



MONGOLIA MARITIME ADMINISTRATION

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Marine Circular № 01/250/2024

SUBJECT: Guidelines on Seafarer's repatriation

APPLICATION: This Marine Circular is applicable to all seafarers working on board Mongolian-flagged ships, shipowners, operators, management companies, agents, recognized organizations and other relevant stakeholders.

PURPOSE OF THE GUIDELINE

The marine circular offers guidance regarding seafarers' repatriation, as required by the Maritime Labour Convention (MLC, 2006).

REFERENCES

- Regulation 2.5 of the MLC, 2006;
- Article 19, paragraph 1, and Article 20, paragraph 20.2.1 of the Maritime Law of Mongolia;
- Marine Circular No. 01-198-2020;
- Marine Circular No. 01-181-2024.

1. OBLIGATION TO REPATRIATE SEAFARERS

1.1. Seafarers shall have the right to be repatriated at no cost to themselves and as soon as practicable in the following circumstances:

- a. where the Seafarer's Employment Agreement (SEA) expires;
- b. when the SEA is terminated by the shipowner;
- c. when the SEA is terminated by the seafarer in accordance with the terms of their SEA;
- d. when the seafarer is no longer able to carry out their duties under their SEA or cannot be expected to carry them out in the specific circumstances.

1.2. The specific circumstances referred to in paragraph 1.1(d) include the following:

- a. where the seafarer has an illness, injury or other medical condition which requires their repatriation when found medically fit to travel;
- b. where the seafarer has been shipwrecked;
- c. where the shipowner is not able to fulfil their legal or contractual obligations towards the seafarer by reason of insolvency, sale of the ship, or a change in the ship's registration;
- d. where the ship is bound for a war zone to which the seafarer does not consent to go. In this context, what constitutes a "war zone" may be defined in the seafarer's SEA or by the relevant international organization or a State;

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- e. where the seafarer has completed the maximum period of service on board following which the seafarer is entitled to repatriation in accordance with the SEA;
- f. where the SEA is terminated pursuant to an order of a court or tribunal.

1.3. Shipowners shall establish financial security/insurance to ensure that seafarers are duly repatriated. (Reference is made to the Marine Circular No. 1-198-2020)

1.4. In cases where a seafarer provides a notice period shorter than stipulated in their SEA due to significant personal circumstances or other valid reasons, the shipowner may agree to release them without imposing penalties for breach of contract and could also arrange repatriation at no expense to the seafarer. It is advisable for SEA terms to explicitly clarify what qualifies as significant personal circumstances or other valid reasons, as interpretations may differ among shipowners.

1.5. Time spent awaiting repatriation, and repatriation travel time, should not be deducted from paid leave accrued by the seafarer except where any delay in repatriation, or breaks in travel, are at the request of the seafarer.

1.6. The duty of a shipowner to repatriate a seafarer at the shipowner's expense ceases to apply once the seafarer has been repatriated to the place specified in the seafarer's SEA or to such other place as may have been agreed between the shipowner and the seafarer. In addition, the duty to repatriate ceases in the following circumstances:

- a. where the seafarer fails without reasonable cause to comply with any reasonable arrangements made by the shipowner for their repatriation;
- b. where, despite reasonable efforts made by the shipowner to contact them, the whereabouts of a seafarer remains unknown;
- c. where a seafarer informs the shipowner in writing that they do not wish to be repatriated by the shipowner;
- d. where the seafarer has died.

1.7. Where, in accordance with paragraph 1.6 (d) the obligation of a shipowner to repatriate a seafarer at the shipowner's expense has ceased as a result of the death of the seafarer, part 10 of the MLC minimum requirements regulations requires a shipowner to meet any expenses reasonably incurred in connection with the seafarer's burial or cremation. Should the shipowner fail to meet such expenses the estate of the seafarer may recover any sums due from the shipowner as a civil debt.

1.8. The shipowner is only responsible for bearing the cost of the burial/cremation of a seafarer who dies on board or ashore during the period of engagement. However, there is nothing to prevent a shipowner agreeing with the next of kin to return the seafarer's body to them for burial/cremation where it is feasible to do so and it is acceptable to the relevant authorities in the countries concerned for such return to take place. Payment of any costs incurred in such return shall however be a matter for agreement between the shipowner and the next of kin.

2. PLACE FOR RETURN

2.1. Where there is a duty on a shipowner to repatriate a seafarer under the MLC minimum requirements regulations, a seafarer is entitled to repatriation to the destination provided for in or under their SEA, or such other place as may subsequently be agreed with the shipowner.

2.2. If the SEA does not identify a destination, and there has been no agreement between the seafarer and the shipowner as to the destination, the seafarer is entitled to repatriation to the seafarer's choice of the following destinations:

- a. the place at which the seafarer entered the SEA, or
- b. the seafarer's country of residence.

3. REPATRIATION COST AND OTHER EXPENSES TO BE BORNE BY THE SHIPOWNER

3.1. In addition to the actual repatriation cost, where a shipowner is under a duty to repatriate a seafarer, they must also make such provision as is necessary for the seafarer's relief and maintenance both during and whilst awaiting repatriation.

3.2. The shipowner is not permitted to require any seafarer working on board Mongolian-flagged ship to make an advance payment towards the cost of repatriation at the beginning of their employment.

3.3. The shipowner also cannot recover the cost of repatriation from any seafarer's wages or other entitlements except where the seafarer has been found to be in serious default of their obligations under their SEA or has been guilty of serious misconduct.

3.4. Where a seafarer breaches their obligations under their SEA such that their employment is terminated on the grounds of serious misconduct, the shipowner may, where a provision to this effect is included in the seafarer's SEA, recover from the seafarer, by means of a deduction from the seafarer's wages, the full cost of repatriation, together with any relief and maintenance costs. However, where such a provision is not included in the SEA, the shipowner may only recover damages in respect of repatriation, relief and maintenance costs by means of a civil claim.

3.5. The items of expense to be borne by the shipowner include:

- a. the provision of food (including drinking water) and accommodation;
- b. the provision of clothing;
- c. the provision of toiletries and other personal necessities;
- d. surgical, medical, dental or optical treatment (including the repair or replacement of any appliance) for any condition requiring immediate care;
- e. in cases where the seafarer is not entitled to legal aid or legal aid is insufficient, reasonable costs for the defence of the seafarer in any criminal proceedings in respect of any act or omission within the scope of their employment, being proceedings where the shipowner is not a party to the prosecution;
- f. sufficient money to meet any minor ancillary expenses necessarily incurred or likely incurred by the seafarer for their relief and maintenance.

3.6. In addition to the costs of repatriation set out in paragraph 3.5, the shipowner is responsible for the following:

- a. costs incurred in bringing a shipwrecked seafarer ashore and maintaining them until they are repatriated;

- b. any other expenses which the shipowner is obliged to meet, as set out in the seafarer's SEA or any related collective bargaining agreement;
- c. the provision of medical treatment, when necessary, until the seafarer is medically fit to be repatriated.

3.7. Whilst not specified in the MLC minimum requirements regulations, the shipowner should consider bearing the cost of transporting a minimum of 30kg of the seafarer's personal luggage to the repatriation destination where this is not automatically provided for by the carrier transporting the seafarer.

Any inquiries or requests regarding this marine circular should be directed to Mongolia Maritime Administration (E-mail address: info@monmarad.gov.mn)

This Marine Circular will enter into effect as of 01 July 2024

Sincerely,



OTGONSUREN DAMDINSUREN
DIRECTOR-GENERAL
MONGOLIA MARITIME ADMINISTRATION