



# Guidelines on the employment of seafarers

Guidelines on the conditions related to the employment of seafarers on board vessels registered in Solomon Islands and the content of the Seafarer Employment Agreement

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# Purpose

The purpose of these guidelines is to gather mandatory rules and standards and provide guidance concerning the employment of seafarers and agreement.

## Background information

### 1. Issues related the employment of seafarers

Since 2020, the Solomon Islands Maritime Authority (SIMA) has been implementing reforms to ensure rules and standards related to the safe manning of vessels and the employment of seafarers are applied as per applicable laws. The first phase of the reform consisting of issuing Safe Manning Certificates to all ships and requiring qualified seafarers is being completed.

While the second phase of the reform concerns the employment of seafarers, concerns have been raised about the lack of qualified seafarers which created unfair competition over seafarers, particularly officers, moving from vessels to vessels. The absence of employment agreements exacerbated the issue leading to illegal practices of hiring the services of marine officers without employment contracts.

Consultations and discussions in 2022 between SIMA and ship owners/operators have led to request SIMA to develop guidelines related to the employment of seafarers and engage now in the second phase of the reform.

### 2. About these guidelines

For the purpose of inclusiveness, references made to seafarer in these guidelines indistinctively refer to seafarer and seaman as defined in the *International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978* (STCW Convention) as amended, the *Maritime Labour Convention, 2006* (MLC 2006), the *Shipping Act 1998* as amended, and the *Labour Act* as amended.

Solomon Islands is a party to the STCW Convention but has not acceded to the MLC 2006 Convention yet. However, the MLC 2006's regulations and guidelines have been considered for the development of these guidelines.

In Solomon Islands, the employment of seafarer is subject to mandatory provisions contained in:

- The Labour Act (2006 Consolidated Edition Chapter 73), and
- The Shipping Act 1998 as amended by the SIMA Act 2018.

# Conditions of seafarer employment

## 3. Definitions

The Labour Act defines a **seaman** as *“any person employed as a member of the crew of any vessel or boat whatsoever (other than a ship of war) engaged in maritime navigation whether privately or publicly owned”*.

In the Shipping Act:

- the **seaman** is defined as *“a person who is employed or engaged on any vessel in any capacity for gain or reward, but does not include a pilot or a person temporarily employed on board while the vessel is in port”*, where the **qualified seaman** is *“a person on board a vessel who holds a certificate appropriate to the capacity in which he is serving in the vessel”*,
- the **crew** are *“those persons employed or engaged in any capacity on board a vessel, but does not include a master, or pilot or other person temporarily employed on board the vessel while it is in port”*, and
- the **master** is the *“person appointed by the owner having lawful command or charge of the vessel but does not include a pilot”*.

The Shipping (STCW Convention) Regulations 2010 defines a **seafarer** as *“a person employed in any capacity on a vessel and includes a person who is employed, or who seeks employment, as master, officer, or rating on a vessel”*. The STCW Convention provides the definitions of all capacities on board a vessel including the **master** as *“the person having command of a ship”*.

Lastly, the MLC 2006 defines a **seafarer** as *“any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies”*.

Consequently, in Solomon Islands, seamen or seafarers are all the persons employed or engaged on any vessel in any capacity defined by the STCW Convention and the master and the crew formed by the officers and other qualified seafarers.

## 4. Conditions of employment

The conditions of employment of seafarers are contained in the laws and make provisions as shown in the table below:

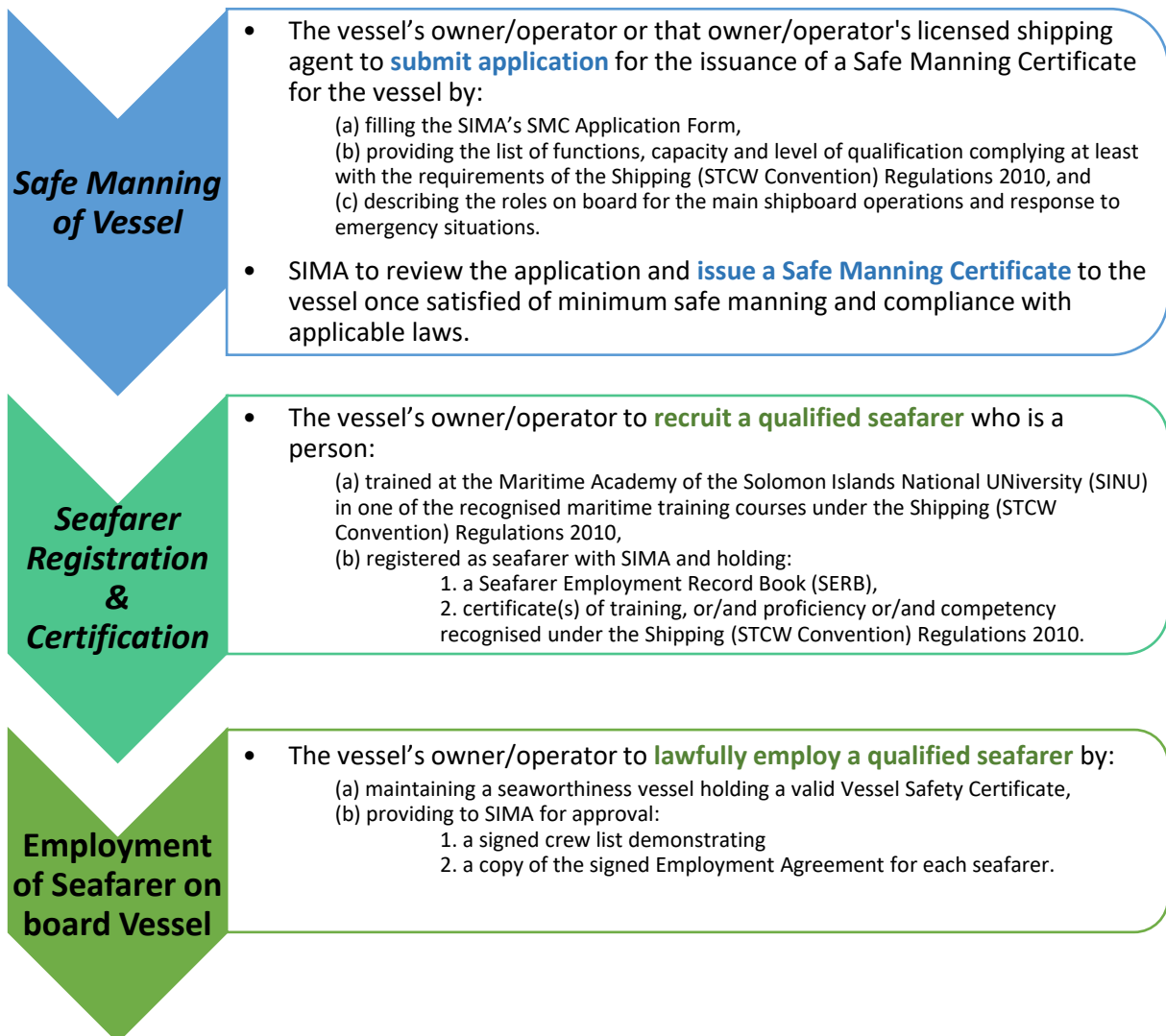
Law	Reference	Provisions
<b>Labour Act</b>	Labour (Seamen) Rules (s. 80).	<ul style="list-style-type: none"> <li>• Seaman is excluded from the definition of "worker" in the Labour Act.</li> <li>• Provisions of the Labour Act apply to seafarers, <u>except</u> those related to:               <ul style="list-style-type: none"> <li>○ days and hours of work (s. 13)</li> <li>○ overtime (s. 14),</li> <li>○ payment of Wages (s.16), and</li> <li>○ deductions for fines (s. 24(1)).</li> </ul> </li> <li>• The Labour (Seamen) Rules provide for:               <ul style="list-style-type: none"> <li>○ wages to be paid:</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>▪ monthly not later than seven days after the expiration of the period, or</li> <li>▪ if impracticable due to vessel on voyages within two clear days (excluding a Sunday or a public holiday) of the vessel arriving at a port, and</li> <li>▪ within two days of the termination of the contract or agreement, or at the time when the seaman is discharged, whichever first occurs,</li> <li>○ the right of a seamen for compensation in case of no payment of wages,</li> <li>○ no deduction from wages for or in respect of any fine, or bad or negligent work or injury to the materials or other property of the master or owner,</li> <li>○ no forfeit of his lien on the ship, or be deprived of any remedy for the recovery of his wages in any contract or agreement,</li> <li>○ no wages or provisions for any time during which he unlawfully refuses or neglects to work.</li> </ul> <ul style="list-style-type: none"> <li>• Any agreement inconsistent with any provision of the Labour (Seamen) Rules shall be void.</li> </ul>
<b>Shipping Act</b>	Seamen's Employment (Part VI s. 110 to 152)	<ul style="list-style-type: none"> <li>• The provisions (s.110) related to seamen's employment apply in relation to: <ul style="list-style-type: none"> <li>○ a vessel that is registered or is required to be registered under this Act; or</li> <li>○ a seaman who is a citizen or permanent resident of Solomon Islands and employed in any vessel, whether that seaman joins a vessel in Solomon Islands or elsewhere, and</li> <li>○ <u>does not</u> apply to or in relation to a vessel that is less than 10 metres in length or a pleasure craft or a traditional vessel.</li> </ul> </li> <li>• Only the owner of the vessel or that owner's licensed shipping agent shall engage a seaman employment on board a vessel (s. 113).</li> <li>• No person shall be employed on a vessel as a seaman unless there is in force an <u>Employment Agreement approved by the Director, in writing in the English language</u> (s. 115), between the owner, or licensed shipping agent, or master and the seaman which agreement may be: <ul style="list-style-type: none"> <li>○ with respect to employment in one or more vessel; or</li> <li>○ for a particular period not exceeding one year; or</li> <li>○ for one or more particular voyages.</li> </ul> </li> <li>• <b><u>Conditions for the employment of a seaman under an Employment Agreement as required by the Shipping Act:</u></b> <ul style="list-style-type: none"> <li>○ seaworthiness of vessel (s. 116),</li> <li>○ seaman understands the Employment Agreement (s. 117),</li> <li>○ Employment Agreement is approved by the Director SIMA (s. 118),</li> <li>○ no employment of suspended person (s. 119),</li> <li>○ termination of employment agreement (s. 120),</li> <li>○ no employment Agreement can modify, vary or negate the right of a seaman under this Part or is void and of no effect (s. 121),</li> <li>○ seaman not left behind (s. 122),</li> <li>○ wages, allotments, and other provisions related to wages (s. 123 to 128),</li> <li>○ return of a distressed seaman (s. 129),</li> <li>○ property of deceased seaman (s. 130),</li> <li>○ disciplinary offences and other provisions related to unlawful behaviours (s. 131 to 133, 138 &amp; 139).</li> </ul> </li> </ul>
<b>MLC 2006</b>	Seafarers' employment and social rights (Article IV)	<ul style="list-style-type: none"> <li>• The MLC 2006 gives every seafarers to have the right to: <ul style="list-style-type: none"> <li>○ a safe and secure workplace,</li> <li>○ fair terms of employment,</li> <li>○ decent working and living conditions on board ship, and</li> </ul> </li> </ul>

	<p>Conditions of employment (Title 2)</p>	<ul style="list-style-type: none"> <li>○ health protection, medical care, welfare measures and other forms of social protection.</li> <li>● <b>Conditions of employment of a seafarer under the MLC 2006:</b> <ul style="list-style-type: none"> <li>○ Seafarers' employment agreements (<i>Regulation 2.1</i>),</li> <li>○ Wages (<i>Regulation 2.2</i>),</li> <li>○ Hours of work and hours of rest (<i>Regulation 2.3</i>),</li> <li>○ Entitlement to leave (<i>Regulation 2.4</i>),</li> <li>○ Repatriation (<i>Regulation 2.5</i>),</li> <li>○ Seafarer compensation for the ship's loss or foundering (<i>Regulation 2.6</i>),</li> <li>○ Manning levels (<i>Regulation 2.7</i>)</li> <li>○ Career and skill development and opportunities for seafarers' employment (<i>Regulation 2.8</i>).</li> </ul> </li> </ul>
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## 5. Process for the employment of a seafarer

For the employment of any person on board a vessel registered in Solomon Islands, SIMA has established the following process:



# Seafarer Employment Agreement

## 1. Mandatory information in a Seafarer Employment Agreement

In signing a Seafarer Employment Agreement (SEA), the ship owner/operator and the seafarer must consider and abide to the following:

- the SEA is a written legally enforceable agreement complying to applicable laws of Solomon Islands as detailed in section *Conditions of employment*; the agreement is written in English,
- the seafarer shall be given the opportunity to review and seek advice on the terms and conditions in the SEA and freely accepts them before signing,
- the SEA must be signed by both the seafarer and the shipowner,
- the shipowner and seafarer concerned shall each have a signed original of the SEA,
- the seafarer must have all information available on board about the conditions of employment and copy of the SEAs shall be on board and produced by the master for verification by SIMA's authorised officers,
- the seafarer shall be given a document containing a record of their employment on board the ship.

The SEA shall contain the following particulars:

- (a) the seafarer's full name, date of birth or age, and birthplace,
- (b) the shipowner's name and address,
- (c) the place where and date when the seafarers' employment agreement is entered into,
- (d) the capacity in which the seafarer is to be employed,
- (e) the amount of the seafarer's wages or, where applicable, the formula used for calculating them,
- (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,
- (h) the health and social security protection benefits to be provided to the seafarer by the shipowner,
- (i) the seafarer's entitlement to repatriation, and
- (j) reference to the collective bargaining agreement, if applicable.

In addition, the SEA shall:

- make reference to the Shipping Act 1998 as amended and the Labour Act as amended and state that duties and rights of both parties to the SEA are contained in the acts,
- include provisions for on-board complaint and to the ship owner preventing any adverse action against the seafarer and allowing the complaint to be raised with a SIMA's Authorised Officer or the Director SIMA (contact to be included),
- include provision for the ship owner to provide the seafarer at the time of termination of employment with a record of employment on board the vessel that include the vessel name

and particulars, the type of voyages, the capacity in which the seafarer is employed and the period of employment, and

- include a space for approval by the Director SIMA.

## **2. Model format for a Seafarer Employment Agreement**

A Model Format for a SEA is provided in Annex to assist ship owners without capacity to develop their own SEA and to guide all ship owners in developing their SEA Model Format.

This format is not mandatory, but ship owners are advised to consider the SEA Model Format as all SEAs must contain mandatory information set out in section *Mandatory Information in a Seafarer Employment Agreement*.



# Annex – Model Format for a Seafarer Employment Agreement

## SEAFARER EMPLOYMENT AGREEMENT

*Under the Shipping Act 1998 as amended and Labour Act as amended*

<b>This Seafarer Employment Agreement (SEA) is between:</b>			
Name of seafarer:			
Full address of seafarer:			
Seafarer's date of birth:			
Seafarer's place of birth:			
Name, relation to seafarer and contact of next of kin:			
<b>and</b>			
Name of seafarer's employer:			
Full address of seafarer's employer:			
Vessel owner/operator full name:			
Vessel owner/operator full address:			

Capacity in which the seafarer is employed:	
Place of work:	<b>You will be employed on board the vessel:</b>
Name/callsign and IMO number of the vessel:	
Wages:	<p><b>Your wages will be _____ gross per month/fortnight/week/day* which include your PAYE and the employee and employer's contribution to the National Provident Fund.</b></p> <p><i>* Delete as appropriate</i></p>
Other benefits:	<b>The other benefits paid to you are:</b>

<i>Hours of work:</i>	<b>Your normal hours of work are:</b> _____
<i>Overtime:</i>	<b>Overtime and other extra duty will be paid as special duty or voyage allowance at a rate of:</b> _____
<i>Entitlement to leave:</i>	<b>You are entitled to take _____ working days as paid leave in each year month of employment.</b>
<i>Period of SEA:</i>	<b>This SEA is for the duration of the voyage commencing on _____ from the port of _____ to _____ and ending no later than _____</b>
<b>OR</b>	
<i>Period of SEA:</i>	<b>This SEA is for a period commencing on _____ and ending on _____</b>
<b>OR</b>	
<i>Period of SEA:</i>	<b>This SEA is for an indefinite period commencing on _____</b>
<i>Termination of this SEA:</i>	<p><b>This SEA agreement may be terminated</b></p> <ul style="list-style-type: none"> <li>(a) by mutual consent of the parties,</li> <li>(b) by the incapacity or death of the seafarer,</li> <li>(c) by the expiry of a particular period referred to this SEA, and, if that period expires during a voyage, on the arrival of the vessel at the next port of call after the expiry of that period,</li> <li>(d) where this SEA relates to employment in a particular vessel: - <ul style="list-style-type: none"> <li>(i) by the wreck, loss or total inability of the vessel to go to sea or to proceed on a voyage; or</li> <li>(ii) by the vessel ceasing to be registered; or</li> <li>(iii) by the lawful dismissal of the seafarer; or</li> <li>(iv) by the seafarer becoming a suspended person.</li> </ul> </li> <li>(e) by the employer failing to fulfil obligations under this SEA and applicable laws such as payment of wages, taxes and contributions related to the employment,</li> <li>(f) where the conduct and ethic of the seafarer is against the terms of this SEA and applicable laws such as: - <ul style="list-style-type: none"> <li>(i) consumption of alcohol on board or under influence of alcohol while on duty,</li> <li>(ii) walking away from duty or leaving the vessel without authorisation and the agreed notice against this SEA's provisions and manning requirements,</li> <li>(iii) misconduct at place of work breaching applicable laws and the employer's policies and regulations.</li> </ul> </li> </ul> <p><b>This SEA is not capable of being terminated under paragraph (a) or (c) above at a place away from the proper return port of the seaman without the consent of the seaman and the Director SIMA.</b></p>
<i>Notice period for termination:</i>	<p><b>The notice period for termination is:</b></p> <ul style="list-style-type: none"> <li>• one (1) month for an indefinite SEA, or</li> </ul>

	<ul style="list-style-type: none"> <li>• seven (7) days for a definite or voyage SEA, or</li> <li>• with immediate effect for serious offence under paragraphs (e) and (f) above.</li> </ul>
Repatriation:	<p>If you are a distressed seafarer as defined in the Shipping Act, you will be entitled to repatriation, at the expense of the shipowner, if you are away from your country of residence or place of residence when this agreement is terminated:</p> <ul style="list-style-type: none"> <li>• by the shipowner,</li> <li>• by you in the event of illness or injury or other medical condition requiring your repatriation,</li> <li>• in circumstances where you are no longer able to carry out your duties under this SEA or cannot be expected to do so e.g. shipwreck, the sale of your ship or a change in your ship's registration.</li> </ul> <p>The entitlement to repatriation entails transport by: _____</p> <p>to: _____</p> <p><i>NOTE - You may not be entitled to repatriation at the expense of the shipowner in circumstances where you have been dismissed for serious misconduct. In such circumstances the shipowner will still be liable to repatriate you but is entitled to recover from any wages due to you the cost of doing so.</i></p>
Health and Social Security entitlements:	<p><b>Health and social security benefits are provided to you by the ship owner of the above vessel subject to the Workmen's Compensation Act.</b></p>
Complaints and disciplinary matters:	<p>Should a situation arise where you wish to make a complaint regarding any matter arising as a result of this SEA, you may raise this matter with your supervisor or the Master of the vessel or to the ship owner. You cannot have adverse action taken against you as a result of making a complaint and you have the right to be accompanied by an independent person at all times and/or to contact an Authorised Officer or the Director of the Solomon Islands Maritime Authority (SIMA) at <a href="mailto:contact@sima.gov.sb">contact@sima.gov.sb</a>.</p> <p>The Disciplinary rules applicable to you are set out in the Shipping Act 1998 as amended, the conditions of this SEA and the employer's policies and regulations.</p>

By signing this Seafarer Employment Agreement (SEA), the undersigned seafarer, and the undersigned shipowner, each confirm that the seafarer has:

1. been given the opportunity to review and seek advice on this SEA,
2. received an explanation of their rights and responsibilities under the SEA and applicable laws of Solomon Islands before signing it, and
3. has entered into the agreement freely.

<b>Place where this agreement is entered into:</b>		<b>Date when this agreement is entered into:</b>	
<b>Signature of the seafarer:</b>		<b>Signature of the shipowner:</b>	

<b>Approved on:</b>		<b>By:</b>	<b>Name and title:</b>	
			<b>Signature:</b>	