principles in applicable international instruments, especially those of the International Maritime Organization, on manning levels, and all the requirements concerning food and catering.
- (3) Complaints concerning manning levels on a ship must be investigated. The competent authority must maintain, or satisfy itself that there is maintained, efficient machinery for the investigation and settlement of such complaints and arrange for representatives of shipowners' and seafarers' organizations to participate, with or without other persons or authorities, in the operation of such machinery.

#### **14 Career and skill development and opportunities for seafarers' employment**

- (1) The competent authority shall develop national policies to promote employment in the maritime sector and to encourage career and skill development and employment opportunities for seafarers domiciled in Tuvalu, in order to provide the maritime sector with a stable and competent workforce.
- (2) The aim of these policies shall be to help seafarers strengthen their competencies, qualifications and employment opportunities.
- (3) The national policies shall be based on Regulation 13 and Standard A2.8 of the Convention, with due consideration being given to Guideline B2.8.

### **PART IV - ACCOMMODATION, RECREATIONAL FACILITIES, FOOD AND CATERING**

#### **15 Accommodation and recreational facilities**

- (1) Ships must provide and maintain decent accommodations and recreational facilities for seafarers working or living on board, or both, consistent with promoting the seafarers' health and well-being.
- (2) With respect to the requirements of this Merchant Shipping (Maritime Labour Convention 2006) Regulations which relate to ship construction and equipment, ships constructed before 22 February 2013 when the Convention comes into force for Tuvalu shall comply with the following requirements:
  - (a) the general requirement in paragraph 1 above;
  - (b) the requirements relating to ship construction and equipment that are set out in the Accommodation of Crews Convention (Revised), 1949 (No. 92);
  - (c) the requirements relating to ship construction and equipment that are set out in the Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133).
- (3) A ship shall be deemed to have been constructed on the date when its keel is laid or when it is at a similar stage of construction.
- (4) Ships must:
  - (a) meet the minimum standards for on-board accommodation and recreational facilities in this Merchant Shipping (Maritime Labour Convention 2006) Regulations, including the provisions on health and safety protection and accident prevention, to ensure that any accommodation for seafarers, working or living on board, or both, is

- safe, decent in light of the specific needs of seafarers that both live and work on board ship.
- (b) be inspected in accordance with the provisions in and paragraph 5 below to ensure initial and ongoing compliance with those standards.
- (5) Frequent inspections must be carried out on board ships by, or under the authority of, the master, to ensure that seafarer accommodation is clean, decently habitable and maintained in a good state of repair. The results of each such inspection must be recorded and be available for review.
- (6) Where there is need to take account, without discrimination, of the interests of seafarers having differing and distinctive religious and social practices, the competent authority may, after consultation with the shipowners' and seafarers' organizations, permit fairly applied variations in respect of the requirements in the Maritime Shipping (Maritime Labour Convention 2006) Regulations on condition that such variations do not result in overall facilities less favourable than those which would result from the application of those requirements.
- (7) The competent authority may, after consultation with the shipowners' and seafarers' organizations, exempt ships of less than 200 gross tonnage from certain requirements provided that all of the following conditions are met:
- (a) the exemption must be expressly permitted below with respect to the requirement concerned;
- (b) the exemption must be reasonable, taking account of the size of the ship and the number of persons on board;
- (c) the exemption can be clearly justified on strong grounds due to particular circumstances; and
- (d) the exemption is subject to the need to protect the seafarers' health and safety.
- (8) With respect to the general requirements for design and construction:
- (a) there must be adequate headroom in all seafarer accommodation; the minimum permitted headroom where full and free movement is necessary shall be not less than 203 centimetres; the competent authority may permit some limited reduction in headroom in any space, or part of any space, in such accommodation where it is satisfied that such reduction:
- (i) is reasonable; and
- (ii) will not result in discomfort to the seafarers;
- (b) the accommodation shall be adequately insulated;
- (c) in ships other than passenger ships, as defined in Section 2(e) and (f) of the International Convention for the Safety of Life at Sea, 1974, as amended (the SOLAS Convention), sleeping rooms shall be situated

above the load line amidships or aft, except that in exceptional cases, where the size, type or intended service of the ship renders any other location impracticable, sleeping rooms may be located in the fore part of the ship, but in no case forward of the collision bulkhead;

- (d) in passenger ships, and in special ships constructed in compliance with the IMO Code of Safety for Special Purpose Ships, 1983, and subsequent versions (hereinafter called “special purpose ships”), the competent authority may, on condition that satisfactory arrangements are made for lighting and ventilation, permit the location of sleeping rooms below the load line, but in no case shall they be located immediately beneath working alleyways;
- (e) there shall be no direct openings into sleeping rooms from cargo and machinery spaces or from galleys, storerooms, drying rooms or communal sanitary areas; that part of a bulkhead separating such places from sleeping rooms and external bulkheads shall be efficiently constructed of steel or other approved substance and be watertight and gas-tight;
- (f) the materials used to construct internal bulkheads, panelling and sheeting, floors and joinings must be suitable for the purpose and conducive to ensuring a healthy environment;
- (g) external bulkheads of sleeping rooms and mess rooms must be adequately insulated; all machinery casings and all boundary bulkheads of galleys and other spaces in which heat is produced must be adequately insulated where there is a possibility of resulting heat effects in adjoining accommodation or passageways; measures must also be taken to provide protection from heat effects of steam or hot-water service pipes or both;
- (h) sleeping rooms, mess rooms, recreation rooms and alleyways in the accommodation space must be adequately insulated to prevent condensation or overheating;
- (i) the bulkhead surfaces and deckheads must be of material with a surface easily kept clean; no form of construction likely to harbour vermin shall be used; the bulkhead surfaces and deckheads in sleeping rooms and mess rooms must be capable of being easily kept clean and light in colour with a durable, nontoxic finish.
- (j) the decks in all seafarer accommodation must be of approved material and construction and must provide a non-slip surface impervious to damp and easily kept clean; where the floorings are made of composite materials, the joints with the sides must be profiled to avoid crevices;
- (k) proper lighting and sufficient drainage must be provided; and
- (l) accommodation and recreational and catering facilities must meet the requirements set out below in Regulations 19, on health and safety protection and accident prevention, with respect to preventing the risk

of exposure to hazardous levels of noise and vibration and other ambient factors and chemicals on board ships, and to provide an acceptable occupational and on-board living environment for seafarers. In particular:

- (i) accommodation and recreational and catering facilities must be located as far as practicable from the engines, steering gear rooms, deck winches, ventilation, heating and air-conditioning equipment and other noisy machinery and apparatus;
  - (ii) acoustic insulation or other appropriate sound-absorbing materials must be used in the construction and finishing of bulkheads, deckheads and decks within the sound-producing spaces as well as self-closing noise-isolating doors for machinery spaces;
  - (iii) engine rooms and other machinery spaces must be provided, wherever practicable, with soundproof centralized control rooms for engine-room personnel; working spaces, such as the machine shop, must be insulated, as far as practicable, from the general engine-room noise and measures must be taken to reduce noise in the operation of machinery.
  - (iv) the limits for noise levels for working and living spaces must be in conformity with the ILO international guidelines on exposure levels, including those in the ILO code of practice entitled “Ambient factors in the workplace, 2001”, and, where applicable, the specific protection recommended by the International Maritime Organization, and with any subsequent amending and supplementary instruments for acceptable noise levels on board ships; a copy of the applicable instruments in English or the working language of the ship should be carried on board and should be accessible to seafarers;
  - (v) accommodation or recreational or catering facilities must not be exposed to excessive vibration;
  - (vi) ships regularly trading to mosquito-infested ports must be fitted with appropriate devices.
- (9) With respect to requirements for ventilation and heating:
- (a) sleeping rooms and mess rooms must be adequately ventilated; the system of ventilation for sleeping rooms and mess rooms must be controlled so as to maintain the air in a satisfactory condition and to ensure a sufficiency of air movement in all conditions of weather and climate;
  - (b) ships, except those regularly engaged in trade where temperate climatic conditions do not require this, must be equipped with air conditioning for seafarer accommodation, for any separate radio room and for any

centralized machinery control room; in particular, air-conditioning systems, whether of a centralized or individual unit type, must be designed to:

- (i) maintain the air at a satisfactory temperature and relative humidity as compared to outside air conditions, ensure a sufficiency of air changes in all air-conditioned spaces, take account of the particular characteristics of operations at sea and not produce excessive noises or vibrations; and
  - (ii) facilitate easy cleaning and disinfection to prevent or control the spread of disease.
- (c) all sanitary spaces must have ventilation to the open air, independently of any other part of the accommodation;
- (d) adequate heat through an appropriate heating system must be provided, except in ships exclusively on voyages in tropical climates; furthermore:
- (i) the system of heating the seafarer accommodation must be in operation at all times when seafarers are living or working on board and conditions require its use;
  - (ii) in all ships in which a heating system is required, the heating must be by means of hot water, warm air, electricity, steam or equivalent except that within the accommodation area, steam must not be used as a medium for heat transmission;
  - (iii) the heating system must be capable of maintaining the temperature in seafarer accommodation at a satisfactory level under normal conditions of weather and climate likely to be met within the trade in which the ship is engaged;
  - (iv) radiators and other heating apparatus must be placed and, where necessary, shielded so as to avoid risk of fire or danger or discomfort to the occupants; and
- (e) power for the operation of the air conditioning and other aids to ventilation required by the preceding subparagraphs must be available at all times when seafarers are living or working on board and conditions so require; however, this power need not be provided from an emergency source.
- (10) Ships of less than 200 gross tonnage may, subject to the conditions set out in paragraph 7 above, be exempted from the requirement in paragraph 9 (b).
- (11) With respect to requirements for lighting, subject to such special arrangements as may be permitted by the competent authority for passenger ships, sleeping rooms and mess rooms must be lit by natural light and provided with adequate artificial light. In particular:
- (a) electric light must be provided in seafarers' accommodation;

- (b) if there are not two independent sources of electricity for lighting, additional lighting must be provided by properly constructed lamps or lighting apparatus for emergency use;
  - (c) in seafarers' sleeping rooms an electric reading lamp must be installed at the head of each berth;
  - (d) all seafarer accommodation must comply with the standards of natural and artificial lighting established by the International Association of Classification Societies (IACS).
- (12) When sleeping accommodation on board ships is required, the following requirements for sleeping rooms apply:
- (a) in ships other than passenger ships, an individual sleeping room must be provided for each seafarer; in the case of ships of less than 3,000 gross tonnage or special purpose ships, exemptions from this requirement may be granted by the competent authority after consultation with the shipowners' and seafarers' organizations;
  - (b) Subject to the minimum floor area requirements set out below in paragraph 13:
    - (i) on ships of less than 3,000 gross tonnage other than passenger ships and special purpose ships, sleeping rooms may be occupied by a maximum of two seafarers;
    - (ii) on passenger ships, sleeping rooms may be occupied by a maximum of four seafarers not carrying out the duties of ships' officers; in the case of seafarers performing the duty of petty officers, there must be no more than two persons per sleeping room;
    - (iii) on special purpose ships sleeping rooms may accommodate more than four persons;
  - (c) separate sleeping rooms must be provided for men and for women;
  - (d) as far as practicable, sleeping rooms of seafarers must be so arranged that watches are separated and that no seafarers working during the day share a room with watch keepers;
  - (e) sleeping rooms must be of adequate size and properly equipped so as to ensure reasonable comfort and to facilitate tidiness; accordingly:
    - (i) where the size of the ship, the activity in which it is to be engaged and its layout make it reasonable and practicable, sleeping rooms must be planned and equipped with a private bathroom, including a toilet, so as to provide reasonable comfort for the occupants and to facilitate tidiness;
    - (ii) for each occupant, the furniture, which must be of smooth, hard material not liable to warp or corrode, must include a clothes locker of ample space (minimum 475 litres) and a drawer or

- equivalent space of not less than 56 litres; if the drawer is incorporated in the clothes locker then the combined minimum volume of the clothes locker must be 500 litres; it must be fitted with a shelf and be able to be locked by the occupant so as to ensure privacy;
- (iii) each sleeping room must be provided with a table or desk, which may be of the fixed, drop-leaf or slide-out type, and with comfortable seating accommodation as necessary;
  - (iv) sleeping rooms must be fitted with curtains or equivalent for the sidelights, as well as a mirror, small cabinets for toilet requisites, a book rack and a sufficient number of coat hooks;
- (f) berths must meet the following standards:
- (i) a separate berth for each seafarer must in all circumstances be provided;
  - (ii) the minimum inside dimensions of a berth must be at least 198 centimetres by 80 centimetres;
  - (iii) there must be adequate berth arrangements on board, making it as comfortable as possible for the sea- farer and any partner who may accompany the seafarer;
  - (iv) berths must not be arranged in tiers of more than two; in the case of berths placed along the ship's side, there must be only a single tier where a sidelight is situated above a berth;
  - (v) the lower berth in a double tier must be not less than 30 centimetres above the floor; the upper berth must be placed approximately midway between the bottom of the lower berth and the lower side of the deckhead beams;
  - (vi) the framework and the lee-board, if any, of a berth must be of approved material, hard, smooth, and not likely to corrode or to harbour vermin;
  - (vii) if tubular frames are used for the construction of berths, they must be completely sealed and without perforations which would give access to vermin;
  - (viii) each berth must be fitted with a comfortable mattress with cushioning bottom or a combined cushioning mattress, including a spring bottom or a spring mattress; the mattress and cushioning material used must be made of approved material.
  - (ix) stuffing of material likely to harbour vermin must not be used;
  - (x) when one berth is placed over another, a dust-proof bottom must be fitted beneath the bottom mattress or spring bottom of the upper berth;

- (xi) clean good quality bedding must be supplied by the shipowner to all seafarers for use on board during service on the ship, and such seafarers must be responsible for their return at times specified by the master and on completion of service in the ship.
- (13) Unless otherwise provided, sleeping rooms must have the minimum floor areas set out below:
- (a) in single berth seafarers' sleeping rooms the floor area must not be less than:
    - (i) 4.5 square metres in ships of less than 3,000 gross tonnage;
    - (ii) 5.5 square metres in ships of 3,000 gross tonnage or over but less than 10,000 gross tonnage;
    - (iii) 7 square metres in ships of 10,000 gross tonnage or over;
  - (b) in order to provide single berth sleeping rooms on ships of less than 3,000 gross tonnage, passenger ships and special purpose ships, the competent authority may allow a reduced floor area;
  - (c) in ships of less than 3,000 gross tonnage other than passenger ships and special purpose ships, where sleeping rooms are occupied by two seafarers, the floor area of such sleeping rooms must not be less than 7 square metres;
  - (d) on passenger ships and special purpose ships the floor area of sleeping rooms for seafarers not performing the duties of ships' officers must not be less than:
    - (i) 7.5 square metres in rooms accommodating two persons;
    - (ii) 11.5 square metres in rooms accommodating three persons;
    - (iii) 14.5 square metres in rooms accommodating four persons;
  - (e) on special purpose ships sleeping rooms where more than four seafarers are accommodated, the floor area must not be less than 3.6 square metres per person;
  - (f) on ships other than passenger ships and special purpose ships, for seafarers who perform the duties of ships' officers where no private sitting room or day room is provided, the floor area per person must not be less than:
    - (i) 7.5 square metres in ships of less than 3,000 gross tonnage;
    - (ii) 8.5 square metres in ships of 3,000 gross tonnage or over but less than 10,000 gross tonnage;
    - (iii) 10 square metres in ships of 10,000 gross tonnage or over;
  - (g) on passenger ships and special purpose ships, the floor area for seafarers performing the duties of ships' officers where no private sitting room or day room is provided, the floor area per person for junior officers must not be less than 7.5 square metres and for senior officers

- not less than 8.5 square metres; junior officers are understood to be at the operational level, and senior officers at the management level;
- (h) the master, the chief engineer and the chief navigating officer, and where practicable the second engineer officer, must have, in addition to their sleeping rooms, an adjoining sitting room, day room or equivalent additional space; ships of less than 3,000 gross tonnage may be exempted by the competent authority from this requirement after consultation with the shipowners' and seafarers' organizations;
- (14) Ships of less than 200 gross tonnage may, subject to the conditions set out in paragraph 7 above, be exempted from the requirements in subparagraphs (a) and (c) to of paragraph 13 in so far as those subparagraphs relate to floor area.
- (15) Mess rooms must comply with the following standards:
- (a) they must be located apart from the sleeping rooms and as close as practicable to the galley; ships of less than 3,000 gross tonnage may be exempted by the competent authority from this requirement after consultation with the shipowners' and seafarers' organizations;
  - (b) they must be of adequate size and comfort and properly furnished and equipped including ongoing facilities for refreshment, taking account of the number of seafarers likely to use them at any one time;
  - (c) provision must be made for separate or common mess room facilities as appropriate: the decision in this respect must be taken after consultation with seafarers' and shipowners' representatives and subject to the approval of the competent authority; account should be taken of factors such as the size of the ship and the distinctive cultural, religious and social needs of the seafarers;
  - (d) where separate mess room facilities are to be provided to seafarers, then separate mess rooms must be provided for the master and officers and for petty officers and other seafarers;
  - (e) on ships other than passenger ships, the floor area of mess rooms for seafarers must be not less than 1.5 square metres per person of the planned seating capacity;
  - (f) in all ships, mess rooms must be equipped with tables and appropriate seats, fixed or movable, sufficient to accommodate the greatest number of seafarers likely to use them at any one time;
  - (g) the tops of tables and seats must be of damp-resistant material;
  - (h) there must be available at all times when seafarers are on board:
    - (i) a refrigerator, which must be conveniently situated and of sufficient capacity for the number of persons using the mess room or mess rooms;
    - (ii) facilities for hot beverages and cool water;

- (iii) where available pantries are not accessible to mess rooms, adequate lockers for mess utensils and proper facilities for washing utensils must be provided;
  - (iv) mess utensils, including plates, cups and other mess utensils, of approved material which can be easily cleaned, must be supplied by the shipowner to all seafarers for use on board during service on the ship, and such seafarers must be responsible for their return at times specified by the master and on completion of service in the ship.
- (16) With respect to requirements for sanitary facilities:
- (a) all seafarers must have convenient access on the ship to sanitary facilities meeting minimum standards of health and hygiene and reasonable standards of comfort, with separate sanitary facilities being provided for men and for women;
  - (b) there must be sanitary facilities within easy access of the navigating bridge and the machinery space or near the engine room control centre; ships of less than 3,000 gross tonnage may be exempted by the competent authority from this requirement after consultation with the shipowners' and seafarers' organizations;
  - (c) in all ships a minimum of one toilet, one wash basin and one tub or shower or both for every six persons or less who do not have personal facilities must be provided at a convenient location;
  - (d) with the exception of passenger ships, each sleeping room must be provided with a washbasin having hot and cold running fresh water, except where such a washbasin is situated in the private bathroom provided; ships of less than 200 gross tonnage may, subject to the conditions set out in paragraph 7 above, be exempted from this requirement;
  - (e) where separate facilities for engine department personnel to change their clothes are provided, they must be located outside the machinery space but with easy access to it; and must be fitted with individual clothes lockers as well as with tubs or showers or both and washbasins having hot and cold running fresh water;
  - (f) in passenger ships normally engaged on voyages of not more than four hours' duration, the competent authority may approve special arrangements or a reduction in the number of facilities required;
  - (g) hot and cold running fresh water must be available in all wash places;
  - (h) washbasins and tub baths must be of adequate size and constructed of approved material with a smooth surface not liable to crack, flake or corrode;

- (i) all toilets must be of an approved pattern and provided with an ample flush of water or with some other suitable flushing means, such as air, which are available at all times and independently controllable;
  - (j) sanitary accommodation intended for the use of more than one person must comply with the following:
    - (i) floors must be of approved durable material, impervious to damp, and must be properly drained;
    - (ii) bulkheads must be of steel or other approved material and must be watertight up to at least 23 centimetres above the level of the deck;
    - (iii) the accommodation must be sufficiently lit, heated and ventilated;
    - (iv) toilets must be situated convenient to, but separate from, sleeping rooms and wash rooms, without direct access from the sleeping rooms or from a passage between sleeping rooms and toilets to which there is no other access; this requirement does not apply where a toilet is located in a compartment between two sleeping rooms having a total of not more than four seafarers;
    - (v) where there is more than one toilet in a compartment, they must be sufficiently screened to ensure privacy;
    - (vi) towels, soap and toilet paper for all seafarers must be provided by the shipowner.
- (17) Ships carrying 15 or more seafarers and engaged in a voyage of more than three days' duration must provide separate hospital accommodation to be used exclusively for medical purposes and complying with the following requirements:
- (a) hospital accommodation must, in all weathers, be easy of access, provide comfortable housing for the occupants and be conducive to their receiving prompt and proper attention; in particular:
    - (i) it must be designed so as to facilitate consultation and the giving of medical first aid and to help prevent the spread of infectious diseases;
    - (ii) the arrangement of the entrance, berths, lighting, ventilation, heating and water supply must be designed to ensure the comfort and facilitate the treatment of the occupants;
    - (iii) the number of hospital berths required will be prescribed by the competent authority;
  - (b) sanitary accommodation must be provided for the exclusive use of the occupants of the hospital accommodation, either as part of the accommodation or in close proximity thereto; such sanitary

accommodation must comprise a minimum of one toilet, one washbasin and one tub or shower.

- (18) Appropriately situated and furnished laundry facilities must be available. The laundry facilities must include:
- (a) washing machines;
  - (b) drying machines or adequately heated and ventilated drying rooms; and
  - (c) irons and ironing boards or their equivalent.
- (19) Ships of less than 200 gross tonnage may, subject to the conditions set out in paragraph 7 above, be exempted from the requirement in paragraph 18.
- (20) Appropriate seafarers' recreational facilities, amenities and services, as adapted to meet the special needs of seafarers who must live and work on ships, must be provided on board for the benefit of all seafarers, taking into account the provisions on health and safety protection and accident prevention in Regulations 19 of the Merchant Shipping (Maritime Labour Convention 2006) Regulations. Recreational facilities and services must be reviewed frequently to ensure that they are appropriate in the light of changes in the needs of seafarers resulting from technical, operational and other developments in the shipping industry. In particular, ships must:
- (a) have a space or spaces on open deck to which the seafarers can have access when off duty, which are of adequate area having regard to the size of the ship and the number of seafarers on board;
  - (b) be provided with separate offices or a common ship's office for use by deck and engine departments; ships of less than 3,000 gross tonnage may be exempted by the competent authority from this requirement after consultation with the shipowners' and seafarers' organizations concerned;
  - (c) provide furnishings for recreational facilities that as a minimum include a bookcase and facilities for reading, writing and, where practicable, games, and where appropriate, a canteen;
  - (d) include the following facilities at no cost to the seafarer, where practicable:
    - (i) a smoking room;
    - (ii) television viewing and the reception of radio broadcasts;
    - (iii) showing of films, the stock of which must be adequate for the duration of the voyage and, where necessary, changed at reasonable intervals;
    - (iv) sports equipment including exercise equipment, table games and deck games;
    - (v) facilities for swimming;

- (vi) a library containing vocational and other books, the stock of which must be adequate for the duration of the voyage and changed at reasonable intervals;
  - (vii) facilities for recreational handicrafts;
  - (viii) electronic equipment such as a radio, television, video recorders, DVD/CD player, personal computer and software and cassette recorder/player;
  - (ix) where appropriate, the provision of bars on board for seafarers unless these are contrary to national, religious or social customs; and
  - (x) reasonable access to ship-to-shore telephone communications, and email and Internet facilities, where available, with any charges for the use of these services being reasonable in amount;
- (e) ensure that the forwarding of seafarers' mail is as reliable and expeditious as possible; efforts should also be considered for avoiding seafarers being required to pay additional postage when mail has to be readdressed owing to circumstances beyond their control;
  - (f) whenever possible and reasonable, expeditiously grant seafarers permission to have their partners, relatives and friends as visitors on board their ship when in port; such measures must meet any concerns for security clearances;
  - (g) allow seafarers to be accompanied by their partners on occasional voyages where this is practicable and reasonable; such partners must carry adequate insurance cover against accident and illness; the shipowners must give every assistance to the seafarer to effect such insurance.

## 16 Food and catering

- (1) Ships must, in accordance with paragraphs 2 and 3 below, carry on board and serve food and drinking water that is of appropriate quality, nutritional value and quantity and adequately covers the requirements of the ship.
- (2) Seafarers on board a ship must be provided with food free of charge during the period of engagement.
- (3) The following minimum standards for food and catering apply:
  - (a) food and drinking water supplies, having regard to the number of seafarers on board, their religious requirements and cultural practices as they pertain to food, and the duration and nature of the voyage, must be suitable in respect of quantity, nutritional value, quality and variety;

- (b) the organization and equipment of the catering department must be such as to permit the provision to the seafarers of adequate, varied and nutritious meals prepared and served in hygienic conditions;
  - (c) catering staff must be properly trained or instructed for their positions, and any seafarers engaged as ships' cooks must have completed a training course approved or recognized by the competent authority, which covers practical cookery, food and personal hygiene, food storage, stock control, and environmental protection and catering health and safety.
- (4) Seafarers shall only be qualified as ships' cooks if they:
- (a) have served at sea for a minimum period to be prescribed by the competent authority, which could be varied to take into account existing relevant qualifications or experience;
  - (b) have passed an examination prescribed by the competent authority or passed an equivalent examination at an approved training course for cooks or hold a certificate of qualification as ships' cook issued by countries which have ratified the Maritime Labour Convention, 2006, or the Certification of Ships' Cooks Convention, 1946 (No. 69), or other approved body.
- (5) On ships operating with a prescribed manning of less than ten which, by virtue of the size of the crew or the trading pattern, may not be required by the competent authority to carry a fully qualified cook, anyone processing food in the galley must be trained or instructed in areas including food and personal hygiene as well as handling and storage of food on board ship.
- (6) In circumstances of exceptional necessity, the competent authority may issue a dispensation permitting a non-fully qualified cook to serve in a specified ship for a specified limited period, until the next convenient port of call or for a period not exceeding one month, provided that the person to whom the dispensation is issued is trained or instructed in areas including food and personal hygiene as well as handling and storage of food on board ship.
- (7) Frequent documented inspections must be carried out on board ships, by or under the authority of the master, with respect to:
- (a) supplies of food and drinking water;
  - (b) all spaces and equipment used for the storage and handling of food and drinking water;
  - (c) galley and other equipment for the preparation and service of meals.
- (8) The competent authority shall:
- (a) in cooperation with other relevant agencies and organizations, collect up-to-date information on nutrition and on methods of purchasing, storing, preserving, cooking and serving food, with special reference to the requirements of catering on board a ship; this information shall be

made available, free of charge or at reasonable cost, to manufacturers of and traders in ships' food supplies and equipment, masters, stewards and cooks, and to shipowners' and seafarers' organizations concerned; appropriate forms of publicity, such as manuals, brochures, posters, charts or advertisements in trade journals should be used for this purpose;

- (b) issue recommendations to avoid wastage of food, facilitate the maintenance of a proper standard of hygiene, and ensure the maximum practicable convenience in working arrangements;
- (c) work with relevant agencies and organizations to develop educational materials and on-board information concerning methods of ensuring proper food supply and catering services;
- (d) work in close cooperation with the shipowners' and seafarers' organizations and with other national or local authorities dealing with questions of food and health; it may where necessary utilize the services of such authorities.

## **PART V - HEALTH PROTECTION, MEDICAL CARE, WELFARE AND SOCIAL SECURITY PROTECTION**

### **17 Medical care on board ship and ashore**

- (1) All seafarers working on board a ship must be covered by adequate measures for the protection of their health and must have access to prompt and adequate medical care that is as comparable as possible to that which is generally available to workers ashore in Tuvalu.
- (2) The protection and care under paragraph 1 must, in principle, be provided at no cost to the seafarers.
- (3) Shipowners must adopt measures to provide for health protection and medical care, including essential dental care, for seafarers working on board. These measures must:
  - (a) ensure the application to seafarers of any general provisions on occupational health protection and medical care relevant to their duties, as well as of special provisions specific to work on board ship;
  - (b) ensure that seafarers are given health protection and medical care as comparable as possible to that which is generally available to workers ashore, including prompt access to the necessary medicines, medical equipment and facilities for diagnosis and treatment and to medical information and expertise;
  - (c) give seafarers the right to visit a qualified medical doctor or dentist without delay in ports of call, where practicable;

- (d) ensure that, to the extent consistent with national law and practice, medical care and health protection services while a seafarer is on board ship or landed in a foreign port are provided free of charge to seafarers; and
  - (e) not be limited to treatment of sick or injured seafarers but include measures of a preventive character such as health promotion and health education programmes.
- (4) A standard medical report form, adopted by the competent authority, in order to facilitate the exchange of medical and related information concerning individual seafarers between ship and shore in cases of illness or injury, must be used by ships' masters and relevant onshore and on-board medical personnel. When completed, the form and its contents must be kept confidential and must only be used to facilitate the treatment of seafarers.
- (5) The following minimum requirements for on-board hospital and medical care facilities and equipment and training on ships apply:
- (a) all ships must carry a medicine chest, medical equipment and a medical guide, the specifics of which shall be prescribed and subject to regular inspection by the competent authority, taking into account the type of ship, the number of persons on board and the nature, destination and duration of voyages and relevant national and international recommended medical standards. In particular:
    - (i) the medicine chest and its contents, as well as the medical equipment and medical guide carried on board, must be properly maintained and inspected at intervals, not exceeding 12 months, by responsible persons designated by the competent authority, who must ensure that the labelling, expiry dates and conditions of storage of all medicines and directions for their use are checked and all equipment functioning as required;
    - (ii) as a minimum the approved medical guides that must be kept on board are the most recent edition of the International Medical Guide for Ships, the Medical First Aid Guide for Use in Accidents Involving Dangerous Goods, the Document for Guidance – An International Maritime Training Guide, and the medical Regulation of the International Code of Signals; where a cargo, which is classified dangerous, has not been included in the most recent edition of the Medical First Aid Guide for Use in Accidents Involving Dangerous Goods, the necessary information on the nature of the substances, the risks involved, the necessary personal protective devices, the relevant medical procedures and specific antidotes must be made available to the seafarers; the antidotes and personal protective devices must be on board whenever dangerous goods are carried; this information must be integrated with the ship's policies and programmes on

occupational safety and health as set out in Regulations 19 of the Merchant Shipping (Maritime Labour Convention 2006 ) Regulations;

- (b) ships carrying 100 or more persons and ordinarily engaged on international voyages of more than three days' duration must carry a qualified medical doctor who is responsible for providing medical care; the competent authority may require that other ships carry a medical doctor, taking into account, inter alia, such factors as the duration, nature and conditions of the voyage and the number of seafarers on board;
- (c) ships which do not carry a medical doctor must have either at least one seafarer on board who is in charge of medical care and administering medicine as part of their regular duties or at least one seafarer on board competent to provide medical first aid; persons in charge of medical care on board who are not medical doctors must have satisfactorily completed training in medical care that meets the requirements of the STCW Convention; seafarers designated to provide medical first aid must have satisfactorily completed training in medical first aid that meets the requirements of the STCW Convention; without prejudice to any further standards that may be adopted by the competent authority taking into account, inter alia, such factors as the duration, nature and conditions of the voyage and the number of seafarers on board:
  - (i) ships which ordinarily are capable of reaching qualified medical care and medical facilities within eight hours must have at least one designated seafarer with the approved medical first-aid training required by the STCW Convention which will enable such persons to take immediate, effective action in case of accidents or illnesses likely to occur on board a ship and to make use of medical advice by radio or satellite communication; and
  - (ii) all other ships must have at least one designated seafarer with approved training in medical care required by the STCW Convention, including practical training and training in life-saving techniques such as intravenous therapy, which will enable the persons concerned to participate effectively in coordinated schemes for medical assistance to ships at sea, and to provide the sick or injured with a satisfactory standard of medical care during the period they are likely to remain on board;
- (d) the medical training referred to in subparagraph (c) above must be based on the contents of the most recent editions of the medical guides referred to in subparagraph (a)(ii) above;
- (e) persons referred to in subparagraph (c)(i) and (ii) above and such other seafarers as may be required by the competent authority must undergo, at approximately five-year intervals, refresher courses to

- enable them to maintain and increase their knowledge and skills and to keep up-to-date with new developments;
- (f) the competent authority must ensure by a prearranged system that medical advice by radio or satellite communication to ships at sea, including specialist advice, is available 24 hours a day; medical advice, including the onward transmission of medical messages by radio or satellite communication between a ship and those ashore giving the advice, is be available free of charge to all ships irrespective of the flag that they fly. In addition:
- (i) all ships must carry a complete and up-to-date list of radio stations through which medical advice can be obtained and, if equipped with a system of satellite communication, carry an up-to-date and complete list of coast earth stations through which medical advice can be obtained;
  - (ii) seafarers with responsibility for medical care or medical first aid on board must be instructed in the use of the ship's medical guide and the medical Regulation of the most recent edition of the International Code of Signals so as to enable them to understand the type of information needed by the advising doctor as well as the advice received.
- (7) Seafarers on board foreign ships in the territory of Tuvalu who are in need of immediate medical care will be given access to medical facilities on shore including:
- (a) outpatient treatment for sickness and injury;
  - (b) hospitalization when necessary;
  - (c) facilities for dental treatment, especially in cases of emergency.

## 18 Shipowners' liability

- (1) Seafarers working on board a ship have a right to material assistance and support from the shipowner with respect to the financial consequences of sickness, injury or death occurring while they are serving under a seafarers' employment agreement or arising from their employment under such agreement.
- (2) The right under paragraph 1 does not affect any other legal remedies that a seafarer may seek.
- (3) Shipowners must provide financial security to assure compensation in the event of the death or long-term disability of seafarers due to an occupational injury, illness or hazard, as set out in the seafarers' employment agreement or any applicable collective agreement;

- (4) Shipowners are responsible for health protection and medical care of all seafarers working on board and are liable for the costs for all seafarers working on their ships in respect of sickness and injury of the seafarers occurring between the date of commencing duty and the date upon which they are deemed duly repatriated, or arising from their employment between those dates to the extent provided below:
  - (a) shipowners must defray the expense of medical care, including medical treatment and the supply of the necessary medicines and therapeutic appliances, and board and lodging away from home until the sick or injured seafarer has recovered, or until the sickness or incapacity has been declared of a permanent character;
  - (b) shipowners must pay the cost of burial expenses in the case of death occurring on board or ashore during the period of engagement; these expenses may be reimbursed by an insurance institution in cases in which funeral benefit is payable in respect of the deceased seafarer under laws or regulations relating to social insurance or workers' compensation;
  - (c) where the sickness or injury results in incapacity for work, shipowners must:
    - (i) pay full wages (exclusive of bonuses) as long as the sick or injured seafarers remain on board or until the seafarers have been repatriated in accordance with Regulations 11 above of this Merchant Shipping (Maritime Labour Convention 2006 ) Regulations;
    - (ii) pay wages in whole or in part as provided for in collective agreements from the time when the seafarers are repatriated or landed until their recovery or if earlier, until they are entitled to cash benefits under the applicable social security legislation.
- (5) The liability of the shipowner under paragraph 4 (a) is limited to 16 weeks from the day of the injury or the commencement of the sickness and shall cease from the time at which the seafarer can claim medical benefits under a scheme of compulsory sickness insurance, compulsory accident insurance or workers' compensation for accidents.
- (6) The liability of the shipowner to pay wages in whole or in part in respect of a seafarer no longer on board is limited to 16 weeks from the day of the injury or the commencement of the sickness and shall cease from the time at which the seafarer can claim medical benefits under a scheme of compulsory sickness insurance, compulsory accident insurance or workers' compensation for accidents.
- (7) Shipowners are not liable in respect of:
  - (a) injury incurred otherwise than in the service of the ship;

- (b) injury or sickness due to the wilful misconduct of the sick, injured or deceased seafarer;
  - (c) sickness or infirmity intentionally concealed when the engagement is entered into.
- (8) Shipowners or their representatives must take measures for safeguarding property left on board by sick, injured or deceased seafarers and for returning it to them or to their next of kin.

## **19 Health and safety protection and accident prevention**

- (1) Seafarers must be provided with occupational health protection consistent with their right to live, work and train on board ship in a safe and hygienic environment.
- (2) After consultation with the seafarers' and shipowners' organizations, the competent authority shall – in accordance with the national occupational safety and health policy referred to in paragraph 3 below and keeping in mind the requirements of this Regulations 19 – set and maintain standards for occupational safety and health protection and accident prevention to be observed on-board ship.
- (3) The competent authority shall, after consultation with the seafarers' and shipowners' organizations, adopt and keep under continuous review guidelines for the management of seafarer occupational safety and health on board. Relevant provisions or recommendations adopted by the appropriate national authorities or organizations or international organizations should be taken into account by those preparing texts of occupational safety and health protection and accident prevention measures or recommended practices. In formulating occupational safety and health protection and accident prevention programmes, the competent authority should have due regard to any code of practice concerning the safety and health of seafarers which may have been published by the International Labour Organization.
- (4) The guidelines under paragraph 3 shall take account of Guidelines B4.3.2 to B4.3.10 of the Convention as well as the ILO code of practice entitled Accident prevention on board ship at sea and in port, 1996, and subsequent versions and other related ILO and other international standards and guidelines and codes of practice regarding occupational safety and health protection, including any exposure levels that they may identify. The guidelines shall give priority to the following matters, in particular:
  - (a) structural features of the ship, including means of access and asbestos-related risks;
  - (b) machinery;
  - (c) the effects of the extremely low or high temperature of any surfaces with which seafarers may be in contact;

- (d) the effects of noise in the workplace and in shipboard accommodation;
  - (e) the effects of vibration in the workplace and in shipboard accommodation;
  - (f) the effects of ambient factors, other than those referred to in subparagraphs (d) and (e), in the workplace and in shipboard accommodation, including tobacco smoke;
  - (g) special safety measures on and below deck;
  - (h) loading and unloading equipment;
  - (i) fire prevention and fire-fighting;
  - (j) anchors, chains and lines;
  - (k) dangerous cargo and ballast;
  - (l) personal protective equipment for seafarers;
  - (m) work in enclosed spaces;
  - (n) physical and mental effects of fatigue;
  - (o) the effects of drug and alcohol dependency;
  - (p) HIV/AIDS protection and prevention; and
  - (q) emergency and accident response.
- (5) The assessment of risks and reduction of exposure on the matters referred to in paragraph 4 above shall take account of the physical occupational health effects, including manual handling of loads, noise and vibration, the chemical and biological occupational health effects, the mental occupational health effects, the physical and mental health effects of fatigue, and occupational accidents. The necessary measures shall take due account of the preventive principle according to which, among other things, combating risk at the source, adapting work to the individual, especially as regards the design of workplaces, and replacing the dangerous by the non-dangerous or the less dangerous, have precedence over personal protective equipment for seafarers.
- (6) In addition, the competent authority shall ensure that the implications for health and safety are taken into account, particularly in the following areas:
- (a) emergency and accident response;
  - (b) the effects of drug and alcohol dependency; and
  - (c) HIV/AIDS protection and prevention.
- (7) Compliance with the requirements of applicable international instruments on the acceptable levels of exposure to workplace hazards on board ships and on the development and implementation of ships' occupational safety and health policies and programmes will be considered as meeting the requirements.

- (8) Shipowners must adopt and promote on-board occupational safety and health management policies and programmes, consistent with the guidelines referred to in paragraph 3 above, that:
- (a) include reasonable precautions to prevent occupational accidents, injuries and diseases on board ship, including measures to reduce and prevent the risk of exposure to harmful levels of ambient factors and chemicals as well as the risk of injury or disease that may arise from the use of equipment and machinery on board ships;
  - (b) include training and instruction of seafarers and other on-board programmes for the prevention of occupational accidents, injuries and diseases and for continuous improvement in occupational safety and health protection, that involve seafarers' representatives and all other persons concerned in their implementation, taking account of preventive measures, including engineering and design control, substitution of processes and procedures for collective and individual tasks, and the use of personal protective equipment; the curriculum for the training must be reviewed periodically and brought up to date in the light of development in types and sizes of ships and in their equipment, as well as changes in manning practices, nationality, language and the organization of work on board ships;
  - (c) require the inspection, reporting and correcting of unsafe conditions and provide for the investigation and reporting of on-board occupational accidents and occupational injuries and diseases; all such events must be reported so that they can be investigated and comprehensive statistics can be kept, analysed and published, taking account of protection of the personal data of the seafarers concerned; reports must not be limited to fatalities or to accidents involving the ship; due regard should be had to any international system or model for recording accidents to seafarers which may have been established by the International Labour Organization;
  - (d) provide special attention to the safety and health of seafarers under the age of 18;
  - (e) specify the duties of the master or a person designated by the master, or both, to take specific responsibility for the implementation of and compliance with the ship's occupational safety and health policy and programme;
  - (f) specify the authority of the ship's seafarers appointed or elected as safety representatives to participate in meetings of the ship's safety committee; such a committee must be established on board a ship on which there are five or more seafarers.
  - (g) include risk evaluation in relation to management of occupational safety and health that refer to appropriate statistical information from their ships and from general statistics provided by the competent authority.

- (9) With respect to young seafarers referred to under paragraph 8(d), except where they are recognized as fully qualified in a pertinent skill by the competent authority, the standards set in accordance with paragraph 2 must specify restrictions on young seafarers undertaking, without appropriate supervision and instruction, certain types of work presenting special risk of accident or of detrimental effect on their health or physical development, or requiring a particular degree of maturity, experience or skill. In determining the types of work to be restricted by the regulations, the competent authority might consider in particular work involving:
- (a) the lifting, moving or carrying of heavy loads or objects;
  - (b) entry into boilers, tanks and cofferdams;
  - (c) exposure to harmful noise and vibration levels;
  - (d) operating hoisting and other power machinery and tools, or acting as signallers to operators of such equipment;
  - (e) handling mooring or tow lines or anchoring equipment;
  - (f) rigging;
  - (g) work aloft or on deck in heavy weather;
  - (h) nightwatch duties;
  - (i) servicing of electrical equipment;
  - (j) exposure to potentially harmful materials, or harmful physical agents such as dangerous or toxic substances and ionizing radiations;
  - (k) the cleaning of catering machinery; and
  - (l) the handling or taking charge of ships' boats.

## **20 Access to shore-based welfare facilities**

- (1) The competent authority shall promote the development of welfare facilities in appropriate ports of Tuvalu to be determined, after consultation with the shipowners' and seafarers' organizations to ensure that adequate welfare facilities and services are provided, that take into account the special needs of seafarers, especially when in foreign countries and when entering war zones, in respect of their safety, health and spare-time activities; including:
- (a) meeting and recreation rooms as required;
  - (b) facilities for sports and outdoor facilities, including competitions;
  - (c) educational facilities;
  - (d) where appropriate, facilities for religious observances and for personal counselling.

- (2) The welfare facilities and services under paragraph 1 shall be provided, in accordance with national conditions and practice, by one or more of the following:
  - (a) public authorities;
  - (b) shipowners' and seafarers' organizations concerned under collective agreements or other agreed arrangements; and
  - (c) voluntary organizations.
- (3) These facilities under paragraph 1 may be provided by making available to seafarers in accordance with their needs facilities designed for more general use.
- (4) Seafarers' welfare facilities must be available for the use of all seafarers, irrespective of nationality, race, colour, sex, religion, political opinion or social origin and irrespective of the flag State of the ship on which they are employed or engaged or work. Without in any way infringing this principle, it may be necessary in certain ports to permit several types of facilities, comparable in standard but adapted to the customs and needs of different groups of seafarers.
- (5) The competent authority shall take the necessary measures to encourage the establishment of welfare boards which shall regularly review welfare facilities and services to ensure that they are appropriate in the light of changes in the needs of seafarers resulting from technical, operational and other developments in the shipping industry.
- (6) The welfare boards should be established, at the port, regional and national levels, as appropriate, with supervisory functions including the participation of shipowners' and seafarers' organizations. Their functions should include:
  - (a) keeping under review the adequacy of existing welfare facilities and monitoring the need for the provision of additional facilities or the withdrawal of underutilized facilities; and
  - (b) assisting and advising those responsible for providing welfare facilities and ensuring coordination between them.
- (7) Welfare boards should, in particular, be responsible for ensuring that:
  - (a) information is disseminated among seafarers concerning facilities open to the general public in ports of call, particularly transport, welfare, entertainment and educational facilities and places of worship, as well as facilities provided specifically for seafarers;
  - (b) shipowners and seafarers entering port are aware of any special laws and customs, the contravention of which may jeopardize their freedom;
  - (c) adequate means of transport at moderate prices are available at any reasonable time in order to enable seafarers to reach urban areas from convenient locations in the port;

- (d) port areas and access roads have adequate lighting and signposting and regular patrols for the protection of seafarers;
  - (e) hotels or hostels suitable for seafarers are available where there is need for them with facilities equal to those found in a good-class hotel; they should, wherever possible be located in good surroundings away from the immediate vicinity of the docks, be properly supervised and reasonably priced; where necessary and possible, provision should be made for accommodating seafarers' families;
  - (f) measures are taken to expedite a free circulation among ships, central supply agencies and welfare establishments of welfare materials such as films, books, newspapers and sports equipment for use by seafarers on board their ships and in welfare centres ashore;
  - (g) technically competent persons are, as necessary, employed full time in the operation of seafarers' welfare facilities and services, in addition to any voluntary workers.
- (8) As appropriate, consuls of maritime States and local representatives of foreign welfare organizations may be associated with the work of welfare boards.
- (9) For the protection of foreign seafarers in ports of Tuvalu, the competent authority shall take measures to facilitate:
- (a) access to consuls of their State of nationality or State of residence; and
  - (b) effective cooperation between consuls and the local or national authorities.
- (10) Foreign seafarers who are detained in a port must be dealt with promptly under due process of law and with appropriate consular protection.
- (11) Whenever a foreign seafarer is detained for any reason the competent authority must, if the seafarer so requests, immediately inform the flag State and the State of nationality of the seafarer. The competent authority must promptly inform the seafarer of the right to make such a request. The competent authority must allow consular officers of these States immediate access to the seafarer and regular visits thereafter so long as the seafarer is detained.
- (12) The competent authority shall take measures, whenever necessary, to ensure the safety of foreign seafarers from aggression and other unlawful acts while ships are in this country's territorial waters and especially in approaches to ports.
- (13) The competent authority shall ensure that every effort is made by those responsible in port and on board a ship to facilitate shore leave for seafarers as soon as possible after a ship's arrival in port.
- (14) The competent authority should cooperate with other countries in promoting the welfare of seafarers at sea and in port. Such cooperation may include the following:

- (a) consultations among competent authorities aimed at the provision and improvement of seafarers' welfare facilities and services, both in port and on board ships;
- (b) agreements on the pooling of resources and the joint provision of welfare facilities in major ports so as to avoid unnecessary duplication;
- (c) organization of international sports competitions and encouragement of the participation of seafarers in sports activities;
- (d) organization of international seminars on the subject of welfare of seafarers at sea and in port.

## 21 Social security

- (1) Seafarers and their dependants are covered by the social security scheme set out in the below paragraphs, with this coverage being progressively extended and increased from time to time, by decisions of the competent authority, until comprehensive social security protection is achieved.
- (2) This scheme consists of three of the following branches of social security protection, which complement the protection provided for under Regulations 17 and 18 of the Merchant Shipping (Maritime Labour Convention 2006 ) Regulations
  - (a) medical care,
  - (b) sickness benefit,
  - (c) unemployment benefit,
  - (d) old-age benefit,
  - (e) employment injury benefit,
  - (f) family benefit,
  - (g) maternity benefit,
  - (h) invalidity benefit,
  - (i) survivors' benefit.
- (3) As from the entry into force of this Merchant Shipping (Maritime Labour Convention 2006) Regulations:
  - (a) all seafarers who are ordinarily resident in Tuvalu shall enjoy the protection of social security specified in paragraph 2 as (a) medical care, (b) sickness benefit and (c) unemployment injury benefit according to the branches covered in the country at the time of entry into force of the instrument;
  - (b) seafarers shall also enjoy any social security benefits that are inherent in the general obligations of Tuvalu under international law as determined by the competent authority;

- (c) seafarers under (a) and (b) shall also enjoy any more favourable conditions to which seafarers in their situation were entitled under the law of Tuvalu prior to the entry into force of this Merchant Shipping (Maritime Labour Convention 2006) Regulations;
  - (d) the dependants of the seafarers referred to in this paragraph will also be covered by the social security protection enjoyed by the seafarers concerned, to the extent provided for in the law of Tuvalu as determined by the competent authority.
- (4) In order to achieve progressively comprehensive social security protection for all seafarers under the jurisdiction of Tuvalu, the competent authority shall periodically review the social security protection available to seafarers in accordance with paragraph 3, giving consideration to any subsequent improvement in the national circumstances as well as to the prospects for making use, where possible and appropriate, of bilateral or multilateral agreements, contribution-based systems, insurance or other effective means for increasing or extending the protection or providing comparable benefits to seafarers in the absence of adequate coverage.
- (5) The competent authority shall cooperate, through bilateral or multilateral agreements or other arrangements, to ensure the maintenance of social security rights, provided through contributory or non-contributory schemes, which have been acquired, or are in the course of acquisition, by all seafarers regardless of residence. Where seafarers are subject to more than one national legislation covering social security, the competent authority shall cooperate in order to determine by mutual agreement which legislation is to apply, taking into account such factors as the type and level of protection under the respective legislations which is more favourable to the seafarer concerned as well as the seafarer's preference.
- (6) The competent authority shall establish fair and effective procedures for the settlement of disputes to cover all disputes relevant to the claims of the seafarers concerned, irrespective of the manner in which the coverage is provided.

## **PART VI - COMPLIANCE AND ENFORCEMENT**

### **22 Flag State responsibilities**

#### **22.1 General principles**

- (1) The competent authority shall establish an effective system for the inspection and certification of maritime labour conditions, in accordance

with Regulations 22.3 and 22.4 of these Merchant Shipping (Maritime Labour Convention 2006) Regulations on ships that fly the flag of Tuvalu.

- (2) The competent authority may, where appropriate in accordance with Regulations 22.2 below, authorize public institutions or other organizations which it recognizes as competent and independent to carry out inspections or to issue certificates or to do both.
- (3) The competent authority shall establish clear objectives and standards covering the administration of the inspection and certification system referred to paragraph 1 above, as well as adequate overall procedures for its assessment of the extent to which those objectives and standards are being attained.
- (4) Ships must have a copy of the Convention available on board.

## **22.2 Authorization of recognized organizations**

- (1) The competent authority may recognize public institutions or other organizations as competent and independent, for the purpose of carrying out inspections or certification of ships to determine compliance with the provisions of this Merchant Shipping (Maritime Labour Convention 2006) Regulations.
- (2) Before recognizing an organization under paragraph 1 above, the competent authority shall review the competency and independence of the organization concerned and determine whether the organization has demonstrated, to the extent necessary for carrying out the activities covered by the authorization conferred on it, that the organization:
  - (a) has the necessary knowledge of the requirements of the Convention as well as of applicable national laws and regulations and relevant international instruments; and has the necessary expertise in the relevant aspects of the Convention and an appropriate knowledge of ship operations, including the minimum requirements for seafarers to work on a ship, conditions of employment, accommodation, recreational facilities, food and catering, accident prevention, health protection, medical care, welfare and social security protection;
  - (b) is of the appropriate size, structure, experience and capability commensurate with the type and degree of authorization; the organization seeking recognition must demonstrate the technical, administrative and managerial competence and capacity to ensure the provision of timely service of satisfactory quality; in this respect, the competent authority must determine whether the organization:
    - (i) has adequate technical, managerial and support staff;
    - (ii) has sufficient qualified professional staff to provide the required service, representing an adequate geographical coverage;

- (iii) has proven ability to provide a timely service of satisfactory quality;
    - (iv) is independent and accountable in its operations;
  - (c) has the ability to maintain and update the expertise of its personnel; recognized organizations must develop a system for the qualification of staff employed by them as inspectors to ensure the timely updating of their knowledge and expertise.
- (3) The competent authority shall conclude a written agreement with any organization that it recognizes for purposes of an authorization. The agreement shall include the following elements:
  - (a) scope of application;
  - (b) purpose;
  - (c) general conditions;
  - (d) the execution of functions under authorization;
  - (e) legal basis of the functions under authorization;
  - (f) reporting to the competent authority;
  - (g) specification of the authorization from the competent authority to the recognized organization; and
  - (h) the competent authority's supervision of activities delegated to the recognized organization.
- (4) Any authorizations granted with respect to inspections must, as a minimum, empower the recognized organization to require the rectification of deficiencies that it identifies in seafarers' working and living conditions and to carry out inspections in this regard at the request of a port State.
- (5) Recognized organizations must maintain records of the services performed by them such that they are able to demonstrate achievement of the required standards in the items covered by the services.
- (6) The competent authority shall establish:
  - (a) a system to ensure the adequacy of work performed by recognized organizations, which includes information on all applicable national laws and regulations and relevant international instruments; and
  - (b) procedures for communication with and oversight of such organizations that take into account the Guidelines for the Authorization of Organizations Acting on Behalf of the Administration, adopted in the framework of the International Maritime Organization.
- (7) The competent authority shall make appropriate arrangements to promote effective cooperation between public institutions and other organizations concerned with seafarers' shipboard working and living conditions.

- (8) The competent authority shall provide the International Labour Office with a current list of any recognized organizations authorized to act on its behalf and shall keep the list up to date. The list shall specify the functions that the recognized organizations have been authorized to carry out.

### **22.3 Maritime labour certificate and declaration of maritime labour compliance**

- (1) This Regulation applies to every ship that flies the flag of Tuvalu and is:
- (a) 500 gross tonnage or over and engaged in international voyages;
  - (b) 500 gross tonnage or over and operates from a port, or between ports, in a country other than Tuvalu;
  - (c) For the purpose of these paragraphs, “**international voyage**” means a voyage from a country to a port outside such a country.
- (2) This Regulation also applies to a ship not covered by paragraphs 1(a) or (b) above, at the request of the shipowner to the competent authority.
- (3) Every ship to which this Regulation applies must carry and maintain a current valid maritime labour certificate issued to the ship by the competent authority, or by a recognized organization duly authorized for this purpose, which shall complete the form for this certificate that is contained in Schedule I below, and affix to the form their signature and the seal or stamp of the issuing authority.
- (4) A declaration of maritime labour compliance must be attached to the maritime labour certificate. The declaration consists of two parts:
- (a) Part I summarizes, in accordance with Standard A5.1.3, paragraph 10(a) of the Convention, the requirements of Tuvalu laws or regulations or other measures implementing the requirements of the Convention regarding the working and living conditions of seafarers on ships; it is drawn up by the competent authority using the form contained in Schedule II below;
  - (b) Part II identifies the measures adopted by the shipowner to ensure ongoing compliance on the ship with the national requirements and the measures proposed to ensure that there is continuous improvement; it must be drawn up by the shipowner based on the form contained in Schedule III below and certified by the competent authority or recognized organization duly authorized for this purpose; the following requirements apply:
    - (i) the measures drawn up by the shipowner, must, in particular, indicate the occasions on which ongoing compliance with particular national requirements will be verified, the persons responsible for verification, the records to be taken, as well as the procedures to be followed where non-compliance is noted;

- (ii) Part II may take a number of forms and may make reference to other more comprehensive documentation covering policies and procedures relating to other aspects of the maritime sector, for example documents required by the International Safety Management (ISM) Code or the information required by Regulation 4 of the SOLAS Convention, Chapter XI-1 relating to the ship's Continuous Synopsis Record;
  - (iii) the measures to ensure ongoing compliance must include general international requirements for the ship owner and master to keep themselves informed of the latest advances in technology and scientific findings concerning workplace design, taking into account the inherent dangers of seafarers' work, and to inform the seafarers' representatives accordingly.
- (5) A maritime labour certificate, complemented by a declaration of maritime labour compliance, constitutes prima facie evidence that the ship has been duly inspected and that the requirements of the Convention relating to working and living conditions of the seafarers have been met to the extent so certified.
- (6) The maritime labour certificate may be issued only where the competent authority or a recognized organization duly authorized for this purpose has ascertained through inspection, as provided for in Regulation 22.4 below, that the ship concerned meets the standards of this Merchant Shipping (Maritime Labour Convention 2006) Regulations.
- (7) The maritime labour certificate is issued for a period of five years or any shorter period that may be considered appropriate by the competent authority or recognized organization in a particular case.
- (8) The validity of the maritime labour certificate is subject to an intermediate inspection by the competent authority, or by a recognized organization duly authorized for this purpose, to ensure continuing compliance. If only one intermediate inspection is carried out and the period of validity of the certificate is five years, it must take place between the second and third anniversary dates of the certificate. Anniversary date means the day and month of each year which will correspond to the date of expiry of the maritime labour certificate. The scope and depth of the intermediate inspection must be equal to an inspection for renewal of the certificate. A certificate must be endorsed following satisfactory intermediate inspection.
- (9) The maritime labour certificate may be renewed subject to a new inspection in accordance with paragraph 6 above to ascertain that the ship concerned continues to meet the standards of this Merchant Shipping (Maritime Labour Convention 2006) Regulations. When the renewal inspection has been completed within three months before the expiry of the existing maritime labour certificate, the new maritime labour certificate is valid from the date of completion of the renewal inspection for a period not exceeding five years from the date of expiry of the existing certificate. When the renewal

inspection is completed more than three months before the expiry date of the existing maritime labour certificate, the new maritime labour certificate is valid for a period not exceeding five years starting from the date of completion of the renewal inspection.

- (10) A maritime labour certificate may be issued on an interim basis:
  - (a) to new ships on delivery;
  - (b) when a ship changes flag;
  - (c) when a shipowner assumes responsibility for the operation of a ship which is new to that shipowner.
- (11) An interim maritime labour certificate may be issued for a period not exceeding six months by the competent authority or a recognized organization duly authorized for this purpose following verification that:
  - (a) the ship has been inspected, as far as reasonable and practicable, for the matters covered by the 14 items listed in the declaration of maritime labour compliance, taking into account verification of items under subparagraphs (b), (c) and (d) of this paragraph;
  - (b) the shipowner has demonstrated to the competent authority or recognized organization that the ship has adequate procedures to comply with the standards of this Merchant Shipping (Maritime Labour Convention 2006) Regulations;
  - (c) the master is familiar with the requirements of this Merchant Shipping (Maritime Labour Convention 2006) Regulations and the responsibilities for implementation; and
  - (d) relevant information has been submitted to the competent authority or recognized organization to produce a declaration of maritime labour compliance.
- (12) An inspection in accordance with paragraph 6 above shall be carried out prior to expiry of the interim certificate to enable issue of the full-term maritime labour certificate. No further interim certificate may be issued following the initial six months. A declaration of maritime labour compliance need not be issued for the period of validity of the interim certificate.
- (13) The results of all subsequent inspections or other verifications carried out with respect to the ship concerned and any significant deficiencies found during any such verification must be recorded, together with the date when the deficiencies were found to have been remedied. This record, accompanied by an English language translation where it is not in English, must appended to the declaration of maritime labour compliance or made available in some other way to seafarers, flag State inspectors, authorized officers in port States and shipowners' and seafarers' representatives.
- (14) A current valid maritime labour certificate and declaration of maritime labour compliance, accompanied by an English language translation where it is not in

English, shall be carried on the ship and a copy shall be posted in a conspicuous place on board where it is available to the seafarers. A copy shall be made available upon request, to seafarers, flag State inspectors, authorized officers in port States, and shipowners' and seafarers' representatives.

- (15) The requirement for an English language translation in paragraphs 13 and 14 does not apply in the case of a ship not engaged in an international voyage.
- (16) A maritime labour certificate, including an interim certificate where applicable, will cease to be valid in any of the following cases:
  - (a) if the relevant inspections are not completed within the periods specified under paragraph 9 above;
  - (b) if the certificate is not endorsed in accordance with paragraph 8;
  - (c) when a ship changes flag;
  - (d) when a shipowner ceases to assume the responsibility for the operation of a ship;
  - (e) when substantial changes have been made to the structure or equipment covered in Regulation 15 of the Merchant Shipping (Maritime Labour Convention 2006 ) Regulations.
- (17) In the case referred to in paragraph 16(c), (d) or (e), a new certificate may only be issued when the competent authority or a recognized organization issuing the new certificate is fully satisfied that the ship is in compliance with the requirements set out above.
- (18) A maritime labour certificate shall be withdrawn by the competent authority or a recognized organization duly authorized for this purpose, if there is evidence that the ship is not in compliance with the requirements of this Merchant Shipping (Maritime Labour Convention 2006) Regulations and any required corrective action has not been taken.
- (19) When considering whether a maritime labour certificate should be withdrawn in accordance with paragraph 18 the competent authority or the recognized organization shall take into account the seriousness or the frequency of the deficiencies.

#### **22.4. Inspection and enforcement**

- (1) The competent authority shall maintain a system of inspection of the conditions for seafarers on ships that fly the flag of Tuvalu including verification that the measures relating to working and living conditions as set out in the declaration of maritime labour compliance, where applicable, are being followed.
- (2) The competent authority shall develop compliance and enforcement policy to ensure consistency and otherwise guide inspection and enforcement activities related to this Merchant Shipping (Maritime Labour Convention

2006) Regulations. Copies of this policy shall be provided to all inspectors and relevant law-enforcement officials and shall be made available to the public and shipowners and seafarers.

- (3) Inspections shall take place at the intervals required under Regulation 22.4 of the Merchant Shipping (Maritime Labour Convention 2006) Regulations, where applicable. Intervals shall in no case exceed three years. Inspections of seafarer accommodation must be carried out when:
  - (a) a ship is registered or re-registered; or
  - (b) the seafarer accommodation on a ship has been substantially altered.
- (4) If the competent authority receives a complaint which it does not consider manifestly unfounded or obtains evidence that a ship that flies the flag of Tuvalu does not conform to the requirements of Merchant Shipping (Maritime Labour Convention 2006) Regulations or that there are serious deficiencies in the implementation of the measures set out in the declaration of maritime labour compliance, the competent authority shall investigate the matter and ensure that action is taken to remedy any deficiencies found.
- (5) The competent authority shall establish simple procedures to enable it to receive information in confidence concerning possible breaches of this Merchant Shipping (Maritime Labour Convention 2006) Regulations presented by seafarers directly or by representatives of the seafarers, and permit inspectors to investigate such matters promptly, including:
  - (a) enabling masters, seafarers or representatives of the seafarers to request an inspection when they consider it necessary; and
  - (b) supplying technical information and advice to shipowners and seafarers and organizations concerned as to the most effective means of complying with the requirements of this Merchant Shipping (Maritime Labour Convention 2006) Regulations and of bringing about a continual improvement in seafarers' on-board conditions.
- (6) The competent authority shall appoint a sufficient number of qualified inspectors to fulfil the responsibilities in paragraph 1 above.
- (7) The competent authority shall adopt adequate rules that are effectively enforced to guarantee that inspectors have the status and conditions of service to ensure that they are independent of changes of government and of improper external influences.
- (8) Inspectors must not undertake duties which might, because of their number or nature, interfere with effective inspection or prejudice in any way their authority or impartiality in their relations with shipowners, seafarers or other interested parties. In particular, inspectors:
  - (a) are prohibited from having any direct or indirect interest in any operation which they are called upon to inspect; and

- (b) subject to appropriate sanctions or disciplinary measures, must not reveal, even after leaving service, any commercial secrets or confidential working processes or information of a personal nature which may come to their knowledge in the course of their duties.
- (9) The competent authority shall have the resources necessary to fulfil their functions. In particular:
  - (a) duly qualified technical experts and specialists may be called upon, as needed, to assist in the work of inspectors; and
  - (b) inspectors shall be provided with conveniently situated premises, equipment and means of transport adequate for the efficient performance of their duties.
- (10) Inspectors must have qualifications and adequate training to perform their duties and where possible must have a maritime education or experience as a seafarer. They must have adequate knowledge of seafarers' working and living conditions and of the English language and must be fully trained and sufficient in numbers to secure the efficient discharge of their duties with due regard to:
  - (a) the importance of the duties which the inspectors have to perform, in particular the number, nature and size of ships subject to inspection and the number and complexity of the legal provisions to be enforced;
  - (b) the resources placed at the disposal of the inspectors; and
  - (c) the practical conditions under which inspections must be carried out in order to be effective.
- (11) Inspectors, with proper credentials acting in accordance with the policy referred to in paragraph 2 above have the following powers:
  - (a) to board a ship that flies the flag of Tuvalu freely and without previous notice; when commencing the ship inspection, inspectors must provide notification of their presence to the master or person in charge and, where appropriate, to the seafarers or their representatives;
  - (b) to carry out any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the standards are being strictly observed, including the following:
    - (i) to question the master, seafarer or any other person, including the shipowner or the shipowner's representative, on any matter concerning the application of the requirements under laws and regulations, in the presence of any witness that the person may have requested;
    - (ii) to require the production of any books, log books, registers, certificates or other documents or information directly related to matters subject to inspection, in order to verify compliance;
    - (iii) to enforce the posting of notices as required;

- (iv) to take or remove, for the purpose of analysis, samples of products, cargo, drinking water, provisions, materials and substances used or handled; when a sample is being taken or removed, the shipowner or the shipowner's representative, and where appropriate a seafarer, must be notified or must be present at the time the sample is taken or removed and the quantity of such a sample must be properly recorded by the inspector;
  - (c) to require that any deficiency is remedied and, where they have grounds to believe that deficiencies constitute a serious breach of the requirements of this Merchant Shipping (Maritime Labour Convention 2006) Regulations, or represent a significant danger to seafarers' safety, health or security, to prohibit a ship from leaving port until necessary actions are taken.
- (12) Inspectors should also at a minimum have the power:
  - (a) following an inspection, to bring immediately to the attention of the shipowner, the operator of the ship or the master, deficiencies which may affect the health and safety of those on board ship;
  - (b) to alert the competent authority and, if applicable, the recognized organization to any deficiency or abuse not specifically covered by existing laws or regulations and submit proposals to them for the improvement of the laws or regulations; and
  - (c) to notify the competent authority of any occupational injuries or diseases affecting seafarers in such cases and in such manner as may be prescribed by laws and regulations.
- (13) Inspectors have the discretion to give advice instead of instituting or recommending proceedings when there is no clear breach of the requirements of this Merchant Shipping (Maritime Labour Convention 2006) Regulations that endangers the safety, health or security of the seafarers concerned and where there is no prior history of similar breaches.
- (14) Inspectors must treat as confidential the source of any grievance or complaint alleging a danger or deficiency in relation to seafarers' working and living conditions or a violation of laws and regulations and give no intimation to the shipowner, the shipowner's representative or the operator of the ship that an inspection was made as a consequence of such a grievance or complaint.
- (15) Inspectors must submit a report of each inspection to the competent authority. One copy of the report in English or in the working language of the ship must be provided to the master of the ship and another copy must be posted on the ship's notice board for the information of the seafarers and, upon request, sent to their representatives.
- (16) The competent authority shall maintain records of inspections of the conditions for seafarers on ships of Tuvalu.

- (17) The annual report on inspection activities will be published within a reasonable time, not exceeding six months after the end of the year. It will contain the following information:
  - (a) a list of laws and regulations in force relevant to seafarers' working and living conditions and any amendments which have come into effect during the year;
  - (b) details of the organization of the system of inspection;
  - (c) statistics of ships or other premises subject to inspection and of ships and other premises actually inspected;
  - (d) statistics on all seafarers subject to the laws and regulations of Tuvalu
  - (e) statistics and information on violations of legislation, penalties imposed and cases of detention of ships;
  - (f) statistics on reported occupational injuries and diseases affecting seafarers.
- (18) In the case of an investigation pursuant to a major incident, the report must be submitted to the competent authority as soon as practicable, but not later than one month following the conclusion of the investigation.
- (19) When an inspection is conducted or when measures are taken, all reasonable efforts must be made to avoid a ship being unreasonably detained or delayed.
- (20) Compensation shall be payable in accordance with the common law of Tuvalu for any loss or damage suffered as a result of the wrongful exercise of the inspectors' powers. The burden of proof in each case is on the complainant.
- (21) A fine of \$200.00 and other corrective measures apply
  - (a) for breaches of the requirements of this Merchant Shipping (Maritime Labour Convention 2006) Regulations; and
  - (b) for obstructing inspectors in the performance of their duties.
- (22) Any action taken pursuant to paragraph 11 (c) above is subject to a right of appeal to a judicial or administrative authority.

## **22.5 On-board complaint procedures**

- (1) Ships must have an approved on-board complaint procedures for the fair, effective, well documented and expeditious handling of seafarer complaints alleging breaches of the requirements of this Merchant Shipping (Maritime Labour Convention 2006) Regulations.
- (2) Any adverse action taken by any person with respect to a seafarer for lodging a complaint, which is not manifestly vexatious or maliciously made, is considered victimization and is prohibited.

- (3) Shipowners must provide all seafarers working on a ship with a copy of the approved on-board complaint procedures applicable on the ship.
- (4) On-board complaint procedures that are approved by the competent authority must:
  - (a) seek to resolve complaints at the lowest level possible; however, in all cases, seafarers must have a right to complain directly to the master and, where they consider it necessary, to appropriate external authorities;
  - (b) include the right of the seafarer to be accompanied or represented during the complaints procedure, as well as safeguards against the possibility of victimization of seafarers for filing complaints; in order to help avoid problems of victimization of seafarers making complaints, the procedures should encourage the nomination of a person on board who can advise seafarers on the procedures available to them and, if requested by the complainant seafarer, also attend any meetings or hearings into the subject matter of the complaint;
  - (c) include contact information for the competent authority and, where different, the competent authority in the seafarers' country of residence, as well as the name of a person or persons on board the ship who can, on a confidential basis, provide seafarers with impartial advice on their complaint and otherwise assist them in following the complaint procedures available to them on board the ship.
- (5) Subject to any relevant provisions of an applicable collective agreement, the competent authority shall, in close consultation with the shipowners' and seafarers' organizations, develop a model for fair, expeditious and well-documented on-board complaint-handling procedures; the following procedures must, at a minimum, be among those discussed during this consultative process:
  - (a) complaints should be addressed to the head of the department of the seafarer lodging the complaint or to the seafarer's superior officer;
  - (b) the head of department or superior officer must then attempt to resolve the matter within prescribed time limits appropriate to the seriousness of the issues involved;
  - (c) if the head of department or superior officer cannot resolve the complaint to the satisfaction of the seafarer, the latter may refer it to the master, who must handle the matter personally;
  - (d) seafarers must at all times have the right to be accompanied and to be represented by another seafarer of their choice on board the ship concerned;
  - (e) all complaints and the decisions on them must be recorded and a copy provided to the seafarer concerned;
  - (f) if a complaint cannot be resolved on board, the matter must be referred ashore to the shipowner, who must be given an appropriate time limit

for resolving the matter, where appropriate, in consultation with the seafarers concerned or any person they may appoint as their representative; and

- (g) in all cases seafarers must have a right to file their complaints directly with the master and the shipowner and competent authorities.
- (6) Any act of victimization as defined in paragraph 2 is subject to a penalty of \$200.00 fine.
- (7) The paragraphs set out above are without prejudice to a seafarer's right to seek redress through whatever legal means the seafarer considers appropriate.

## **22.6 Marine casualties**

- (1) The competent authority shall hold an official inquiry into any serious marine casualty, leading to injury or loss of life that involves a ship that flies the flag of Tuvalu. The final report of an inquiry must normally be made public.
- (2) The competent authority shall cooperate with the competent authorities in other countries to facilitate the investigation of serious marine casualties.

## **23 Port State responsibilities**

### **23.1 Inspection in Ports**

- (1) Every foreign ship calling, in the normal course of its business or for operational reasons, in the port of Tuvalu may be subject to an inspection, carried out by authorized officers, to review compliance with the requirements of the Convention including seafarers' rights relating to the working and living conditions of seafarers on the ship.
- (2) A valid maritime labour certificate and declaration of maritime labour compliance shall be accepted as prima facie evidence of compliance with the requirements of the Convention including seafarers' rights. Accordingly, inspection in ports shall, except in the circumstances specified below in paragraph 4, be limited to a review of the certificate and declaration.
- (3) The competent authority shall establish an effective port State inspection and monitoring system to help ensure that the working and living conditions for seafarers on foreign ships entering a port of Tuvalu meet the requirements of the Convention including seafarers' rights. In particular the competent authority shall develop an inspection policy for authorized officers carrying out inspections under paragraph 1. The objective of the policy must be to ensure consistency and to otherwise guide inspection and enforcement activities related to the requirements of the Convention (including seafarers' rights) and must provide authorized officers with guidance, as to the kinds of

circumstances justifying detention of a ship under paragraph 9 below. Copies of this policy must be provided to all authorized officers and must be available to the public and to shipowners and seafarers.

- (4) Where an authorized officer, having come on board to carry out an inspection and requested, where applicable, the maritime labour certificate and the declaration of maritime labour compliance, finds that:
  - (a) the required documents are not produced or maintained or are falsely maintained or that the documents produced do not contain the information required by the Convention or are otherwise invalid; or
  - (b) there are clear grounds for believing that the working and living conditions on the ship do not conform to the requirements of the Convention; or
  - (c) there are reasonable grounds to believe that the ship has changed flag for the purpose of avoiding compliance with the Convention; or
  - (d) there is a complaint alleging that specific working and living conditions on the ship do not conform to the requirements of the Convention; a more detailed inspection may be carried out to ascertain the working and living conditions on board the ship. Such inspection shall in any case be carried out where the working and living conditions believed or alleged to be defective could constitute a clear hazard to the safety, health or security of seafarers or where the authorized officer has grounds to believe that any deficiencies constitute a serious breach of the requirements of the Convention (including seafarers' rights).
- (5) Where a more detailed inspection is carried out on a foreign ship in the circumstances set out in paragraph 4(a), 4(b) or 4(c), it shall in principle cover the matters listed in Appendix A5-III of the Convention, which correspond to the 14 items listed in the declaration of maritime labour compliance.
- (6) In the case of a complaint under paragraph 4(d), the inspection shall generally be limited to matters within the scope of the complaint, although a complaint, or its investigation, may provide clear grounds for a detailed inspection in accordance with paragraph 4(b). For the purpose of paragraph 4(d), complaint means information submitted by a seafarer, a professional body, an association, a trade union or, generally, any person with an interest in the safety of the ship, including an interest in safety or health hazards to seafarers on board.
- (7) Where, following a more detailed inspection, the working and living conditions on the ship are found not to conform to the requirements of the Convention, the authorized officer shall forthwith bring the deficiencies to the attention of the master of the ship, with required deadlines for their rectification. In the event that such deficiencies are considered by the authorized officer to be significant, or if they relate to a complaint made in

accordance with paragraph 4(d), the authorized officer shall bring the deficiencies to the attention of the seafarers' and shipowners' organizations and may:

- (a) notify a representative of the flag State;
  - (b) provide the competent authorities of the next port of call with the relevant information.
- (8) A copy of the officer's report, which must be accompanied by any reply received from the competent authorities of the flag State within the prescribed deadline, may be transmitted to the Director-General of the International Labour Office with a view to such action as may be considered appropriate and expedient in order to ensure that a record is kept of such information and that it is brought to the attention of parties which might be interested in availing themselves of relevant recourse procedures.
- (9) Where, following a more detailed inspection by an authorized officer, the ship is found not to conform to the requirements of the Convention and:
- (a) the conditions on board are clearly hazardous to the safety, health or security of seafarers; or
  - (b) the non-conformity constitutes a serious or repeated breach of the requirements of the Convention (including seafarers' rights); the authorized officer shall take steps to ensure that the ship does not proceed to sea until any non-conformities that fall within the scope of subparagraph (a) or (b) of this paragraph have been rectified, or until the authorized officer has accepted a plan of action to rectify such non-conformities and is satisfied that the plan will be implemented in an expeditious manner. If the ship is prevented from sailing, the authorized officer shall forthwith notify the flag State accordingly and invite a representative of the flag State to be present, if possible, requesting the flag State to reply within a prescribed deadline. The authorized officer shall also inform forthwith the shipowners' and seafarers' organizations.
- (10) All possible efforts shall be made to avoid a ship being unduly detained or delayed. If a ship is found to be unduly detained or delayed, compensation shall be paid for any loss or damage suffered. The burden of proof in each case shall be on the complainant.

### **23.2 Onshore seafarer complaint-handling procedures**

- (1) Seafarers on foreign ships who allege a breach of the requirements of the Convention including seafarers' rights have the right to report such a complaint in order to facilitate a prompt and practical means of redress.
- (2) A complaint by a seafarer alleging a breach of the requirements of the Convention including seafarers' rights may be reported to an authorized

officer in the port at which the seafarer's ship has called. In such cases, the authorized officer shall undertake an initial investigation, taking account of the following principles:

- (a) the authorized officer should first check whether the complaint is of a general nature which concerns all seafarers on the ship, or a category of them, or whether it relates only to the individual case of the seafarer concerned;
  - (b) if the complaint relates to an individual case, the authorized officer must ascertain whether the ship's on-board complaint procedures required under Regulation 22.5 and the Code of the Convention have been explored and an examination of the results of any on-board complaint procedures for the resolution of the complaint concerned should be undertaken;
  - (c) if such procedures have not been explored, the authorized officer should suggest that the complainant take advantage of any such procedures available; there should be good reasons for considering a complaint before any on-board complaint procedures have been explored; such reasons would include the inadequacy of, or undue delay in, the internal procedures or the complainant's fear of reprisal for lodging a complaint;
  - (d) if the complaint is of a general nature, the authorized officer should consider conducting a more detailed inspection in accordance with Regulation 22.8 of the Merchant Shipping (Maritime Labour Convention) Regulations.
- (3) In any investigation of a complaint, the authorized officer must give the master, the shipowner and any other person involved in the complaint a proper opportunity to make known their views.
  - (4) The authorized officer shall, where appropriate, seek to promote a resolution of the complaint at the ship-board level.
  - (5) In the event that the investigation or an inspection reveals a non-conformity that falls within the scope of paragraph 9 of Regulation 22.8 of this Merchant Shipping (Maritime Labour Convention 2006) Regulations, the provisions of that paragraph shall be applied.
  - (6) Where the provisions of paragraph 5 do not apply, and the complaint has not been resolved at the ship-board level, the authorized officer must forthwith notify the flag State, seeking, within a prescribed deadline, advice and a corrective plan of action.
  - (7) In the event that the flag State demonstrates, that it will handle the matter, and that it has in place effective procedures for this purpose and has submitted an acceptable plan of action, the authorized officer may refrain from any further involvement with the complaint.

- (8) Where the complaint has not been resolved following action taken in accordance with paragraph 6, the port State shall transmit a copy of the authorized officer's report to the Director-General. The report must be accompanied by any reply received within the prescribed deadline from the competent authority of the flag State. The seafarers' and shipowners' organizations (see Schedule I of the Merchant Shipping (Maritime Labour Convention 2006) Regulations) shall be similarly informed. In addition, statistics and information regarding complaints that have been resolved shall be regularly submitted by the competent authority to the Director-General. Both such submissions are provided in order that, on the basis of such action as may be considered appropriate and expedient, a record is kept of such information and is brought to the attention of parties, including shipowners' and seafarers' organizations, which might be interested in availing themselves of relevant recourse procedures.
- (9) Appropriate steps shall be taken to safeguard the confidentiality of complaints made by seafarers.

**SCHEDULE I**



Maritime Labour Certificate

(Note: This Certificate shall have a Declaration of Maritime Labour Compliance attached)

Issued under the provisions of Article V and Title 5 of the Maritime Labour Convention, 2006 (referred to below as “the Convention”) under the authority of the Government of

**TUVALU**

by .....

(full designation and address of the competent authority or recognized organization duly authorized under the provisions of the Convention)

With respect to the provisions of the Maritime Labour Convention, 2006 (also referred to below as “MLC 2006”), the following referenced ship:

<b>Name of Ship</b>	
<b>Distinctive number or letters</b>	
<b>Port of registry</b>	
<b>Date of registry</b>	
<b>Gross Tonnage<sup>1</sup></b>	
<b>IMO Number</b>	
<b>Type of ship</b>	
<b>Name and address of the shipowner<sup>2</sup></b>	

1 For ships covered by the tonnage measurement interim scheme adopted by the IMO, the gross tonnage is that which is included in the REMARKS column of the International Tonnage Certificate (1969). See Article II (1) (c) of the Convention.

2 *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 organizations or persons fulfill certain of the duties or responsibilities on behalf of the shipowner. See Article II(1)(j) of the Convention.

This is to certify:

1. That this ship has been inspected and verified to be in compliance with the requirements of the Convention, and the provisions of the attached Declaration of Maritime Labour Compliance.

2. That the seafarers' working and living conditions specified in Appendix A5-I of the Convention were found to correspond to the abovementioned country's national requirements implementing the Convention. These national requirements are summarized in the Declaration of Maritime Labour Compliance, Part I.

This Certificate is valid until ..... subject to inspections in accordance with Standards A5.1.3 and A5.1.4 of the Convention.

This Certificate is valid only when the Declaration of Maritime Labour Compliance issued at ..... on ..... is attached.

Completion date of the inspection on which this Certificate is based was .....

Issued at ..... on .....

.....  
Signature of the duly authorized official issuing the Certificate  
(Seal or stamp of issuing authority, as appropriate)

Endorsements for mandatory intermediate inspection and, if required, any additional inspection  
This is to certify that the ship was inspected in accordance with Standards A5.1.3 and A5.1.4 of the Convention and that the seafarers' working and living conditions specified in Appendix A5-I of the Convention were found to correspond to the abovementioned country's national requirements implementing the Convention.

Intermediate inspection: Signature : \_\_\_\_\_  
(to be completed between the (Signature of authorized  
second and third anniversary official)  
dates)

Place : \_\_\_\_\_

Date : \_\_\_\_\_  
(seal or stamp of the authority,  
as appropriate)

Additional endorsements (if required)

This is to certify that the ship was the subject of an additional inspection for the purpose of verifying that the ship continued to be in compliance with the national requirements implementing the Convention, as required by Standard A3.1, paragraph 3, of the Convention (re-registration or substantial alteration of accommodation) or for other reasons.

Additional inspection: Signature : \_\_\_\_\_  
(if required) (Signature of authorized official)

Place : \_\_\_\_\_

Date : \_\_\_\_\_  
(seal or stamp of the authority, as appropriate)

Additional inspection: Signature : \_\_\_\_\_  
(if required) (Signature of authorized official)

Place : \_\_\_\_\_

Date : \_\_\_\_\_  
(seal or stamp of the authority, as appropriate)

Additional inspection: Signature : \_\_\_\_\_  
(if required) (Signature of authorized official)

Place : \_\_\_\_\_

Date : \_\_\_\_\_  
(seal or stamp of the authority, as appropriate)

## Schedule II



GOVERNMENT OF TUVALU

TUVALU SHIP REGISTRY

MARITIME LABOUR CONVENTION, 2006

### Declaration of Maritime Labour Compliance – Part I

(Note: This Declaration must be attached to the ship's Maritime Labour Certificate)

Issued under the authority of the Government of

#### TUVALU

With respect to the provisions of the Maritime Labour Convention, 2006 (also referred to below as "MLC 2006"), the following referenced ship:

Name of Ship	IMO Number	Gross Tonnage

is maintained in accordance with Standard A5.1.3 of the Convention.

The undersigned declares, on behalf of the abovementioned competent authority, that:

- the provisions of the MLC 2006 are fully embodied in the national requirements referred to below;
- these national requirements are contained in the national provisions referenced below; explanations concerning the content of those provisions where they differ from the MLC 2006 are provided where necessary;
- the details of any substantial equivalencies under Article VI, paragraphs 3 and 4, are provided in the section provided for this purpose below;
- any exemptions granted by the competent authority in accordance with Title 3 are clearly indicated in the section provided for this purpose below; and
- any ship-type specific requirements under national legislation are also referenced under the requirements concerned.

<p>Minimum age (Regulation 3)</p> <p><i>The minimum age to be employed or hired and able to work on board a Tuvalu flagged vessel is 16 years old.</i></p> <p><i>The employment, engagement or work of seafarers under the age of 18 is prohibited where the work is likely to jeopardize their health or safety. Refer to Marine Circular MC-9/2012/1.</i></p>
---

<p>Medical Certification (Regulation 4)</p> <p><i>Seafarers employed on a Tuvalu flagged vessel must undergo a medical examination prior to employment aboard a vessel (not more than 12 months prior to the date of making application) and normally (unless a shorter time is specified for specific duties or required by STCW) every two (2) years thereafter (unless the seafarer is under the age of 18 where an annual exam is required) to obtain a valid medical certificate/report showing medical fitness for duty. The scope of the medical exam for both pre-sea and periodic assessments is identical. Refer to Marine Guidance MG-2/2012/1.</i></p> <p><i>Medical certificates issued in accordance to the requirements of the STCW Convention 1978, as amended, shall be accepted by Tuvalu for the purpose of this requirement. Similarly, a medical certificate meeting the substance of those requirements, in the case of seafarers not covered by the STCW Convention 1978, as amended, shall also be accepted.</i></p> <p><i>Permits can be requested for urgent cases when the medical certificate has expired provided that the medical certificate has not expired for greater than 6 months. Such permit shall not exceed a 3 month period.</i></p>
---

<p>Qualifications of Seafarers (Regulation 5)</p> <p><i>Seafarers shall have the appropriate training and qualifications, as well as certificate(s) accrediting their professional competences and other qualifications to perform their functions duly issued or endorsed by the Competent Authority in accordance to the International Convention on Standards of Training, Certification and Watchkeeping, 1978, as amended and revised from time to time.</i></p> <p><i>If any seafarer forges or fraudulently alters or procures the forgery or fraudulent alteration of any such official document he shall forfeit to his employer all wages above the amount payable to an ordinary seafarer for the period during which he was employed in reliance upon such forged or altered document and shall be subject to the penalties provided for in Section 77 of the Tuvalu Merchant Shipping Act.</i></p>
---

<p>Seafarers' Employment Agreements (Regulation 7)</p> <p><i>Seafarers working on board a Tuvalu flagged vessel shall have an employment agreement signed by the seafarer and the ship owner / operator, or a representative that guarantees decent working and living conditions on board the ship, and each shall retain an original copy of the signed agreement for the duration of its term. All seafarers shall have the opportunity to review the conditions stated on the employment agreement and, if necessary, seek advice before signing.</i></p> <p><i>Ship owners / operators must ensure that clear information as to the conditions of employment can be easily obtained on board by the seafarers concerned, 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.</i></p>
--

Use of any Licensed or Certified or Regulated Private Recruitment and Placement Service (Regulation 6)

*Private seafarer recruitment and placement of services (SRPS) operating in Tuvalu shall be issued licences or certificates or granted similar authorization.*

*Ship owners / operators using services of SRPS that are not located in countries or territories where the MLC 2006 applies are required to demonstrate, as far as practicable, that such services meet the relevant requirements set forth in Regulation 1.4 of Title 1 of the MLC 2006, and shall be solely responsible for any detention, as well as any penalties imposed by such detention, by Flag State or Port State, that is the result of the use of a SRPS located in a State where MLC 2006 does not apply.*

Hours of Work or Rest (Regulation 9)

*Ship owners / operators must ensure that the minimum number of hours of rest shall not be less than:*

*10 hours in any 24-hour period, which may be divided into no more than two (2) periods – one of which shall be at least six (6) hours in length, and no more than 14 hours between any consecutive periods; and*

*77 hours in any 7-day period.*

*Every vessel shall have a record of hours of rest in order to serve as documentary evidence that the seafarer's minimum resting hours are met. Refer to Marine Circular MC-11/2012/1 for forms for the Table of Working Arrangements and for the Records of Hours of Rest.*

*The daily records of the resting hours shall be written in the working language or languages of the ship and in English. Each seafarer shall receive a copy of the records pertaining to her or him, which shall be endorsed by the master, or a person authorized by the master and the seafarer. Nonetheless, in passenger ships, the daily records of resting hours can be electronically sent to seafarers, as long as these had been approved by the master or by the person that he authorizes.*

Manning levels for the ship (Regulation 13)

*All Tuvalu flagged vessels shall have a sufficient number of seafarers on board to ensure that vessels are operated safely, efficiently and with due regard to security. Every vessel shall be manned by a crew that is adequate, in terms of size and qualifications, to ensure the safety and security of the vessel and its personnel, under all operating conditions, in accordance with minimum safe manning certificate issued by the Tuvalu Ship Registry or the equivalent document issued by the same.*

<p>Accommodation (Regulation 15)</p> <p><i>Ship owners / operators shall ensure that Tuvalu flagged vessels are provided with decent accommodations for seafarers working or living on board, or both, and maintained consistent with promoting the seafarers' health and well-being.</i></p> <p><i>The provisions of the Merchant Shipping (Maritime Labour Convention 2006) Regulations relating to ship construction and equipment apply only to ships constructed after the date in which the MLC 2006 enters into force.</i></p> <p><i>Ship construction and equipment for ships constructed before MLC 2006 enters into force shall comply with the provisions set out in the Accommodation of Crews Convention No. 92, and the Accommodation of Crews Convention (Supplementary Provisions) No. 133 of the ILO.</i></p> <p><i>The master or the person designated by him shall conduct frequent inspections on board ships to ensure that the accommodation of seafarers is clean, decently habitable and maintained in a good state of repair. The results of each inspection shall be recorded and available for review.</i></p>
<p>On-board recreational facilities (Regulation 15)</p> <p><i>Ship owners / operators shall ensure that Tuvalu flagged vessels are provided with recreational facilities for seafarers working or living on board, or both, and maintained consistent with promoting the seafarers' health and well-being. Refer to Marine Circular MC-7/2012/1.</i></p>
<p>Food and catering (Regulation 16)</p> <p><i>Ship owners / operators shall maintained on board the following minimum standards:</i></p> <p><i>food and drinking water supplies, having regard to the number of seafarers on board, their religious requirements and cultural practices as they pertain to food, and duration and nature of the voyage, shall be suitable in respect of quantity, nutritive value, quality and variety;</i></p> <p><i>the organization and equipment of the catering department shall be such as to permit the provision to the seafarers of adequate, varied and nutritious meals prepared and served in hygienic conditions; and</i></p> <p><i>catering staff shall be properly trained or instructed for their positions.</i></p> <p><i>Seafarers living on board a vessel shall be provided with food free of charge during the period of engagement.</i></p> <p><i>Refer to Marine Circular MC-7/2012/1 (Sections 1, 15, 16 and 17) and Marine Guidance MG-1/2012/1.</i></p>

Health and safety and accident prevention (Regulation 19)

*Ship owners / operators have the obligation to:*

*adopt policies and programmes relating to occupational safety and health management that includes risk evaluation as well as training and instruction of seafarers with the purpose to prevent occupational accidents, injuries and diseases, including measures to reduce and prevent the risk of exposure to harmful levels of environmental factors and chemicals substances, as well as the risk of injuries or diseases that may arise from the use of equipment and machinery on board ships;*

*to provide seafarers with protective equipment or other accident prevention devices accompanied by provisions on the use of such equipment or protection devices;*

*to ensure that the machineries used on board are properly guarded and that its use without appropriate safety guards is prevented; and*

*to ensure that a Safety Committee is established on board a ship that has five or more seafarers.*

*Refer to Marine Guidance MG-3/2012/1 for Guidance on the Basic Elements of a Shipboard Occupational Health and Safety Program and Marine Circular MC-9/2012/1 for Health & Safety Issues for Seafarers under the Age of 18.*

On-board medical care (Regulation 17)

*Ship owners / operators shall ensure that health protection and medical care (including essential dental care) are provided for seafarers working on board vessels taking into consideration cultural and religious backgrounds are maintained which:*

*ensures the application to seafarers of any general provisions on occupational health protection and medical care relevant to their duties, as well as of special provisions specific to work on board vessels;*

*gives health protection and medical care as comparable as possible to that which is generally available to workers ashore, including prompt access to the necessary medicines, medical equipment and facilities for diagnosis and treatment and to medical information and expertise;*

*gives seafarers the right to visit a qualified medical doctor or dentist without delay in ports of call, where practicable;*

*ensures that, to the extent consistent with the national law and practice, medical care and health protection services while a seafarer is on board a vessel or landed in a foreign port are provided free of charge to seafarers;*

*are not limited to treatment of sick or injured seafarers but include measures of a preventive nature.*

*Refer to Marine Circular MC-2/2007/12/2 (Sections 1, 3 and 4)*

<b>On-board complaint procedures (Regulation 22.5)</b>
<p><i>There shall be on board complaint procedures that allow for the fair and effective handling of seafarer complaints alleging violations of the provisions of MLC 2006.</i></p> <p><i>Seafarers shall be provided, together with a copy of their seafarers' employment agreement, a copy of the on board complaint procedures applicable to the ship as prescribed in Marine Circular MC-10/2012/1.</i></p> <p><i>Utilization of on board compliant procedures shall not prejudice a seafarer's right to seek redress through conciliation and mediation, arbitration or legal means.</i></p> <p><i>Any victimization of a seafarer for filing a complaint is strictly prohibited. Victimization is understood to mean 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.</i></p>
<b>Payment of Wages (Regulation 8)</b>
<p><i>Ship owners / operators shall ensure that all seafarers are:</i></p> <p><i>paid at no greater than monthly intervals and in accordance with their seafarers' employment agreement and any applicable collective agreement;</i></p> <p><i>given a monthly account of the payments due and the amounts paid, including wages, additional payments and the rate of exchange used where payment has been made in a currency or at a rate different from the one agreed to; and</i></p> <p><i>allowed to, at the time of their entering employment or during it, to allot, if they so desire, a proportion of their wages for remittance at regular intervals to their families by bank transfers or similar means. Allotments must be remitted in due time and directly to the person or persons nominated by the seafarers.</i></p> <p><i>Refer to Marine Circular MC-12/2012/2 for Provisions for Seafarers Wages.</i></p>

Name : \_\_\_\_\_

Title : \_\_\_\_\_

Signature : \_\_\_\_\_

Place : \_\_\_\_\_

Date : \_\_\_\_\_

(seal or stamp of the authority, as appropriate)

**SUBSTANTIAL EQUIVALENCIES**

(Note: Strike out the statement which is not applicable)

The following substantial equivalencies, as provided under Article VII, paragraphs 3 and 4, of the Convention, except where stated above, are noted (*insert description if applicable*):

.....  
.....

No equivalency has been granted.

Name : \_\_\_\_\_

Title : \_\_\_\_\_

Signature : \_\_\_\_\_

Place : \_\_\_\_\_

Date : \_\_\_\_\_

(seal or stamp of the authority, as appropriate)

**Exemptions**

(Note: Strike out the statement which is not applicable)

The following exemptions granted by the competent authority as provided in Title 3 of the Convention are noted:

.....  
.....

No exemption has been granted.

Name : \_\_\_\_\_

Title : \_\_\_\_\_

Signature : \_\_\_\_\_

Place : \_\_\_\_\_

Date : \_\_\_\_\_

(seal or stamp of the authority, as appropriate)

**SCHEDULE III**

GOVERNMENT OF TUVALU

TUVALU SHIP REGISTRY

MARITIME LABOUR CONVENTION, 2006

Declaration of Maritime Labour Compliance – Part II

(Measures adopted to ensure ongoing compliance between inspections)

The following measures have been drawn up by the shipowner, named in the Maritime Labour Certificate to which this Declaration is attached, to ensure ongoing compliance between inspections:

(State below the measures drawn up to ensure compliance with each of the items in Part I – please attach additional sheets of paper if space below is insufficient)

1.	<b>Minimum age (Regulation 3)</b>	<input type="checkbox"/>
2.	<b>Medical Certification (Regulation 4)</b>	<input type="checkbox"/>
3.	<b>Qualifications of Seafarers (Regulation 5)</b>	<input type="checkbox"/>
4.	<b>Seafarers' Employment Agreements (Regulation 7)</b>	<input type="checkbox"/>
5.	<b>Use of any Licensed or Certified or Regulated Private Recruitment and Placement Service (Regulation 6)</b>	<input type="checkbox"/>
6.	<b>Hours of Work or Rest (Regulation 9)</b>	<input type="checkbox"/>
7.	<b>Manning levels for the ship (Regulation 13)</b>	<input type="checkbox"/>
8.	<b>Accommodation (Regulation 15)</b>	<input type="checkbox"/>
9.	<b>On-board recreational facilities (Regulation 15)</b>	<input type="checkbox"/>

10.	Food and catering (Regulation 16)	<input type="checkbox"/>
11.	Health and safety and accident prevention (Regulation 19)	<input type="checkbox"/>
12.	On-board medical care (Regulation 17)	<input type="checkbox"/>
13.	On-board complaint procedures (Regulation 22.5)	<input type="checkbox"/>
14.	Payment of Wages (Regulation 8)	<input type="checkbox"/>

I hereby certify that the above measures have been drawn up to ensure ongoing compliance, between inspections, with the requirements listed in Part I.

Name of shipowner<sup>1</sup> : \_\_\_\_\_

Company address : \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Name of the authorised signatory : \_\_\_\_\_

Title : \_\_\_\_\_

Signature of the authorised signatory : \_\_\_\_\_

Date : \_\_\_\_\_

(seal or stamp of the shipowner<sup>1</sup>)

The above measures have been reviewed by \_\_\_\_\_  
 (name of competent authority or duly recognized organization)

and, following inspection of the ship, have been determined as meeting the purposes set out under Standard 22.3, paragraph 10(b), regarding measures to ensure initial and ongoing compliance with the requirements set out in Part I of this Declaration.

Name : \_\_\_\_\_

Title \_\_\_\_\_

Address : \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signature : \_\_\_\_\_

Place : \_\_\_\_\_

Date : \_\_\_\_\_

(seal or stamp of the authority, as appropriate)

<sup>1</sup> 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 organizations or persons fulfil certain of the duties or responsibilities on behalf of the shipowner. See Article II(1)(j) of the Convention.

Interim Maritime Labour Certificate

Issued under the provision of Article V and Title 5 of the Maritime Labour Convention, 2006  
(referred to below as “the Convention”)

Under the authority of the Government of:

.....

(full designation of the State whose flag the ship is entitled to fly)

By

.....

(fully designation and address of the competent authority or recognized organization  
dully authorised under provisions of the Convention)

Particulars of the ship

Name of ship:.....

Distinctive number or letters:.....

Port of registry:.....

Date of registry:.....

Gross tonnage:.....

IMO number:.....

Type of ship:.....

Name and address of the shipowner:.....

.....

This is to certify, for the purpose of Standard A5.1.3. Paragraph 7 of the Convention, that:

This ship has been inspected, as far as reasonable and practicable, for the matters listed in Appendix A5-I to the Convention, taking into account verification of items under (b), (c) and (d) below;

The shipowner has demonstrated to the competent authority or recognize organization that the ship has adequate procedures to comply with the Convention;

The master is familiar with the requirements with the requirements of the Convention and the responsibilities for implementation; and

Relevant information has been submitted to the competent authority or recognized organization to produce a Declaration of Maritime Labour Compliance.

This Certificate is valid until ..... subject to inspections in accordance with Standard A5.1.3 and A5.1.4.

Completion date of the inspection referred to under (a) above was.....

Issued at .....on.....

Signature of the duly authorized official

Issuing the interim certificate.....