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*Suppliment tal-Gazzetta tal-Gvern ta' Malta Nru. 19,685, 25 ta' Novembru, 2016*
*Taqsima B*

**L.N. 390 of 2016**

# MERCHANT SHIPPING ACT
# (CAP. 234)

## Merchant Shipping (Maritime Labour Convention) (Amendment) Rules, 2016

IN exercise of the powers conferred by articles 90, 106, 108, 122C, 148, 149, 152, 153, 154, 163, 168A and 374 of the Merchant Shipping Act, the Minister for Transport and Infrastructure has made the following rules:-

Citation and commencement.

**1.** (1) The title of these rules is the Merchant Shipping (Maritime Labour Convention) (Amendment) Rules, 2016 and they shall be read and construed as one with the Merchant Shipping (Maritime Labour Convention) Rules, hereinafter referred to as "the principal rules". S.L. 234.51

(2) These rules shall come into force on the 18th January 2017.

Adds new rule 74A to the principal rules.

**2.** Immediately after rule 74 of the principal rules there shall be added the following new rule 74A:

"Financial security.

**74A**. (1) A seafarer shall be deemed to have been abandoned where, in violation of the requirements of these rules or the terms of the seafarers' employment agreement, the shipowner:

(a) fails to cover the cost of the seafarer's repatriation; or

(b) has left the seafarer without the necessary maintenance and support; or

(c) has otherwise unilaterally severed his ties with the seafarer including failure to pay contractual wages for a period of at least two months.

(2) All ships to which these rules apply shall carry on board a certificate or other documentary evidence of financial security issued by a financial security provider. A copy shall be posted in a conspicuous place on board where it is available to the seafarers. Where more than one financial security provider provides cover, the document provided by each provider shall be carried on board.

(3) Assistance provided by the financial security system shall be sufficient to cover the following:

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(a) outstanding wages and other entitlements due from the shipowner to the seafarer under their employment agreement, the relevant collective bargaining agreement or these rules, limited to four months of any such outstanding wages and four months of any such outstanding entitlements;

(b) all expenses reasonably incurred by the seafarer, including the cost of repatriation referred to in paragraph (4); and

(c) the essential needs of the seafarer including such items as: adequate food, clothing where necessary, accommodation, drinking water supplies, essential fuel for survival on board the ship, necessary medical care and any other reasonable costs or charges from the act or omission constituting the abandonment until the seafarer's arrival at home.

(4) The cost of repatriation shall cover travel by appropriate and expeditious means, normally by air, and include provision for food and accommodation of the seafarer from the time of leaving the ship until arrival at the seafarer's home, necessary medical care, passage and transport of personal effects and any other reasonable costs or charges arising from the abandonment.

(5) The financial security shall not cease before the end of the period of validity of the financial security unless the financial security provider has given prior notification of at least 30 days to the Registrar General.

(6) If the provider of insurance or other financial security has made any payment to any seafarer in accordance with this rule, such provider shall, up to the amount it has paid and in accordance with the applicable law, acquire by subrogation, assignment or otherwise, the rights which the seafarer would have enjoyed.

(7) Nothing in this rule shall prejudice any right of recourse of the insurer or provider of financial security against third parties.".

Amends rule 86 of the principal rules.

**3.** In rule 86 of the principal rules, immediately after the definition "certifying authority" there shall be added the following new definition:

" "crew accommodation" includes such sleeping rooms, mess rooms, sanitary accommodation, hospital accommodation and recreation accommodation as are provided for the use of the

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crew;".

Amends rule 92 of the principal rules.

**4.** Rule 92 of the principal rules shall be amended as follows:

(a) sub-rule (6) thereof shall be substituted by the following new sub-rule:

"(6) Every permanent hospital shall be provided with adequate number of berths."; and

(b) in sub-rule (12) thereof, immediately after the words "Third Schedule" there shall be added the words "and the requirements of paragraphs 2 and 3 of the Fourth Schedule and Appendices II, III and IV".

Amends rule 93 of the principal rules.

**5.** In rule 93(1)(b) of the principal rules, the words "(but not sited in)" shall be deleted.

Amends rule 109 of the principal rules.

**6.** The first paragraph of rule 109(4) (excluding the provisos thereof) of the principal rules shall be deleted and substituted by the following new paragraph:

"(4) 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:".

Adds new rule 113A to the principal rules.

**7.** Immediately after rule 113 of the principal rules there shall be added the following new rule 113A:

"Shipowners' liability.

**113A.** (1) The system of financial security to assure compensation for contractual claims, shall meet the following minimum requirements:

(a) the contractual compensation, where set out in the seafarer's employment agreement and without prejudice to paragraph (c) hereof, shall be paid in full and without delay;

(b) there shall be no pressure to accept a payment less than the contractual amount;

(c) where the nature of the long-term disability of a seafarer makes it difficult to assess the full compensation to which the seafarer may be entitled, an interim payment or payments shall be made to the seafarer so as to avoid undue hardship;

(d) the seafarer shall receive payment without prejudice to other legal rights, but such payment may be offset by the shipowner against any damages resulting from any other claim made by the seafarer against the shipowner and arising from the same incident; and

(e) the claim for contractual compensation may be brought directly by the seafarer concerned, or their next of kin, or a representative of the seafarer or designated beneficiary.

(2) Seafarers shall receive prior notification if a shipowner's financial security is to be cancelled or terminated.

(3) The Registrar General shall be notified by the provider of the financial security if a shipowner's financial security is cancelled or terminated.

(4) All ships to which these rules apply shall carry on board a certificate or other documentary evidence of financial security issued by a financial security provider. A copy shall be posted in a conspicuous place on board where it is available to the seafarers. Where more than one financial security provider provides cover, the document provided by each provider shall be carried on board.

(5) The financial security shall not cease before the end of the period of validity of the financial security unless the financial security provider has given prior notification of at least 30 days to the Registrar General.

(6) The financial security shall provide for the payment of all contractual claims covered by it which arise during the period for which the document is valid.".

Amends Appendix I of the Third Schedule to the principal rules.

**8.** Appendix I of the Third Schedule to the principal rules shall be amended as follows:

(a) in paragraph 1.1.2. thereof the word "wholly" shall be deleted;

(b) in paragraph 1.2.1. thereof for the words "suitable screens to sidescuttles, ventilators and doors" there shall be substituted the words "appropriate protection devices as required by the competent authority";

(c) the proviso to paragraph 17.4. thereof shall be deleted; and

(d) immediately after paragraph 21.2., for the words

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"21.2." there shall be substituted the words "21.3.".

**9.** Appendix II of the Third Schedule to the principal rules shall be amended as follows:

Amends Appendix II of the Third Schedule to the principal rules.

(a) in paragraph 1.1.2. thereof the word "wholly" shall be deleted; and

(b) in paragraph 1.2.1. thereof for the words "suitable screens to sidescuttles, ventilators and doors" there shall be substituted the words "appropriate protection devices as required by the competent authority";.

**10.** Immediately after paragraph 7.4. of the Fourth Schedule to the principal rules, there shall be added the following new paragraph:

Amends the Fourth Schedule to the principal rules.

"7.5. Every permanent hospital shall be provided with adequate number of berths.".

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