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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF TRANSPORT

NO. R. 986

11 SEPTEMBER 2017

MERCHANT SHIPPING ACT, 1951 (ACT NO. 57 OF 1951)**MERCHANT SHIPPING (SEAFARER RECRUITMENT AND PLACEMENT)
REGULATIONS, 2017**

The Minister of Transport has, in terms of section 356 of the Merchant Shipping Act, 1951 (Act No. 57 of 1951), made the Regulations as set out in the Schedule below.

**MR JOE MASWANGANYI, MP****MINISTER OF TRANSPORT****DATE:**

15/06/2017

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Definitions

1. In these Regulations, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Act has the meaning so assigned, and—

"Convention" means the Maritime Labour Convention as defined in section 2 of the Act;

"seafarer recruitment and placement service" means any person, company, institution, agency or other organisation, in the public or the private sector, which is engaged in recruiting seafarers on behalf of shipowners or placing seafarers with shipowners;

"shipowner" means the owner of a ship or any person or any authorised representative, such as a manager or bareboat charterer, who has assumed responsibility for the operation of a ship;

"the Act" means the Merchant Shipping Act, 1951 (Act No. 57 of 1951).

PART 1

PURPOSE AND APPLICATION OF REGULATIONS

Purpose

2. These regulations give effect to the Convention in so far as it relates to the recruitment and placement of seafarers.

Application

3. These regulations apply to any seafarer recruitment or placement service that recruits or places seafarers on ships to which the Convention applies.

PART 2

SEAFARER RECRUITMENT AND PLACEMENT SERVICES

Recruitment and placement

4. (1) No person may operate a seafarer recruitment and placement service unless that person holds a certificate of accreditation issued by the Authority.

(2) The authorised representative of a ship must ensure that no person is recruited or placed for work on the ship by a seafarer recruitment and placement service unless the seafarer recruitment and placement service in question holds a certificate of accreditation issued by the Authority.

Accreditation of seafarer recruitment and placement services

5. (1) For the purposes of accreditation, the seafarer recruitment and placement service must submit, in writing, to the Authority an application with the following particulars:

- (a) Name and physical address of the seafarer recruitment and placement service;
- (b) name of each placement agent with a brief description of that agent's relevant expertise; and
- (c) details of any quality assurance system applicable to the activities of that seafarer recruitment and placement service.

(2) For the purposes of accreditation, a seafarer recruitment and placement service must, after having received reasonable notice, make the following documentation available for inspection by the Authority:

- (a) The Act;
- (b) Merchant Shipping (Safe Manning, Training and Certification) Regulations, 2013;
- (c) the Convention;
- (d) the STCW Convention;
- (e) a certified Maritime Labour Certificate; and
- (f) a certified Declaration of Maritime Labour Compliance: Parts I and II.

(3) If the Authority is satisfied that the seafarer recruitment and placement service complies with subregulations (1) and (2) after conducting an audit of the service, it must issue the accreditation which is valid for a period not exceeding five years, subject to subregulation (6).

(4) Every seafarer recruitment and placement service that is accredited must, if requested by the Authority—

- (a) make available to the Authority all contracts entered into between the seafarer recruitment and placement service and a shipowner; and
- (b) make available to the Authority all contracts entered into with seafarers, within a reasonable time from such request.

(5) Every seafarer recruitment and placement service that is accredited must—

- (a) for audit purposes, preserve the documents referred to in subregulation (4)(a) and (b) for a period of at least five years; and
- (b) allow the Authority to visit the seafarer recruitment and placement service at any reasonable time for the purposes of auditing the operations of the service.

(6) The Authority may vary or revoke an accreditation granted under subregulation (3) if—

- (a) the seafarer recruitment and placement service concerned fails to comply with these regulations or any of the conditions of accreditation; or
- (b) the Authority otherwise has reasonable grounds to vary or revoke such accreditation.

(7) If the Authority intends to vary or revoke accreditation under subregulation (6), it must inform the seafarer recruitment and placement service concerned accordingly, giving it at least 30 days to correct any deficiencies or to furnish reasons why accreditation should not be varied or revoked.

(8) A list of all accreditations in force under subregulation (3), including the particulars thereof, must be published from time to time by marine notice.

Fees and other charges

6. No person may impose, directly or indirectly, any fees or other charges on any seafarer for recruiting, placing or providing employment to the seafarer, other

than the cost of obtaining a seafarer's record book or passport or of any training required for a particular post.

Duties of seafarer recruitment and placement services

7. (1) A seafarer recruitment and placement service must—

- (a) maintain an up-to-date register of every seafarer recruited or placed by the service, which register must be available for inspection by the Authority;
- (b) ensure that seafarers are informed of their rights and duties under their employment agreements prior to engagement; that proper arrangements are made for seafarers to examine their employment agreements before and after they are signed; and that the seafarers concerned receive copies of their agreements;
- (c) verify that seafarers recruited or placed by the service are properly qualified and hold the appropriate qualifications for the position;
- (d) ensure that the shipowner has the means to repatriate seafarers;
- (e) examine and respond to any complaint about the placement and recruitment of seafarers by the service;
- (f) forward to the Authority all complaints received about on-board working or living conditions;
- (g) establish a system of protection, by way of insurance or an equivalent system, to compensate seafarers recruited and placed by them for any monetary losses that they may incur as a result of the failure of the service to meet its obligations to them;
- (h) advise the seafarer accordingly if the ship on which the seafarer is to be placed, is registered in a country that has not ratified the Convention, and of any possible problems;
- (i) advise the seafarer of any particular conditions applicable to the job, and the shipowner's policies relating to employment;
- (j) ensure that requests for information or advice directed by the families of seafarers who are at sea, are dealt with promptly, sympathetically and at no cost;
- (k) ensure that the shipowner has in place financial protection to cover—
 - (i) medical costs in the event of an accident;

- (ii) funeral and death benefits, including the repatriation of the body;
 - (iii) loss of personal belongings due to an accident to the ship; and
 - (iv) repatriation costs in the event that the seafarer is stranded in any port; and
- (l) ensure the confidentiality of documents submitted by a seafarer.
- (2) A seafarer recruitment and placement service may not use any means, mechanism or list intended to prevent or deter any person from gaining employment for which they are qualified.

PART 3

CONDITIONS OF EMPLOYMENT

Articles of agreement

8. If a seafarer is placed on a ship registered in the Republic, to which the Convention applies, section 102 of the Act applies.

Contracts of employment

9. (1) If a seafarer is placed on a ship to which section 102 of the Act does not apply or on a ship that is not registered in the Republic, a contract of employment must be entered into and such contract must contain the following information:

- (a) The full names of the contracting parties;
- (b) the full names and passport and identity numbers of the seafarer;
- (c) the names and contact details of the seafarer's next of kin;
- (d) the place and date at which the contract was entered into;
- (e) the date on which the contract terminates;
- (f) the capacity in which the seafarer is to be employed;
- (g) the amount of the seafarer's wages, including overtime payments and any other financial compensation;
- (h) the amount of the seafarer's leave entitlement;
- (i) any deductions that may be made from the crew members' wages;
- (j) the frequency of payment of the crew members' wages;

- (k) details of any collective bargaining agreement that may be in place;
 - (l) notice periods by either party;
 - (m) accident and death insurance cover; and
 - (n) any other obligations or rights to which the parties may agree.
- (2) A copy of the contract must be given to the seafarer.

Visas

10. The shipowner is liable for the cost of any visa required by a seafarer when joining or leaving the ship and, if required, when the ship calls at a port.

PART 4 SUPPLEMENTARY PROVISIONS

Offences and penalties

11. Any person who, without reasonable excuse, fails to comply with or contravenes regulation 4, 5(4) or (5), 6, 7, 9 or 10 is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding 12 months.

Title and commencement

12. These regulations are called the Merchant Shipping (Seafarer Recruitment and Placement) Regulations, 2017, and come into operation on the day of publication thereof in the *Gazette*.

DEPARTEMENT VAN VERVOER

NO. R. 986

11 SEPTEMBER 2017

HANDELSKEEPVAARTWET, 1951 (WET NO. 57 VAN 1951)**HANDELSKEEPVAARTREGULASIES (SEEVAARDERWERWING EN -PLASING),
2017**

Die Minister van Vervoer het kragtens artikel 356 van die Handelskeepvaartwet, 1951 (Wet No. 57 van 1951), die Regulasies uiteengesit in die Bylae hieronder uitgevaardig.

**MNR JOE MASWANGANYI, LP****MINISTER VAN VERVOER****DATUM:** 15/06/2017

BYLAE**INDELING VAN REGULASIES**

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Woordomskrywing

1. In hierdie Regulasies, tensy uit die samehang anders blyk, het 'n uitdrukking die betekenis wat in die Wet daarin geheg is, en beteken—

"die Wet" die Handelskeepvaartwet, 1951 (Wet No. 57 van 1951);

"Konvensie" die Maritieme Arbeidskonvensie omskryf in artikel 2 van die Wet;

"seevaarderwerwing- en -plasingsdiens" enige persoon, maatskappy, instelling, agentskap of ander organisasie, in die openbare of privaat sektor, wat betrokke is by die werwing van seevaarders namens skeepseienaars of die plasing van seevaarders by skeepseienaars;

"skeepseienaar" die eienaar van 'n skip of enige persoon of gemagtigde verteenwoordiger, soos 'n bestuurder of blote skeepsverhuurder, wat verantwoordelikheid vir die bedryf van 'n skip aanvaar het.

DEEL 1

OOGMERK EN TOEPASSING VAN REGULASIES

Oogmerk

2. Hierdie regulasies gee gevolg aan die Konvensie in soverre dit op die werwing en plasing van seevaarders betrekking het.

Toepassing

3. Hierdie regulasies is van toepassing op enige seevaarderwerwing- en -plasingsdiens wat seevaarders werf of plaas op skepe waarop die Konvensie van toepassing is.

DEEL 2

SEEVAARDERWERWING- EN -PLASINGSDIENSTE

Werwing en plasing

4. (1) Geen persoon mag 'n seevaarderwerwing- en -plasingsdiens bedryf nie, tensy daardie persoon oor 'n akkrediteringsertifikaat beskik wat deur die Owerheid uitgereik is.

(2) Die gemagtigde verteenwoordiger van 'n skip moet seker maak dat geen persoon deur 'n seevaarderwerwing- en -plasingsdiens vir werk op die skip gewerf of geplaas word nie, tensy die betrokke seevaarderwerwing- en -plasingsdiens oor 'n akkrediteringsertifikaat beskik wat deur die Owerheid uitgereik is.

Akkreditering van seevaarderwerwing- en -plasingsdienste

5. (1) Die seevaarderwerwing- en -plasingsdiens moet, vir die doeleindes van akkreditering, 'n aansoek met die volgende besonderhede skriftelik by die Owerheid indien:

- (a) Die naam en fisiese adres van die seevaarderwerwing- en -plasingsdiens;
- (b) die naam van elke plasingsagent met 'n kort beskrywing van daardie agent se toepaslike kundigheid; en
- (c) die besonderhede van 'n gehalteversekeringstelsel wat op die bedrywighede van daardie seevaarderwerwing- en -plasingsdiens van toepassing is.

(2) 'n Seevaarderwerwing- en -plasingsdiens moet, vir die doeleindes van akkreditering en nadat redelike kennis aan hom gegee is, die volgende dokumentasie vir ondersoek aan die Owerheid beskikbaar stel:

- (a) Die Wet;
- (b) Handelskeepvaartregulasies (Veilige Bemanning, Opleiding en Diplomerings), 2013;
- (c) die Konvensie;
- (d) die STCW-konvensie;
- (e) 'n gewaarmerkte maritieme arbeidsertifikaat; en
- (f) 'n gewaarmerkte verklaring van maritieme arbeidsvoldoening: Deel I en II.

(3) Indien die Owerheid, na die uitvoering van 'n oudit van die seevaarderwerwing- en -plasingsdiens, daarvan oortuig is dat die diens aan subregulasie (1) en (2) voldoen, moet hy die akkreditering, wat vir 'n tydperk van hoogstens vyf jaar geldig is, uitreik behoudens subregulasie (6).

(4) Elke seevaarderwerwing- en -plasingsdiens wat geakkrediteer is moet, indien hy deur die Owerheid daartoe versoek word—

- (a) alle kontrakte wat tussen daardie seevaarderwerwing- en -plasingsdiens en 'n skeepseienaar aangegaan is, aan die Owerheid beskikbaar stel; en
- (b) alle kontrakte wat met seevaarders aangegaan is aan die Owerheid beskikbaar stel,

binne 'n redelike tyd van sodanige versoek.

(5) Elke seevaarderwerwing- en -plasingsdiens wat geakkrediteer is moet—

- (a) vir ouditdoeleindes, die dokumente genoem in subregulasie (4)(a) en (b) vir 'n tydperk van minstens vyf jaar bewaar; en
- (b) die Owerheid toelaat om hom te eniger redelike tyd te besoek met die doel om die bedryf van die diens te oudit.

(6) Die Owerheid kan 'n akkreditering uitgereik kragtens subregulasie (3) verander of herroep indien—

- (a) die betrokke seevaarderwerwing- en -plasingsdiens versuim om aan hierdie regulasies of enige van die akkreditasievoorwaardes te voldoen; of
- (b) die Owerheid andersins oor redelike gronde beskik om daardie akkreditering te verander of te herroep.

(7) Indien die Owerheid van voorneme is om die akkreditering kragtens subregulasie (6) te verander of te herroep, moet hy die betrokke seevaarderwerwing- en -plasingsdiens ooreenkomstig inlig en hom minstens 30 dae gun om enige tekortkominge reg te stel of redes te verskaf waarom die akkreditering nie verander of herroep moet word nie.

(8) 'n Lys van alle akkrediterings wat kragtens subregulasie (3) van krag is, ook die besonderhede daarvan, moet van tyd tot tyd by mariene kennisgewing gepubliseer word.

Gelde en ander heffings

6. Geen persoon mag regstreeks of onregstreeks aan 'n seevaarder enige ander gelde of heffings vir werwing, plasing of werkverskaffing oplê nie as die koste van die verkryging van die seevaarder se rekordboek of paspoort of enige opleiding wat vir 'n besondere pos vereis word.

Pligte van seevaarderwerwing- en -plasingsdienste

7. (1) 'n Seevaarderwerwing- en -plasingsdiens moet—

- (a) 'n bygewerkte register hou van elke seevaarder wat deur die diens gewerf of geplaas is, wat vir inspeksie deur die Owerheid beskikbaar moet wees;
- (b) seker maak dat seevaarders voor indiensneming ingelig word oor hulle regte en verantwoordelikhede kragtens hulle diensooreenkomste; dat behoorlike reëlings getref word sodat seevaarders hulle diensooreenkomste voor en na die ondertekening daarvan kan ondersoek; en dat die betrokke seevaarders afskrifte van hulle ooreenkomste ontvang;
- (c) verifieer dat seevaarders wat deur die diens gewerf en geplaas is, behoorlik opgelei is en oor die geskikte kwalifikasies vir die pos beskik;
- (d) seker maak dat die skeepseienaar oor die middele beskik om die seevaarders te repatrieer;
- (e) enige klag oor die plasing en werwing van seevaarders deur die diens ondersoek en daarop antwoord;
- (f) alle klagte wat hy oor die werk en die lewe aan boord ontvang, aan die Owerheid stuur;
- (g) 'n beskermingstelsel vestig, by wyse van versekering of 'n gelykwaardige stelsel, om seevaarders wat deur hom gewerf en geplaas is te vergoed vir enige geldelike verliese gelyk weens die versuim van die diens om sy verpligtinge teenoor die seevaarders na te kom;
- (h) die seevaarder dan ook van raad dien as die skip waarop die seevaarder geplaas staan te word in 'n land geregistreer is wat nie die Konvensie bekragtig het nie, en oor enige moontlike probleme;
- (i) die seevaarder van raad dien oor enige besondere voorwaardes wat op die pos van toepassing is en oor die skeepseienaar se beleide betreffende diens;

- (j) verseker dat versoeke om inligting of raad wat gerig word deur die gesinne van seevaarders wat ter see is, onverwyld, met begrip en gratis gehanteer word;
- (k) seker maak dat die skeepseienaar finansiële beskerming in plek het ter dekking van—
 - (i) mediese koste in die geval van 'n ongeluk;
 - (ii) begrafnis- en sterftevoordele, ook die repatriasie van die liggaam;
 - (iii) verlies aan persoonlike besittings weens 'n ongeluk wat die skip tref; en
 - (iv) repatriasiekoste in die geval dat die seevaarder in enige hawe gestrand is; en
- (l) die vertroulikheid van die dokumente ingedien deur 'n seevaarder verseker.
 - (2) 'n Seevaarderwerwing- en -plasingsdiens mag nie enige middel, meganisme of lys gebruik met die doel om 'n persoon te verhinder of daarvan te weerhou om werk te bekom waarvoor hy of sy opgelei is nie.

DEEL 3

DIENSVOORWAARDES

Voorwaardes van ooreenkoms

8. As 'n seevaarder geplaas word op 'n skip wat in die Republiek geregistreer is en waarop die Konvensie betrekking het, is artikel 102 van die Wet van toepassing.

Dienskontrakte

9. (1) As 'n seevaarder geplaas word op 'n skip waarop artikel 102 van die Wet nie van toepassing is nie op of 'n skip wat nie in die Republiek geregistreer is nie, word 'n dienskontrak aangegaan wat die volgende inligting moet bevat:

- (a) Die volle name van die kontrakterende partye;
- (b) die volle naam en die paspoort- en identiteitsnommers van die seevaarder;
- (c) die name en kontakbesonderhede van die seevaarder se naasbestaandes;
- (d) die plek en datum waarop die kontrak aangegaan is;
- (e) die datum waarop die kontrak eindig;
- (f) die hoedanigheid waarin die seevaarder in diens geneem word;

- (g) die bedrag van die seevaarder se lone, ook oortydbetalings en enige ander finansiële vergoeding;
 - (h) die bedrag waarop die seevaarder tydens verlof geregtig is;
 - (i) enige aftrekkings wat van die skepeling se lone afgetrek kan word;
 - (j) die frekwensie van betaling van die skepeling se lone;
 - (k) die besonderhede van enige kollektiewe bedingingsooreenkoms wat in plek is;
 - (l) die kennistydperke van elk van die partye;
 - (m) versekering in die geval van ongelukke en sterfte; en
 - (n) enige ander verpligtinge of regte waartoe die partye kan ooreenkom.
- (2) 'n Afskrif van die kontrak moet aan die seevaarder gegee word.

Visums

10. Die skeepseienaar is aanspreeklik vir die koste van enige visum wat deur 'n seevaarder nodig word wat by die skip aansluit of die skip verlaat en, indien vereis, wanneer die skip by 'n hawe aandoen.

DEEL 4

AANVULLENDE BEPALINGS

Misdrywe en strawwe

11. Enigeen wat sonder 'n redelike verskoning regulasie 4, 5(4) of (5), 6, 7, 9 of 10 oortree of versuim om daaraan te voldoen, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens 12 maande.

Titel en inwerkingtreding

12. Hierdie regulasies heet die Handelskeepvaartregulasies (Seevaarderwerwing en -plasing), 2017, en tree in werking op die dag van publikasie daarvan in die *Staatskoerant*.

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