



NOTA MAKLUMAT DAN PANDUAN MERIN
MARINE INFORMATION AND GUIDANCE NOTE

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JABATAN LAUT SEMENANJUNG MALAYSIA

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GARIS PANDUAN TERHADAP PEMILIK KAPAL DALAM TUNTUTAN GANTI RUGI BAGI KECEDEeraan ATAU PELAUT YANG MENINGGAL DUNIA

GUIDELINES ON SHIPOWNERS' RESPONSIBILITIES IN RESPECT OF CONTRACTUAL CLAIMS FOR PERSONAL INJURY TO OR DEATH OF SEAFARER

Nota kepada Pemilik Kapal, Syarikat Perkapalan dan Nakhoda Kapal

Note to Ship Owners, Shipping Companies and Ship's Masters

Resolusi Organisasi Maritim Antarabangsa (IMO) A.931(22) adalah dirujuk.

The International Maritime Organization (IMO) resolution A931(22) is referred.

2. Garis panduan dari resolusi diatas memerlukan pemilik kapal untuk mendapatkan perlindungan insurans atau jaminan kewangan bagi menyediakan dan membuat pembayaran segera dalam tuntutan ganti rugi bagi kecederaan atau pelaut yang meninggal dunia semasa mereka berkhidmat diatas kapal.

2. The guidelines from the above resolution require ship owners to have an effective insurance coverage or other financial security to provide full and prompt payment of contractual claims for personal injury to or death of seafarers during their service onboard ships.

3. Syarikat Perkapalan adalah digalakkan untuk memenuhi keperluan garis panduan ini di mana salinan sijil dari penginsurans perlu dipamerkan di tempat penginapan pelaut.

3. Shipping companies are encouraged to fulfill the attached guidelines requirements whereby a copy of the certificate of the insurer should be posted prominently in the seafarer's accommodation.

4. Maklumat lengkap mengenai garis panduan resolusi IMO A.931(22) boleh di perolehi di dalam lampiran yang di sertakan.

4. The full details of the ship owners requirements can be obtained from the IMO resolution A.931(22) which has been attached.

Ketua Pengarah Laut / *Director General of Marine*
Tarikh: 26 October 2010

ANNEX

**GUIDELINES ON SHIPOWNERS' RESPONSIBILITIES IN RESPECT OF
CONTRACTUAL CLAIMS FOR PERSONAL INJURY TO
OR DEATH OF SEAFARERS**

1 INTRODUCTION

1.1 The purpose of the Guidelines is to assist States, when establishing their national requirements, to identify the most crucial issues relating to the payment to seafarers of contractual claims for personal injury or death.

1.2 The Guidelines recommend measures to be implemented by shipowners to ensure that there is an effective insurance cover or other financial security to provide full and prompt payment of such claims. The Guidelines also contain recommendations for certification and provide a model receipt and release form for such claims.

1.3 These Guidelines are also suitable for fishing vessels.

2 DEFINITIONS

2.1 For the purposes of these Guidelines unless expressly provided otherwise:

- .1 *Shipowner* means the owner of the ship or any other organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for operation of the ship from the shipowner and who on assuming such responsibilities has agreed to take over all the attendant duties and responsibilities;*
- .2 *Seafarer* means any person who is employed or engaged in any capacity on board a seagoing ship;
- .3 *Personal injury* means any disease or impairment of a seafarer's physical or mental condition arising out of or in connection with employment of the seafarer;
- .4 *Claims* means valid contractual claims for compensation for personal injury or death at levels provided for within the terms and conditions of employment of seafarers;
- .5 *Insurance* means effective insurance or other forms of financial security to meet claims against shipowners which comply with the functional criteria set out in these Guidelines; and
- .6 *Insurer* means any person or entity providing insurance for a shipowner.

* Article 1(c) of the Recruitment and Placement of Seafarers Convention 1996 (No.179) and Regulation IX/1.2 of SOLAS 1974 as amended.

3 SCOPE OF APPLICATION

3.1 Shipowners are urged to comply with these Guidelines in respect of all seagoing ships.

3.2 These Guidelines do not apply to any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on Government non-commercial service, unless that State decides otherwise.

4 SHIPOWNERS' RESPONSIBILITIES

4.1 Shipowners, in discharging their responsibilities to provide for safe and decent working conditions, should have effective arrangements for the payment of compensation for death or personal injury. Shipowners should arrange for their ships effective insurance cover that complies with these Guidelines.

4.2 Shipowners should take steps, when a claim arises, for its prompt payment. Shipowners should also ensure that all valid contractual claims should be paid in full. There should be no pressure, by their representative or by the representative of their insurers, for a payment less than the contractual amount or for a payment which in any way conflicts with these Guidelines.

4.3 Where the nature of the personal injury makes it difficult for the shipowner to make a full payment of a claim, an interim payment should be made to the seafarer so as to avoid undue hardship.

4.4 Shipowners should display on board contact details of the persons or entity responsible for handling claims covered by these Guidelines.

5 PAYMENT OF CLAIMS

5.1 Notwithstanding provisions of national law, the parties to the payment of a contractual claim are recommended to use the Model Receipt and Release Form attached as an Appendix to this Annex.

6 INSURANCE COVER

6.1 The functional criteria for insurance for claims should include, *inter alia*, that:

- .1 the contractual compensation, as provided by the contract of employment and without prejudice to (2) below, should be paid in full and without delay;
- .2 the seafarer should receive payment without prejudice to other legal rights, but such payment may be offset against any damages resulting from any action in tort arising from the same incident;
- .3 the shipowner should ensure that a certificate is provided indicating the period of cover of the insurance;
- .4 the seafarer should receive prior notification if the insurance is to be cancelled and be notified immediately if it is not to be renewed; and
- .5 the insurance should provide for the payment of all claims arising during the period for which the certificate is valid.

7 CERTIFICATES

7.1 Shipowners should ensure that their ships have on board a certificate issued by the insurer. It should be posted in a prominent position in the seafarers' accommodation.

7.2 Where more than one insurer provides cover for claims, certificate from each insurer is required.

7.3 As a minimum, the certificate should include:

- .1 name of the ship;
- .2 port of registry of the ship;
- .3 call sign of the ship;
- .4 IMO number of the ship;
- .5 name of the provider of the financial security;
- .6 place of business of the provider of the financial security;
- .7 name of the shipowner;
- .8 period of validity of the financial security; and
- .9 an attestation that the financial security meets the recommended standards set out in these Guidelines.

APPENDIX
MODEL RECEIPT AND RELEASE FORM
FOR CONTRACTUAL CLAIMS

Ship:
Incident:
Seafarer/Legal heir and/or Dependant:
Shipowner

I, [Seafarer] [Seafarer's legal heir and/or dependant]* hereby acknowledge receipt of the sum of [currency and amount] in satisfaction of the Shipowner's obligation to pay contractual compensation for personal injury and/or death under the terms and conditions of my/the Seafarer's employment and I hereby release the Shipowner from its obligations under the said terms and conditions.

The payment is made without admission of liability of any claims and is accepted without prejudice to my/the Seafarer's legal heir and/or dependant's right to pursue any claim at law in respect of negligence, tort or any other legal redress available and arising out of the above incident.

Dated:
Seafarer/Legal heir and/or Dependant:
Signed:

For acknowledgement:

Shipowner/Shipowner representative: Signed
Insurer/Insurer representative: Signed

* delete as appropriate