

MERCHANT SHIPPING (SEAFARERS) (WAGES AND ACCOUNTS) REGULATION

(Cap. 478 sections 86 and 134)

[2 September 1996]

1. *(Omitted as spent)*

2. **Application**

This Regulation shall apply to every seafarer employed under a crew agreement.

3. **Manner in which wages are to be paid**

- (1) Subject to subsection (2), the wages due to a seafarer under a crew agreement shall be paid in cash.
- (2) Where the seafarer has so agreed, the whole or part of the wages due to him may be paid by means of a cheque, money order or directly to a bank or giro account.

4. **Accounts of seafarers' wages**

- (1) The account of wages to be delivered to a seafarer under section 85(1) and (4) of the Ordinance shall contain the particulars specified in the Schedule and shall indicate which amounts (if any) stated in the account are estimated amounts.
- (2) The further account of wages to be delivered to a seafarer under section 85(3) and (4) of the Ordinance shall—
 - (a) contain the same particulars as are required to be contained in an account of wages to be delivered to a seafarer under section 85(1) and (4) of the Ordinance adjusted in such manner as the circumstances may require;
 - (b) indicate which amounts stated in the account are adjusted amounts;
 - (c) state the amount of wages already paid to the seafarer; and
 - (d) state the balance of wages remaining to be paid to the seafarer.
- (3) The Authority may, by notice in the Gazette, amend the Schedule.

5. **Authorization of deductions from wages**

- (1) The deductions specified in section 6 are hereby authorized to be made from the wages due to a seafarer under a crew agreement.
- (2) The deductions authorized by this section—
 - (a) shall be without prejudice to any dispute relating to the amount payable to a seafarer under the crew agreement and, subject to the provisions of the Ordinance, to the rights and obligations, whether of the employer or of the seafarer, under the agreement or otherwise; and

- (b) shall be in addition to any deduction authorized by any provision of the Ordinance (except section 86 of the Ordinance) or of any other enactment.

6. Particulars of deductions

The deductions referred to in section 5(1) are—

- (a) deductions of any amount payable by the seafarer to his employer in respect of—
 - (i) canteen bills;
 - (ii) goods supplied;
 - (iii) radio or telephone calls;
 - (iv) postage expenses;
 - (v) cash advances; and
 - (vi) allotments;
- (b) subject to sections 7, 8 and 9, a deduction of an amount being the actual expense or pecuniary loss incurred or sustained by the employer in consequence of the seafarers's absence or absences without leave, where the employer is satisfied on reasonable grounds that such absence is a breach of the seafarer's obligations under the crew agreement; and
- (c) subject to sections 7 and 9 and to any additional limitations imposed by the crew agreement, a deduction of an amount being the actual expense or pecuniary loss incurred or sustained by the employer, where the employer is satisfied on reasonable grounds that the expense or loss was caused by a breach or breaches of the seafarer's obligations under the crew agreement not falling within paragraph (b).

7. Amount which may be deducted from wages under section 6(b) and (c)

The amount which may be deducted from a seafarer's wages in respect of any number of breaches of his obligations under the crew agreement—

- (a) by virtue of section 6(b), shall not exceed \$10,000; and
- (b) by virtue of section 6(c), shall not exceed \$5,000.

8. Circumstances in which no deduction from wages shall be made under section 6(b)

No deduction shall be made by virtue of section 6(b) where the seafarer satisfies the master—

- (a) that his absence was due to an accident or mistake or some other cause beyond his control; and
- (b) that he took all reasonable precautions to avoid being absent.

9. Notice of deduction to be given to seafarer

- (1) A deduction shall not be made by virtue of section 6(b) or (c) unless the provisions of subsection (2) or (3) have been complied with.

- (2) Where it is possible for him to give a notice of deduction complying with subsection (4) not less than 24 hours before the seafarer's wages fall due to be paid, the seafarer's employer or the master on his behalf shall give to the seafarer—
- (a) a notice of deduction complying with subsection (4); and
 - (b) an opportunity to make representations about the deduction to the employer or to the master.
- (3) Where it is not possible for him to give a notice of deduction complying with subsection (4) not less than 24 hours before the seafarer's wages fall due to be paid, the seafarer's employer or the master on his behalf shall—
- (a) if it is possible to do so before the seafarer's wages fall due to be paid, give to the seafarer—
 - (i) a notice of deduction complying with subsection (4); and
 - (ii) an opportunity to make representations about the deduction to the employer or to the master; or
 - (b) if the seafarer has not been given such notice and opportunity, send to the seafarer by post at his last known address a notice of deduction complying with subsection (4).
- (4) A notice of deduction shall state that the employer is satisfied on reasonable grounds that there has been a breach or breaches, as the case may be, of the seafarer's obligations under the crew agreement and that, subject to the provisions of sections 5, 6, 7 and 8, the deduction specified in the notice appears to the employer to be authorized to be made from the wages due to the seafarer under the crew agreement; and such notice shall also—
- (a) identify each provision of the crew agreement of which the employer is satisfied on reasonable grounds that there has been a breach and in respect of which he intends to make a deduction;
 - (b) state the grounds upon which the employer is satisfied that each such breach has taken place;
 - (c) specify, with sufficient particulars to show how it is calculated, the amount of the actual expense or pecuniary loss incurred or sustained by the employer in respect of each such breach or, if that amount exceeds \$10,000, with sufficient particulars to show that it exceeds \$10,000; and
 - (d) specify the total amount of the deduction proposed to be made.

SCHEDULE

[s. 4]

PARTICULARS TO BE SHOWN IN THE ACCOUNT OF WAGES TO BE DELIVERED TO A SEAFARER UNDER

SECTION 85(1) and (4) OF THE ORDINANCE

Particulars of the seafarer and of the Hong Kong ship

1. Name of the seafarer and—
 - (a) the number of his current employment registration book, service record book or discharge book (if any); and
 - (b) his reference number in the crew agreement.

2. Name of the Hong Kong ship and its official number.

Particulars of employment

3. Capacity in which the seafarer was employed.
4. Dates when employment commenced and ceased and total period of employment in which wages were earned, showing separately the dates of the beginning and end of any period in which wages were not earned.

Allotments

5. Sums payable under each allotment note, date when the first payment was due, the intervals between payments, and the total of all such sums.

Gross wages

6. Total amount of gross wages earned, with, shown separately and with sufficient detail to indicate how each amount is calculated, the total amounts in respect of—
 - (a) the wages at the rate specified in the crew agreement;
 - (b) increase in wages;
 - (c) overtime;
 - (d) leave pay;
 - (e) subsistence; and
 - (f) any other earnings during the period of employment.

Deductions

7. Deductions authorized by sections 5 and 6 of this Regulation, specifying the nature of the deduction and showing the total amount in respect of each deduction.
8. Fines deducted pursuant to section 108 of the Ordinance.

9. Deductions authorized by enactments other than the Ordinance, specifying the nature of the deduction and showing the total amount in respect of each deduction.
10. Total of amounts deducted from gross wages.
Net wages
11. Total amount of net wages payable.