

	<b>CIRCULAR 2018-003</b>		
	DEPARTMENT OF MARINE SERVICES AND MERCHANT SHIPPING (ADOMS)		
	<b>Maritime Labour Convention (2006) Seafarer's Employment Agreements (SEA)</b>	Ref.	MLC (2006) Antigua and Barbuda Stat. Instr. No. 15 (2012) Directive No. 001-2017

**Addressee(s):**

- **Owners, Operators, Crewing Agents and Managers of ships under the flag of Antigua and Barbuda**
- **All vessels registered under the Flag of Antigua and Barbuda**

**1. Scope**

This Circular is to provide all ADOMS Clients and relevant Stakeholders with information on the interpretation, expectations and requirements of the Administration in respect of seafarer's employment agreements, particularly with regard to electronic signatures, entitlement to repatriation, notice of termination and maximum fixed service periods duration applicable to all employment agreements for all seafarers on Antigua and Barbuda flagged vessels.

**2. Legal Basis**

- Maritime Labour Convention (2006) – Title No. 2: Conditions of Employment
- Antigua and Barbuda Merchant Shipping Regulations – The Merchant Shipping (Maritime Labour Convention, 2006) Regulations [Statutory Instrument (No. 15; 2012)]
- ADOMS Director's Directive No. 01-2017 – MLC (2006) 2014 Amendments, Financial Security Directive 2017

**3. Summary / Excerpt**

The International Maritime Labour Convention (2006), that has been acceded by Antigua and Barbuda in 2011 and entered into force on the 20th of August 2013, provides the following detailed specifications in respect of signatures and expiration dates on seafarers employment agreements:

*Maritime Labour Convention (2006) - Regulation 2.1:*

3. To the extent compatible with the Member's national law and practice, seafarers' employment agreements shall be understood to incorporate any applicable collective bargaining agreements.

*Maritime Labour Convention (2006) – Standard A 2.1:*

1. Each Member shall adopt laws or regulations requiring that ships that fly its flag comply with the following requirements:
  - (a) seafarers working on ships that fly its flag shall have a seafarers' employment agreement signed by both the seafarer and the shipowner or a representative of the shipowner (or, where they are not employees, evidence of contractual or similar arrangements) ...
  - (c) the shipowner and seafarer concerned shall each have a signed original of the seafarers' employment agreement;
2. Where a collective bargaining agreement forms all or part of a seafarers' employment agreement, a copy of that agreement shall be available on board. ...
4. ... Seafarers' employment agreements shall in all cases contain the following particulars:
  - (f) the amount of paid annual leave or, where applicable, 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; ...
  - (j) reference to the collective bargaining agreement, if applicable

*Maritime Labour Convention (2006) – Standard A 2.4:*

2. ... the annual leave with pay entitlement shall be calculated on the basis of a minimum of 2.5 calendar days per month of employment. ...
3. Any agreement to forgo the minimum annual leave with pay prescribed in this Standard, except in cases provided for by the competent authority, shall be prohibited.

The *Schedule of the Antigua and Barbuda Statutory Instruments No. No. 15 (2012)* reiterates these requirements as mandatory, as per Regulation No. 6, Title 2, Item 5. The instrument further stipulates, under provision (g) of Item 5:

The duration of the minimum notice periods to be given by seafarers and shipowners on ships for early termination of a seafarer's employment agreement *shall be seven days*.

Further *ADOMS Director's Directive No. 001-2017*, Regulation No. 3, provision (j) specifies the maximum service period aboard, after which seafarers are entitled to repatriation:

The maximum duration of service periods on board following which a seafarer is entitled to repatriation in accordance with sub-paragraph (i) (III) shall be specified in his employment agreement, *but in every case shall not exceed 9 months*.

#### **4. ADOMS Policy**

ADOMS does not have a particular/proprietary format for seafarer's employment agreements (SEA) or collective bargaining agreements (CBA) applicable to seafarers on its registered vessels. Owners and Managers are therefore free in their choice to either enter into collective bargaining agreements with seafarer's labour representatives and organisations (e.g. the International Transport Workers Federation ITF), or to employ any seafarers at individual conditions, as permissible by the compulsory applicable standards of the Maritime Labour Convention and Antigua and Barbuda Legislation.

Based on the before listed regulations and in respect of any Antigua and Barbuda registered vessel ADOMS consequently expects the following practice from all respective owners, and any of their lawful representatives:

##### **I) Signatures on Seafarers Employment Agreements:**

- Every Employment Agreement must be signed by all contracting parties
- All contracting parties shall have a fully signed authentic copy for their perusal, which therefore is deemed to be original, and all parties must constantly be in possession thereof
- The relationship between the parties involved must provide for the definite legal link between the Seafarer and the Shipowner(s), based upon evidence for any involved lawful authorization (e.g. representation, acting as agents, sub-contractors etc.)
- The use of electronic and digital signatures and electronic documents is deemed to meet the authenticity requirements and therefore permitted, under the following conditions:
  - Definitions:
    - Electronic signatures are defined as the electronic copies of real, authentic signatures.
    - Electronic documents are defined as electronic copies of real, authentic documents.
    - Digital signatures are defined as unique marking referring to an authorised person or organisation automatically and individually identifiable by a real-time verification process.
  - Security: There are appropriate security measures for electronic signatures in place (e.g. as defined in ISO 7498-2).
  - Procedure: The procedure for applying electronic signatures shall be outlined in the company management system(s).
  - Authenticity: Each electronic signature shall be unique to one individual and shall not be reused by, or reassigned to, anyone else.
  - Traceability: Any alteration of electronic documents and any application of any electronic or digital signature shall be traceable in terms of its extent and origination
  - Reference: Reference shall be made that the document has been electronically or digitally signed by (or for/on behalf of) the Shipowner(s) and or Seafarer(s) etc.

## II) Expiry and Termination of Seafarers Employment Agreements:

- Every Employment Agreement must have a fixed, specified expiry date, unless concluded for a specific voyage or indefinitely. The maximum fixed service period shall be of such length, that any earned payed leave can (and must) be taken before one year after the enlistment aboard and in no case shall exceed 11 months consecutively.
- To maintain operational flexibility for relief and repatriation, a *separate* clause specifying up to 30 days deviation from the fixed expiry to either side may be included, mentioning earlier or later termination with corresponding pro-rata compensation. The application of the clause shall be specified explicitly as subject to the seafarer's consent, as soon as entitled to repatriation.
- The seafarer's entitlement to free repatriation must be specified in the specific employment agreement. If the fixed service period therein exceeds 9 consecutive months, then this entitlement must be stipulated explicitly and separately from the service period, referring to the respective period of notice for early termination. The date when such notice may be given at earliest convenience shall be calculated in advance and explicitly stated.

**Clients and stakeholders are herewith kindly reminded, that no individual Seafarer's Employment Agreement is to preclude, deny or restrict any condition of employment that forms part of an applicable CBA and that no seafarer shall be employed aboard a vessel outside a CBA if a such is applicable to that vessel.**

Due consideration should also be given to all applicable MLC (2006) guidelines and CBA, e.g. in terms of non-discrimination, equal remuneration and equal mustering for equal work, mustering in adequate capacity for actually performed tasks, leave entitlement, overtime compensation, working hours etc.

**Attention is drawn to the fact, that numerous Port State Control Regimes have recently targeted not only material, but also formal compliance by vessels, management and shipowners to MLC (2006) regulations, particularly regarding SEA and conditions of employment, including also applicable guidelines.**

All valued ADOMS clients and stakeholders are therefore encouraged to adhere also to non-mandatory standards, e.g. guidelines, of the MLC (2006) as closely as possible, for the benefit of their own and all crew aboard their vessels.