

No. S 68

MERCHANT SHIPPING ORDER, 2002
(S 27/02)

MERCHANT SHIPPING (SEAMEN'S WAGES AND ACCOUNTS) REGULATIONS, 2007

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SCHEDULE — ACCOUNT OF WAGES OF SEAMAN

MERCHANT SHIPPING ORDER, 2002
(S 27/02)

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In exercise of the power conferred by section 62 of the Merchant Shipping Order, 2002, the Minister of Communications, with the approval of His Majesty the Sultan and Yang Di-Pertuan, hereby makes the following Regulations —

Citation.

1. These Regulations may be cited as the Merchant Shipping (Seamen's Wages and Accounts) Regulations, 2007.

Manner in which wages are to be paid.

2. The wages due to a seaman under a crew agreement shall be paid in cash, or by means of a cheque or money order, or directly to a bank account, as the seaman so desires.

Account of seamen's wages.

3. (1) The account of wages to be delivered to a seaman under sections 61(1) and (4) shall contain the particulars specified in the Schedule and shall indicate which amounts, if any, stated in the accounts are estimated amounts.

(2) The further account of wages to be delivered to a seaman under sections 61(3) and (4) shall —

(a) contain the same particulars as are required to be contained in an account of wages to be delivered to a seaman under sections 61(1) and (4) adjusted in such manner as the circumstances may require;

(b) indicate which amounts stated in the account are adjusted amounts;

(c) state the amount of wages already paid to the seaman; and

(d) state the balance of wages remaining to be paid to the seaman.

Deductions from wages.

4. (1) The deductions specified in sub-regulation (2) are authorised to be made from the wages due to a seaman under a crew agreement.

(2) The deductions referred to in sub-regulation (1) are —

(a) deductions of any amount payable by the seaman to his employer in respect of —

- (i) bar bills;
- (ii) goods supplied;
- (iii) radio or telephone calls;
- (iv) postage expenses;
- (v) cash advances; and
- (vi) allotments;

(b) contributions by the seaman to a fund or in respect of membership of a body declared by regulations under section 64(3) to be a fund or body to which section 64 applies;

(c) subject to regulations 5 and 6, a deduction of an amount being the actual expense or pecuniary loss incurred or sustained by the employer in consequence of the seaman's absence without leave, where the employer is satisfied on reasonable grounds that such absence is a breach of the seaman's obligations under the crew agreement;

(d) subject to regulation 5 and regulations 6(2), (3), (4) and (5) and to any additional limitations imposed by the crew agreement, a deduction of an amount being the actual expense or pecuniary loss incurred or sustained by the employer, where the employer is satisfied on reasonable grounds that the expense or loss was caused by a breach or breaches of the seaman's obligations under the crew agreement not falling within paragraph (c).

(3) Such deductions shall be —

(a) without prejudice to any dispute relating to the amount payable to a seaman under the crew agreement and, subject to the provisions of the Order, to the rights and obligations, whether of the employer or of the seaman, under the agreement or otherwise; and

(b) in addition to any deduction authorised by any provision of the Order, except section 62, or of any other written law.

Amount which may be deducted.

5. The amount which may be deducted from a seaman's wages in respect of any number of breaches of his obligations under the crew agreement —

(a) by virtue of regulation 4(2)(c), shall not exceed \$200; and

(b) by virtue of regulation 4(2)(d), shall not exceed \$200.

No deduction allowed in certain cases.

6. (1) No deduction shall be made by virtue of regulation 4(2)(c) if the seaman satisfies the master that —

(a) his absence was due to an accident or mistake or some other cause beyond his control; and

(b) he took all reasonable precautions to avoid being absent.

(2) A deduction shall not be made by virtue of regulations 4(2)(c) or (d) unless sub-regulations (3) or (4) have been complied with.

(3) Where it is possible for him to give a notice of deduction complying with sub-regulation (5) not less than 24 hours before the seaman's wages fall due to be paid, the seaman's employer or the master on his behalf shall give to the seaman —

(a) a notice of deduction complying with sub-regulation (5); and

(b) an opportunity to make representations about the deduction to the employer or to the master.

(4) Where it is not possible for him to give a notice of deduction complying with sub-regulation (5) not less than 24 hours before the seaman's wages fall due to be paid, the seaman's employer or the master on his behalf shall —

(a) if it is possible to do so before the seaman's wages fall due to be paid, give to the seaman —

(i) a notice of deduction complying with sub-regulation (5); and

(ii) an opportunity to make representations about the deduction to the employer or to the master; or

(b) if the seaman has not been given such notice and opportunity, send to the seaman by registered post at his last known address a notice of deduction complying with sub-regulation (5).

(5) A notice of deduction shall state that the employer is satisfied on reasonable grounds that there has been a breach or breaches, as the case may be, of the seaman's obligations under the crew agreement and that, subject to regulations 4 and 5 and sub-regulation (1) of this regulation, the deduction specified in the notice appears to the employer to be authorised to be made from the wages due to the seaman under the crew agreement, and such notice shall also —

(a) identify each provision of the crew agreement of which the employer is satisfied on reasonable grounds that there has been a breach and in respect of which he intends to make a deduction;

(b) state the grounds upon which the employer is satisfied that each such breach has taken place;

(c) specify, with sufficient particulars to show how it is calculated, the amount of the actual expense or pecuniary loss incurred or sustained by the employer in respect of each such breach or, if that amount exceeds \$200, with sufficient particulars to show that it exceeds \$200; and

(d) specify the total amount of the deduction proposed to be made.

SCHEDULE

(regulation 3(1))

ACCOUNT OF WAGES OF SEAMAN

Particulars to be shown in the account of wages to be delivered to a seaman under sections 61(1) and (4).

Particulars of the seaman and of the ship.

1. Name of the seaman and —

(a) the number of his current discharge book, if any; and

(b) his reference number in the crew agreement.

2. Name of the ship and its official number.

Particulars of employment.

3. Capacity in which the seaman was employed.

4. Dates when employment commenced and ceased and total period of employment in which wages were earned, showing separately the dates of the beginning and end of any period in which wages were not earned.

Allotment.

5. Sums payable under each allotment note, date when the first payment was due, the intervals between payments and the total of all such sums.

Gross wages.

6. Total amount of gross wages earned with, shown separately and with sufficient detail to indicate how each amount is calculated, the total amounts in respect of —

- (a) the wages at the rate specified in the crew agreement;
- (b) increase in wages;
- (c) overtime;
- (d) leave pay;
- (e) subsistence, if any; and
- (f) any other earnings during the period of employment.

Deductions.

7. Deductions authorised by regulation 4, specifying the nature of the deduction and showing the total amount in respect of each deduction.

8. Fines deducted pursuant to section 86.

9. Deductions authorised by any written law other than the Order, specifying the nature of the deduction and showing the total amount in respect of each deduction.

10. Total amounts deducted from gross wages.

Nett wages.

11. Total amount of nett wages.

Special retentions.

12. Any retention made under any written law.

Balance payable.

13. Balance of wages payable at the time when the account is delivered or made out.

Made this 12th. day of Zulhijjah, 1428 Hijriah corresponding to the 22nd. day of December, 2007.

PEHIN ORANG KAYA SERI KERNA DATO SERI SETIA
DR. HAJI AWANG ABU BAKAR BIN HAJI APONG
Minister of Communications,
Brunei Darussalam.