

Consolidated version applicable as at 31 December 2024: Law of 9 November 1990 establishing a Luxembourg public maritime register.

Consolidated text

Consolidation involves incorporating successive amendments into a legal document. Its aim is to improve the transparency of the law and make it more accessible.

This consolidated text has documentary value only. It is important to note that it has no legal force.

List of amending acts

Law of 14 April 1992 establishing a disciplinary and criminal code for the merchant fleet.

Law of 17 June 1994 amending and supplementing the Law of 9 November 1990 establishing a Luxembourg public maritime register.

Law of 23 December 2005 concerning the State revenue and expenditure budget for the 2006 financial year.

Law of 22 December 2006 concerning the State revenue and expenditure budget for the 2007 financial year.

Law of 20 July 2017 amending: 1. the Labour Code; 2. the amended Law of 9 November 1990 establishing a Luxembourg public maritime register, with a view to transposing Directive (EU) 2015/1794 of the European Parliament and of the Council of 6 October 2015 amending Directives 2008/94/EC, 2009/38/EC and 2002/14/EC of the European Parliament and of the Council, and Council Directives 98/59/EC and 2001/23/EC, as regards seafarers.

Law of 20 December 2024 amending: 1° the amended Law of 9 November 1990 establishing a Luxembourg public maritime register; 2° the Consumer Code; 3° the amended Law of 14 April 1992 establishing a disciplinary and criminal code for the merchant fleet; 4° the Law of 23 September 1997 regulating pleasure boating and amending certain other legal provisions; 5° the Law of 29 April 2000 transposing Council Directive 92/29/EEC of 31 March 1992 on the minimum safety and health requirements for improved medical treatment on board vessels.

INTRODUCTORY BOOK

The Conventions listed in Annex 1 to the Law of 9 November 1990 approving certain international conventions on maritime matters pertain to this Introductory Book.

- Convention on the International Maritime Organization, 6 March 1948, as amended.
- Convention on Facilitation of International Maritime Traffic, 1965, as amended.

Title 1 - General principles applicable to the register

Article 0.1.0-1.

A public maritime register of ships flying the Luxembourg flag, hereinafter referred to as “the register”, is hereby created.

That register shall be placed under the authority of the member of the Government responsible for maritime affairs, hereinafter referred to as “the Minister”.

Ships registered in the register shall be required to fly the Luxembourg flag which, like the flag for inland navigation and aviation defined in Article 4 of the Law of 23 June 1972 on national emblems, shall be made up of a strip of cloth in proportions of 7 to 5 comprising a barry argent and azure of ten pieces with a lion rampant gules, oriented towards the flagstaff, crowned, armed and langued in gold with a forked tail crossed in saltire. The description on the reverse shall correspond to that on the obverse.

The registration certificate shall attest, in the absence of proof to the contrary, that the ship complies in all its parts with the requirements of this Law and of the regulations issued in implementation thereof. All ships must display on their hulls their name and the home port "Luxembourg".

The Minister may, for exceptional reasons, authorise a vessel to have a home port other than Luxembourg.

It is forbidden to fly the Luxembourg flag without being in possession of the registration certificate. The registration certificate must be capable of being produced at the request of any official exercising enforcement and control functions. For as long as the ship is registered in the Luxembourg public maritime register, it shall be subject to the laws and jurisdictions of the Grand Duchy of Luxembourg.

TITLE 2 - Tasks of the *Commissariat aux affaires maritimes*

Article 0.2.0-1.

A *Commissariat aux affaires maritimes* (Luxembourg Maritime Administration) is hereby established, headed by the Government Commissioner for Maritime Affairs, hereinafter referred to as the "Commissioner", and placed under the authority of the Minister.

The Commissioner shall be appointed by the Grand Duke, upon a proposal of the Government in Council. The Commissioner shall be in the senior career bracket of the Administration and his/her grade for the purposes of calculating the seniority bonus shall be grade 12. The Commissioner's duties shall include:

- 1° examining applications for registration and issuing the necessary certificates, if he/she considers that the natural or legal person applying for registration offers the necessary guarantees;
- 2° checking that the natural or legal persons responsible for the management of any company applying for registration have the requisite professional good repute and adequate experience for the exercise of their function;
- 3° ensuring that the provisions of this Law and of the regulations arising therefrom are duly applied, without prejudice to the powers of other administrative bodies;
- 4° coordinating the implementation of this Law and of the regulations arising therefrom;
- 5° monitoring developments in international law, in particular within the European Union, with regard to the registration of seagoing ships and, where appropriate, submitting to the Government suggestions likely to maintain or increase the attractiveness of the register;
- 6° examining any other matters relating to the register that the Minister may submit to him/her or for which the Minister has delegated powers to him.
- 7° ruling on appeals against disciplinary decisions made by masters.

The Commissioner may refuse to register, or may de-register, ships belonging to natural or legal persons that do not meet the requirements laid down by this Law or its implementing regulations.

TITLE 3 - Provisions concerning the administration of the *Commissariat aux affaires maritimes*

Article 0.3.0-1.

The staff of the *Commissariat aux affaires maritimes* shall comprise a Commissioner, who shall be responsible for the management thereof, as its ultimate hierarchical superior, and officials in the various salary categories as provided for by the Law of 25 March 2015 laying down the salary system and the conditions and procedures for the promotion of State officials, as amended.

That framework may be supplemented by trainee civil servants and by State employees and salaried staff according to the needs of the service and within the limits of budgetary appropriations.

Article 0.3.0-2.

(1) Pursuant to point (f) of Article 2(1) of the Law of 16 April 1979 laying down the general statute of State officials, as amended, and point (e) of Article 3(1), a civil servant or State employee employed as a technical adviser or legal adviser within the *Commissariat aux affaires maritimes* may choose to work in English instead of German or French. In that case, he/she must demonstrate a knowledge of English equivalent to that which would have been required for the language replaced.

(2) State employees working within the *Commissariat aux affaires maritimes* may be granted the status of State official under the conditions and in accordance with the procedures provided for in Article 80 of the Law of 16 April 1979 laying down the general statute of State officials, as amended. By way of derogation from point (b) of Article 80(1) of the Law of 16 April 1979 laying down the general statute of State officials, as amended, a State employee performing the duties of technical adviser or legal adviser within the *Commissariat aux affaires maritimes* may choose to work in English instead of German or French. In that case, he/she must demonstrate a knowledge of English equivalent to that which would have been required for the language replaced.

BOOK 1. - REGISTRATION OF SHIPS AND MORTGAGES

The convention pertaining to this Book is set out in Annex 2 to the Law of 9 November 1990 approving certain international conventions on maritime matters:

- International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages and Protocol of Signature, Brussels, 10 April 1926.

Title 1. - Registration and the ship**Chapter 1 - Provisions relating to registration****Article 1.1.1-1. Definitions**

For the purposes of this Law and unless otherwise provided, the following definitions shall apply:

Nationality of the ship: A ship is a Luxembourg ship if it is registered in the Luxembourg maritime register and is authorised to fly the Luxembourg flag.

Full registration: A ship is fully registered where the rights of ownership of the ship and the rights in rem encumbering it are entered in the Luxembourg maritime register and the ship is authorised to fly the Luxembourg flag.

Bareboat registration: A ship is registered bareboat in the Luxembourg maritime register where it has obtained authorisation to fly the Luxembourg flag on the basis of a bareboat charterparty, whereas the rights of ownership and the rights in rem encumbering the ship are entered in the register of another State and the legislation of that State allows the abandonment of the national flag in such a case.

Bareboat charter: A ship registered in full ownership in the Luxembourg maritime register is bareboat chartered where, on the basis of a bareboat charterparty, it is registered in a foreign register, with the entries relating to the ship's ownership and other rights in rem encumbering it being maintained in the Luxembourg maritime register.

Ship: for the purposes of this Law, a ship is any floating craft with a gross tonnage of 200 or more which is capable of being used for surface or underwater navigation, regularly exposed to the risks of the sea and operated or intended to be operated commercially.

By way of exception, floating craft may be considered as ships for the purposes of this Law if they are of less than 200 gross tonnage, meet the other criteria referred to in the preceding subparagraph, and have received a special exemption from the Minister on the advice of the Commissioner. The Minister's special exemption may only be granted if the ship fulfils the safety and security requirements laid down by any applicable international conventions. Ships engaged in fishing or similar activities are excluded from the scope of this Law. In any event, the Commissioner may require the production of any document to determine whether the craft is to be considered a ship.

Gross tonnage: means for any ship, even those less than 24 metres in length, its gross tonnage measured in accordance with the relevant provisions of Annex I to the 1969 International Convention on Tonnage Measurement of Ships.

IMO: International Maritime Organization

International conventions: international conventions the scope of which coincides with that of this Law, duly ratified by Luxembourg.

Declarant: The declarant is the natural or legal person in whose name the ship is registered.

Operator: An operator is considered to be the natural or legal person who, under a contract concluded with the owner thereof, operates a ship either for his/her/its own account or on behalf of the owner.

Article 1.1.1-2.

(1) Ships may be registered in the Luxembourg maritime register if:

- 1° they are owned as to at least half by nationals of a Member State of the European Union or of a State party to the Agreement on the European Economic Area, provided that all or at least a significant part of the management of the ship is carried out from Luxembourg; or
- 2° they are owned as to at least half by companies having their registered office or principal place of business on the territory of a Member State of the European Union or of a State party to the Agreement on the European Economic Area, provided that all or at least a significant part of the management of the ship is carried out from Luxembourg; or
- 3° they are owned as to at least half by nationals of a Member State of the European Union or of a State party to the Agreement on the European Economic Area and by companies having their registered office or principal place of business on the territory of a Member State of the European Union or of a State party to the Agreement on the European Economic Area, provided that all or at least a significant part of the management of the ship is carried out from Luxembourg.

(2) Ships may be registered in the Luxembourg maritime register if they are either bareboat chartered or operated by natural or legal persons as defined in paragraph (1) and subject to the same reservations regarding the management of the ship.

Article 1.1.1-3. Application for registration

In order to register a ship in the maritime register, an application must be sent to the Minister responsible for maritime affairs. The application must be made on a separate form for each type of registration.

An operator may apply for full registration in his/her/its own name, if he/she/it has been expressly authorised to do so by the owner and if he/she/it accepts responsibility for the ship and the persons on board in accordance with Luxembourg law and under the same conditions and in the same manner as would apply to the owner if the registration were made in the latter's name.

The application for registration must be made by the owner, by the charterer in the case of bareboat registration, or by the ship operator in whose name the ship will be registered.

Article 1.1.1-4. Registration procedure

The application for registration and the authorisation of the Minister or his/her delegate will be submitted to the Registrar of Mortgages at the time of registration of the ship.

The Commissioner will transmit the registration certificate to the Registrar of Mortgages who will issue it to the declarant against a receipt at the time of registration.

The period of validity of the certificate may not exceed two years and the duration will be mentioned in the register. The Registrar of Mortgages will forthwith send a duplicate of the registration certificate to the Commissioner.

A provisional certificate may be issued for a ship under construction or when it has not been possible to provide all the information required in the application for registration to the Commissioner. Such provisional certificate may not be issued for a period of more than one year, subject to one or more renewals.

Delivery of the registration certificate shall count as authorisation to fly the Luxembourg flag.

Article 1.1.1-5. Notification of modifications

Any fact necessitating a modification of the details required to be contained, under the terms of Article 1.1.1-3, in the application and in the documents produced for the purposes of registration must, with a view to its entry in the register, be communicated to the Commissioner by the declarants within thirty days of its occurrence. In the event of the death of the declarant(s), the aforementioned obligation shall be incumbent on his/her/their legal beneficiaries, the thirty-day period running in that case from the time when they became aware of the fact requiring a modification of the details referred to in this Article.

The notification must be accompanied by a document recording the fact in question. However, in the case of an authentic instrument, an office copy thereof, accompanied by a certified true copy, must be produced, unless the authentic instrument falls within the scope of the Law of 29 May 2009 abolishing the obligation to provide a certified true copy of an original document.

Any notification of a change to the tonnage or dimensions of the ship, or the nature and power of its propulsion machinery, must be accompanied by the registration certificate and the tonnage certificate recording that change and by a duplicate of that document, which shall remain deposited at the office of the Registrar. Modifications to the characteristics, together with the date thereof, must be noted on the registration certificate, and on any duplicates of that certificate, by the Commissioner.

Article 1.1.1-6. Nullity of foreign registration

The registration abroad of a ship registered in the Luxembourg maritime register shall be deemed null and void, as long as the Luxembourg registration has not been cancelled, without prejudice to the provisions relating to bareboat chartering.

Article 1.1.1-7. Full registration

1. The declaration for the purposes of full registration shall state:
 - a) the current name of the ship and the name proposed for the registration of the ship in Luxembourg;
 - b) the IMO number of the ship;
 - c) if applicable, the data relating to the previous registration, or a de-registration certificate issued by the competent authority of the country where the ship was registered;
 - d) the names and addresses of the persons having rights over the ship, and the nature and amount of those rights;
 - e) the names and addresses of the operator of the ship and the place from which the operation of the ship is managed;
 - f) the name and address of the declarant authorised to register the ship.
2. The declaration shall be supplemented by the following documents:
 - a) proof of the declarants' nationality;
 - b) the deed creating, transferring or declaring the rights of ownership or usufruct, if that deed is a private deed, or an office copy if it is an authentic instrument. A duplicate of the private deed or a certified copy of the authentic instrument shall be kept at the office of the Registrar of Mortgages;
 - c) the consent of the owners regarding the registration of the ship in the Luxembourg maritime register, certified by a public deed.

As long as the certificate referred to in paragraph 1(c) is missing, the registration in the Luxembourg maritime register shall contain a statement indicating that the entries contained therein shall not take effect unless and until the previous registration has been cancelled and that only a provisional registration certificate may be issued.

The ministerial regulation referred to in Article 1.1.1-3 may supplement the list of items of information and documents to be provided.

Article 1.1.1-8. Registration of a bareboat chartered ship

1. In addition to the data to be provided for full registration as specified in the preceding article, an application for registration of a bareboat chartered ship must state the names and the address of the charterer(s) of the ship.

The registration declaration must be supplemented by the following documents:

- a) proof of the nationality of each of the persons and the articles of association of each of the commercial companies that have chartered the ship;
- b) a copy, certified by a notary to be a true copy, of the bareboat charterparty, including all annexes thereto and any sub-charterparties;
- c) the consent of the mortgagees to the registration of the ship in the Luxembourg maritime register, certified by a public deed;
- d) a certificate issued by the foreign flag State stating the ownership of the ship and any financial charges encumbering it;
- e) where applicable, authorisation from the foreign authorities to bareboat charter the ship, or a declaration that such authorisation is not required and that the legislation of that State authorises bareboat chartering;
- f) an express undertaking by the charterer that:
 - 1° the ship will exclusively fly the Luxembourg flag and will display “Luxembourg” as its home port as long as the ship is operated under a bareboat charter;
 - 2° the charterer will inform the *Commissariat aux affaires maritimes* and the Mortgage Registry when the bareboat charter has ended for any reason whatsoever or when a third flag State has granted the ship the right to fly its flag;
 - 3° all certificates issued by the Luxembourg authorities will be surrendered within 30 days from the date on which the charterparty expires or from the date of de-registration in the Grand Duchy of Luxembourg.

The ministerial regulation referred to in Article 1.1.1-3 will supplement the list of items of information to be provided.

2. The provisions of this Law relating to liens and mortgages shall not apply to ships registered as bareboat.

Article 1.1.1-9. Validity of the registration certificate

The registration certificate of a bareboat chartered ship shall be valid for a maximum of two years and may not exceed the term fixed by the bareboat charterparty.

The registration certificate must state that the ship is bareboat chartered and must indicate the entry number in the register of the foreign country from which the ship originates.

Delivery of the registration certificate shall count as authorisation to fly the Luxembourg flag.

Article 1.1.1-10.

1. The bareboat chartering of a ship that is fully registered in the Luxembourg maritime register to a specific foreign register shall be conditional on ministerial authorisation.

The application therefore must state:

- a) the name of the ship;
- b) the registration number of the ship;
- c) the names and address of the declarant;
- d) the names and address of the charterer;
- e) details of the foreign register in which the ship will be registered.

2. The application shall be accompanied by the following documents:

- a) a copy, certified by a notary to be a true copy, of the bareboat charterparty, including all annexes thereto and any sub-charterparties;
- b) an extract from the register, issued by the Registrar of Ship Mortgages, recording the ownership of the ship and the mortgages registered;
- c) a copy, certified by a notary to be a true copy, of the consent of the owner and any mortgagees to the registration of the bareboat ship in a foreign flag State;
- d) a formal undertaking from the owner:
 - 1° to submit to the Commissioner within thirty days of the chartering authorisation, or within thirty days of the commencement of the chartering, any certificate issued by or under the authority of Luxembourg, as well as a certified copy of the registration certificate issued by the foreign State;

- 2° to inform the *Commissariat aux affaires maritimes*, which will in turn notify the Registrar, that the bareboat charterparty has come to an end, for whatever reason, and that the owner has taken back the ship;
- e) a written agreement between the owner and the charterer, expressly providing as follows:
- 1° abandonment of the right to fly the Luxembourg flag and to display “Luxembourg” as the home port for as long as the ship is on bareboat charter;
 - 2° the strictest compliance, on a continuing basis, with all technical safety standards imposed by Luxembourg maritime legislation, or by the international conventions to which Luxembourg is a party, throughout the duration of the charter, as well as the maintenance of Luxembourg social standards if the ship is chartered with its crew;
 - 3° the temporary suspension of all endorsements confirming the ship’s certificates, stamped under the authority of Luxembourg;
 - 4° stipulating that, in the event of a major accident during the course of the bareboat charter, resulting in the loss of the ship or serious damage to property or the environment, the owner and the charterer undertake to cooperate fully in facilitating any necessary investigations and questioning of the master and crew by the experts appointed by the Commissioner;
 - 5° stipulating that any subsequent modifications or additions to the initial agreement between the parties, as well as any subsequent sub-charter, must be notified to the *Commissariat aux affaires maritimes* with a statement of their impact on the content of the basic agreement. Such modifications and/or additions shall also be subject to the written consent of the preferential or mortgage creditors whose interests are affected.
- f) A declaration of principle by the foreign authorities that the ship may be registered bareboat and a certificate that there is nothing to preclude the entries relating to the ownership of the ship and the rights in rem encumbering it from continuing to be entered in the Luxembourg maritime register.

The ministerial regulation referred to in Article 1.1.1-3 will supplement the list of information to be provided.

3. For a registered ship under bareboat charter, entries relating to ownership rights and other rights in rem encumbering it shall continue to be governed by Luxembourg law.

Without prejudice to the other provisions relating to registration in the Luxembourg maritime register, a ship engaged in the process of bareboat chartering involving a switch to a register of a third State may fly the Luxembourg flag as long as that State has not granted the right to fly its flag.

Article 1.1.1-11. Bareboat charter certificate

The bareboat charter application duly approved by the Minister or his/her delegate shall be notified to the declarant by registered letter. Within thirty days of the issue of the authorisation, the declarant may apply to the Registrar for the issue of a registration certificate. That certificate shall be worded as follows:

“The within certificate grants no right to fly the Luxembourg flag while the vessel is subject to the demise charter filed on with the register of maritime liens.”

“Le présent certificat ne concède aucun droit de battre pavillon du Luxembourg pendant que le navire se trouve engagé par frètement coque nue, en vertu de la charte-partie déposée en date du..... auprès du conservateur des hypothèques maritimes.”

Article 1.1.1-12. Events leading to loss of nationality

The ship shall lose its nationality:

- a) in the event of demolition or loss by shipwreck;
- b) if the registration certificate is not renewed upon its expiry;
- c) in the event of withdrawal of the ministerial authorisation provided for in Article 1.1.1-4;
- d) when the conditions laid down in Article 1.1.1-2 are no longer met.

Article 1.1.1-13. Effects of loss of nationality

1. The loss of Luxembourg nationality shall cause the registration to be cancelled; however, such de-registration shall not affect any entries relating to rights in rem encumbering the fully registered ship and shall not prevent any subsequent de-registration, reduction or renewal of such entries.
2. No entries relating to rights in rem in respect of a ship which has been the subject of full registration may be cancelled until thirty days after the date on which all creditors registered with the Registry of Maritime Mortgages, and all third parties who have had a notice of seizure entered therein, have been notified by the Registrar of Mortgages. That notification must be done by way of registered letter, which may be addressed to the domicile of the party thus registered.
3. The loss of nationality shall result in the loss of the right to fly the Luxembourg flag. That measure shall take effect at the time of notification done pursuant to paragraph 1 or 2 of Article 1.1.1-14.

Article 1.1.1-14. De-registration procedure

1. In the event that the ship loses Luxembourg nationality as a result of an event other than withdrawal of the ministerial authorisation or the non-renewal of the registration certificate, that event shall, within thirty days of the date on which it happened, be notified to the Commissioner by one of the persons in whose name the ship is registered.
The notification shall be accompanied by the document, drawn up in duplicate, recording the event. If, however, the document is an authentic instrument, an office copy thereof accompanied by a certified true copy must be produced. The notification, approved by the Commissioner, will be presented with the documents to the Registrar of Mortgages for entry in the register. The duplicate of the document or the certified copy of the authentic instrument, and any duplicates, will remain deposited at the office of the Registrar of Mortgages against receipt for cancellation.
Without prejudice to the provisions of paragraph 2 of Article 1.1.1-13, the Registrar of Mortgages will issue a certificate of de-registration.
2. In the event that the loss of Luxembourg nationality results from the withdrawal of ministerial authorisation, the Minister shall automatically send a certified copy of his/her decision to the Registrar of Mortgages.
3. The registration certificate, cut diagonally in two, together with the certificates and other documents provided for by international conventions, must be returned to the *Commissariat aux affaires maritimes* by registered letter within 30 days of the notification provided for in the preceding paragraphs.

Chapter 2 - Provisions relating to the ship**Article 1.1.2-1. Legal nature of the ship**

Ships are movable objects. However, they are not subject to the rule that, in the case of movable property, possession is equivalent to title.

Article 1.1.2-2. Derogations

By way of derogation from the tonnage limit laid down in the fifth paragraph of Article 1.1.1-1, ships may be registered in the public maritime register provided that they comply with the 1974 International Convention for the Safety of Life at Sea, as amended.

The Commissioner may waive the age limit laid down in Article 2.0.0-2, provided that the ship complies with the applicable standards set out in international conventions.

Article 1.1.2-3. Command of the ship

Command of a ship flying the Luxembourg flag shall be assigned to a person holding a certificate of qualification recognised in Luxembourg.

Article 1.1.2-4. Crew qualification

The crew of a ship flying the Luxembourg flag shall be made up of qualified seafarers who meet the training and qualification requirements laid down in Article 3.1.1-14 et seq.

Article 1.1.2-5. Composition of the crew

Any ship flying the Luxembourg flag shall be crewed with a minimum number of seafarers corresponding to that prescribed by its Minimum Safe Manning Document as provided for in Article 3.1.1-18. The Commissioner may exempt from this obligation certain ships which do not fall within the scope of the international conventions on minimum safe manning or if the said international conventions so allow.

Title 2

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**Registration fees and mortgage duties -
Organisation and operation of the Mortgage Registry - Payments****Article 1.2.0-1. Registration fees and mortgage duties**

All deeds in respect of inter vivos transactions, whether ex gratia or for consideration, transferring or declaring rights in rem over a ship built or under construction shall be exempt from proportional registration and transcription duties. The same shall apply, as far as proportional registration duties are concerned, to loan agreements, if it is established by the provisions of the agreement in question that it is intended for the financing, subject to the creation of a mortgage guarantee, of ships built or under construction.

The registration of a maritime mortgage shall be exempt from all duties, apart from those relating to the remuneration of the Registrar of Mortgages.

Article 1.2.0-2.

Save in so far as this Law otherwise provides, the legislation relating to mortgages on immovable property shall apply.

A Grand-Ducal regulation shall determine the conditions for applying this Law, and in particular:

- a) the organisation and operation of the maritime Mortgage Registry;
- b) the manner in which the registers are kept;
- c) the fees to be charged for examining the declaration or application, for registering any ships under the Luxembourg flag, for drawing up and issuing documents, for maintaining, extending or cancelling the registration or any entry and allowing consultation thereof, or for providing information.

The fees to be charged for registration or extension of registration shall consist of an annual basic levy of not less than ECU 1,000 and not more than ECU 3,000 and a first registration or annual fee of not less than ECU 0.25 and not more than ECU 1.25 per tonne.

Title 3 - Publication of rights in rem granted over ships**Article 1.3.0-1.**

Deeds and judgments evidencing an agreement creating, transferring, declaring or extinguishing a right in rem, other than a lien, over a ship built or under construction, shall be registered in the Mortgage Registry; pending such registration, they may not be invoked against third parties.

Article 1.3.0-2.

Applications for a declaration of rescission, revocation or annulment of an agreement falling within the terms of the preceding article or for a declaration of the existence of rights in rem other than a lien over a ship built

or under construction, and decisions issued in respect of such applications, shall likewise be recorded in the said Registry.

Such applications shall only be admissible if they have been registered. Objections thereto must be raised by the judge on his/her own initiative and may be contested in any event.

Court clerks may not, on pain of being found liable to pay damages, issue any office copy of the judgment until they have received proof that the judgment has been registered.

Article 1.3.0-3.

Registered private documents and authentic instruments shall be eligible for registration.

Article 1.3.0-4.

No instrument shall be accepted for registration if the ship to which it relates is not registered.

Article 1.3.0-5.

The registration provided for in Article 1.3.0-1 shall be made in the register upon submission to the Registrar of Mortgages of the deed to be published, if it is a private document, and of an office copy of that deed, if it is an authentic instrument.

If the deed is a private document, it must be submitted in two originals, one of which shall be exempt from stamp duty. If it is an authentic instrument, a certified copy, exempt from stamp duty, shall be attached to the office copy.

Article 1.3.0-6.

The Registrar of Mortgages shall record in the register:

- a) the date of the deed;
- b) the nature of the deed and, if it is an authentic instrument, the name of the public official or the court from which it emanates;
- c) the surnames, forenames, profession and domicile of the parties;
- d) the nature of the agreement and its main features.

Article 1.3.0-7.

After making the entry, the Registrar shall return unto the applicant the office copy of the deed if it is an authentic instrument and one of the originals if it is a private document. He/she shall certify at the foot of the instrument that he/she has made the entry, indicating the date and number of the entry. The certified copy of the authentic instrument or, if it is a private document, the original document, exempt from stamp duty, shall remain deposited in the Registry.

Article 1.3.0-8.

If the document to be registered is created by the master during the course of a voyage, the formality may be carried out on the basis of a telegram, telex or fax or other new technological means of communication containing the information specified in Article 1.3.0-6.

This formality shall have full legal effect provided that, within three months of the registration of the telegram, telex or fax or other new technological means of communication, the document is submitted to the Registrar of Mortgages for registration.

Article 1.3.0-9.

The entry in the register required by Article 1.3.0-2 shall be made upon submission to the Registrar:

- a) in the case of a legal action, of two extracts containing the surnames, forenames, profession and domicile of the parties, the rights the recognition, rescission, revocation or cancellation of which is sought, and the name of the court in which the action is being brought;
- b) in the case of a judgment, two extracts issued by the clerk of the court, containing the surnames, forenames, profession and domicile of the parties, the operative part of the judgment and the name of the court or tribunal which handed down the decision.

The Registrar shall return to the applicant one of the extracts on which he/she has certified that the entry has been made.

In the absence of registration of the ship to which the application for rescission, revocation or cancellation relates, the Registrar shall merely note that the said extracts have been filed in the register of documents deposited, where necessary making the entry if registration is subsequently applied for.

Article 1.3.0-10.

If several documents required to be published have been submitted on the same day to the Mortgage Registry, preference shall be determined on the basis of the serial number under which the filing thereof was recorded by the Registrar in the register of documents deposited.

Article 1.3.0-11.

Non-fulfilment of one or more of the formalities prescribed by the articles contained in this Title shall not render the registration null and void, unless third parties are prejudiced thereby.

Title 4 - Collective labour agreements

Article 1.4.0-1.

Preferential rights as between the creditors of a ship shall result either from liens or from mortgages. Liens shall attach to the quality of the claim: they shall invariably take precedence over mortgages.

Article 1.4.0-2.

Creditors with liens or mortgages registered against a ship shall follow it, into whosever hands it may pass, so that they may be ranked and paid according to the order of preference of their claims or registrations.

Article 1.4.0-3.

In the event of failure by a third-party holder to pay the preferential and mortgage debts pursuant to the terms and within the time limits allowed to the debtor, or to comply with the formalities hereinafter established for clearing the property of the encumbrances attaching thereto, each creditor shall have the right to have the encumbered ship sold over the head of the third party.

Article 1.4.0-4.

A change of nationality shall not prejudice existing rights in the ship. The extent of those rights shall be governed by the law of the flag the ship was legally flying at the time of the change of nationality.

Chapter I - Maritime liens

Article 1.4.1-1.

- (1) Only the following may be the subject of a lien on a ship, on the freight for the voyage during which the preferential claim arose and on any incidentals due in respect of the ship and freight accrued since the start of the voyage:

- a) Legal fees owed to the State and expenses incurred in the common interest of the creditors, for the conservation of the ship or to procure the sale thereof and the distribution of the sale proceeds; tonnage, lighthouse or harbour dues and other analogous public duties and taxes; pilotage charges, custody and conservation costs incurred since the entry of the ship into the last port;
 - b) Claims resulting from the employment agreements of seafarers and of all persons employed on board;
 - c) Remuneration due for salvage and assistance and the ship's contribution to general average;
 - d) Compensation for collision or other shipping accidents, as well as for damage to engineering structures in ports, docks and waterways; compensation for personal injury sustained by passengers and crew members; compensation for loss of, or damage to, cargo or luggage;
 - e) Claims arising from contracts entered into or operations carried out by the master outside the home port, pursuant to the latter's legal powers, to meet an actual need to preserve the ship or continue the voyage, without distinguishing whether or not the master is at the same time the owner of the ship or whether the claim in question is his or her own or that of suppliers, repairers, lenders or other contractors.
- (2) The incidentals due in respect of the ship and freight referred to in paragraph (1) above shall be understood as being:
- a) Compensation due to the owner for material damage suffered by the ship and not repaired, or for loss of freight;
 - b) Compensation due to the owner for general average, in so far as this involves either material damage suffered by the ship and not repaired, or loss of freight;
 - c) Remuneration due to the owner for assistance rendered or salvage effected up to the end of the voyage, after deducting any sums awarded to the master and/or other persons in the service of the ship.

The price of passage shall be treated as freight.

Neither compensation due to the owner under insurance contracts, nor premiums, subsidies or other national grants, shall be deemed to constitute incidentals in respect of the ship or freight.

By way of derogation from subparagraph (a) above, the lien in favour of persons in the service of the ship shall cover all freights due for all voyages made during the course of the same employment agreement.

Article 1.4.1-2.

- (1) Claims relating to one and the same voyage shall be treated on a preferential basis in the order in which they are listed in paragraph (1) of Article 1.4.1-1 above. The claims included in each of the points shall ranked against each other and paid pro rata in the event of an insufficiency of funds.
- The claims referred to in points (c) and (e) of paragraph (1) of Article 1.4.1-1, in each of those categories, shall be settled on a preferential basis in the reverse order of the dates on which they came into existence.
- Claims relating to one and the same event shall be deemed to have come into existence simultaneously.
- (2) Preferential claims from the most recent voyage shall rank in preference to those from previous voyages. However, claims arising from a single employment agreement covering several voyages shall all rank equally with the claims from the most recent of those voyages.
- (3) With a view to the distribution of the proceeds of sale of the objects affected by the lien, the preferential creditors shall be entitled to prove for the full amount of their claims, without any deduction under the rules on limitation, but without the amounts accruing to them being capable of exceeding the sum due under the said rules.
- (4) The lien on freight may be exercised as long as the freight is still due or the amount of the freight is still in the hands of the master or the owner's agent. The same shall apply to the lien on incidentals.
- (5) The provisions of Article 1.4.1-1 above and of this Article shall apply to ships operated by a shipowner who is not the owner or by a principal charterer, except where the owner has been divested thereof by reason of an unlawful act and where, in addition, the creditor is not acting in good faith.

Chapter II - Ship mortgages

Article 1.4.2-1.

Ships may be mortgaged by agreement between the parties.

Articles 2124, 2125 and 2126 of the Civil Code shall apply to ship mortgages.

Article 1.4.2-2.

Ship mortgages shall only be valid if they are granted in respect of duly specified vessels and for a specific sum.

A ship mortgage may be created on a ship under construction.

Article 2131 of the Civil Code shall apply.

Article 1.4.2-3.

A ship mortgage shall extend, unless otherwise agreed, to the tackle, equipment, machinery and other accessories. It shall also extend to freight.

Article 1.4.2-4.

The mortgage shall provide security for three years' interest ranking *pari passu* with the capital.

Article 1.4.2-5.

A mortgage may be registered for as long as it exists.

In the event of the debtor's death, registration must be done within three months of the passing of the deceased's estate to the heirs.

Registration of the mortgage can no longer be done after registration of the transfer instrument, nor after the bankruptcy of the debtor.

If the ship loses its Luxembourg nationality, no mortgage may be registered after its de-registration.

Article 1.4.2-6.

The document creating the mortgage shall contain a provision whereby the creditor elects domicile in the place where the Mortgage Registry is located.

In addition to the particulars required by Article 1.3.0-6, the Registrar of Mortgages shall enter the following in the register:

- a) the rate and maturity of the interest and the period of time granted for repayment date of the capital;
- b) if applicable, a stipulation permitting the creditor to sell the mortgaged property by auction without recourse to judicial proceedings;
- c) the election of domicile.

In the absence of an election of domicile, all documents and notifications relating to the registration may be effectively and validly served on the public prosecutor.

Article 2152 of the Civil Code shall apply.

Article 1.4.2-7.

As between mortgagees, rank shall be determined by date and, if the date is the same, by the serial number indicating the order in which the mortgages were registered.

Article 1.4.2-8.

Registration shall preserve the mortgage for a period of ten years from the date thereof. The mortgage shall cease to be effective if the registration thereof has not been renewed before the expiry of that period.

The registration shall be renewed upon presentation to the Registrar of Mortgages of an application in duplicate specifying precisely the registration to be renewed; otherwise, it will be considered as a first entry.

Article 1.4.2-9.

Where the document transferring a mortgage right is a private document, the instrument creating the mortgage, endorsed with the reference of its registration, must be re-submitted to the Registrar. The Registrar shall record the transfer on that document.

The same shall apply where the document is an authentic instrument, if it has been executed pursuant to a private power of attorney or if it has been done abroad in the form permitted by foreign law.

Article 1.4.2-10.

In the event of the loss or unseaworthiness of the ship, the creditor's rights shall be exercised over the salvaged items or their sale proceeds, even if the claim has not yet fallen due.

In the event of average adjustment in respect of the ship, the mortgagee may intervene to preserve his/her rights; he/she may only exercise them if the compensation, in whole or in part, has not been, or will not be, used to repair the ship.

Article 1.4.2-11.

Registrations shall be cancelled or reduced with the consent of those parties concerned who are eligible to give such consent, or pursuant to a judgment against which no appeal lies or having the force of *res judicata* or a judgment declared to be enforceable notwithstanding any application to set it aside or any appeal.

De-registration or reduction shall be done by the Registrar, either on the filing of an office copy of the authentic instrument consenting thereto, or on the filing of the *acte en brevet* [notarial deed issued to the parties] and a certified copy on unstamped paper, or on the filing of the relevant private document, or on the filing of an execution copy of the judgment.

A verbatim extract of the authentic instrument shall suffice where the notary who issued it declares therein that the instrument contains no conditions or reservations.

If the deed is a private document, it shall be drawn up in two originals, one of which shall be exempt from stamp duty, and the total or partial de-registration shall only be carried out upon re-submission of the deed creating the mortgage, endorsed with the reference of its registration. The Registrar shall record on it the total or partial cancellation of the registration.

Re-submission of the deed creating the mortgage shall also be required if the deed is an authentic instrument and has been executed under a private power of attorney or if it has been done abroad in the form permitted by foreign law.

Article 1.4.2-12.

Applications for de-registration and reduction shall be governed by Articles 2159 and 2160 of the Civil Code.

Chapter III - Extinction of liens and mortgages**Article 1.4.3-1.**

Liens and mortgages shall lapse upon and by virtue of:

- a) extinction of the principal obligation;
- b) waiver on the part of the creditor;
- c) the forced sale of the encumbered ship;

d) voluntary disposal of the encumbered ship, followed by fulfilment of the formalities and conditions prescribed below.

In addition, liens shall lapse, except in the above cases, upon the expiry of a period of one year; in the case of supply claims as referred to in point (1)(e) of Article 1.4.1-1 above, the period may not exceed six months. For liens securing remuneration for assistance and salvage, the period shall run from the day on which the operations are completed; for liens securing compensation for loss and damage caused by collision or other accidents and for personal injury, from the day on which the damage was caused; for liens in respect of loss of or damage to cargo or luggage, from the date of delivery of the cargo or luggage or from the date on which it should have been delivered; for repairs and supplies and other cases referred to in point (1)(e) of Article 1.4.1-1, from the date on which the claim arises. In all other cases, the period shall run from the date on which the debt becomes due and payable.

The right to request advances or payments on account shall not have the effect of rendering due and payable any amounts claimed by persons employed on board, as referred to in Article 1.4.1-1.

The fact that the encumbered ship could not be seized in the territorial waters of the State in which the claimant has his/her/its domicile or principal place of business shall cause the fixed period to be extended by a further term not exceeding three years from the date on which the claim arose.

Article 1.4.3-2.

Liens shall be extinguished by voluntary alienation where:

- a) the disposal instrument is registered in accordance with Article 1.3.0-1;
- b) the disposal is published in the Mémorial and twice at eight-day intervals in the maritime press;
- c) no notice of objection is given by the creditor to either the former or the new owner within one month of the registration or the last publication.

Nevertheless, the creditor's preferential right shall subsist and attach to the sales proceeds, as long as they have not been paid or distributed.

Article 1.4.3-3.

Mortgages shall be extinguished by voluntary disposal on condition that, within six months of the registration of his/her/its title or, in the event of legal proceedings within that six-month period, within fifteen days of bailiff service of formal notice to pay prior to seizure, the new owner serves on all registered creditors, at their respective addresses for service as indicated by them in the registrations, a notice containing:

- a) an extract of his/her/its document of title specifying the date and nature of the deed, the designation of the parties, the name, type and tonnage of the ship, the price and charges forming part of the price, or the valuation of the item if it has been gifted or transferred under any circumstances other than by way of sale;
- b) the date of registration of his/her/its title;
- c) a table consisting of three columns, the first of them containing the date of the entries in the register, the second the names of the creditors and the third the amount of the indebtedness registered.

Article 1.4.3-4.

The new owner shall declare in the notice served that he/she/it will pay the mortgage debts and charges up to the price or the declared value, without any deduction for the benefit of the vendor or any other person.

Unless otherwise stipulated in the debt instruments, he/she/it shall enjoy the same terms and deadlines as those granted to the original debtor and shall comply with those imposed on the latter.

Unmatured claims which have a preferential status only in part, shall be immediately due and payable by the new owner up to the amount of that part, and in full by the debtor.

Article 1.4.3-5.

If among the registered creditors there is a creditor having a right of rescission who intends to exercise that right, he/she/it shall be required, on pain of forfeiture thereof, to declare this to the registry of the court from which the order is to be sought.

The declaration must be made within fifteen days of notification and followed, within ten days, by the application for rescission.

From the date on which the creditor declares his/her/its intention to exercise the right of rescission, the procedure for clearing encumbrances shall be suspended and may only be resumed after the creditor has waived the right of rescission or after the action in that regard has been dismissed.

Article 1.4.3-6.

Within 15 days of the notification made at the request of the new owner, any registered creditor may require the ship to be put up for auction, offering to raise the price by one tenth and to provide security for the payment of the price and charges.

The auction shall be held at the behest either of the creditor who requested it or of the purchaser, in accordance with the procedures established for foreclosure sales.

BOOK 2 - SAFETY REQUIREMENTS

The conventions featuring in Annex 3 to the Law of 9 November 1990 approving certain international conventions relating to maritime matters, listed below, pertain to this Book.

- 1974 International Convention for the Safety of Life at Sea, as amended (SOLAS 1974) and the 1978 Protocol thereto, as amended (SOLAS Prot 1978) and the 1988 Protocol thereto, as amended (SOLAS Prot 1988).
- 1972 Convention on the International Regulations for Preventing Collisions at Sea, as amended (COLREG 1972).
- 1973 International Convention for the Prevention of Pollution from Ships (MARPOL 1973) and the 1978 Protocol relating to the 1973 International Convention for the Prevention of Pollution from Ships, as amended (MARPOL Prot 1978).
- 1966 International Convention on Load Lines, as amended (LL 1966) and the 1988 Protocol Relating to the 1966 International Convention on Load Lines (LL Prot 1988).
- 1969 International Convention on Tonnage Measurement of Ships (Tonnage Convention 1969).
- International Convention on Civil Liability for Oil Pollution Damage (CLC 1969) and the 1976 Protocol thereto (CLC Prot 1976) and the 1984 Protocol thereto (CLC Prot 1984).
- 1978 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW 1978).
- 1979 International Convention on Maritime Search and Rescue (SAR 1979).
- 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, as amended (LDC 1972).

Article 2.0.0-1.

Without prejudice to the provisions of Article 2.0.0-4, no ship shall be authorised to sail under the Luxembourg flag unless it is equipped with the registration certificate described in Book I of this Law and the valid certificates and other documents required by the international conventions in force and duly ratified by Luxembourg.

No Luxembourg ship may set sail from a river port or any sea port unless it complies with the safety requirements laid down in the international conventions in force, duly ratified by Luxembourg or required by this Law and the regulations implementing it.

Article 2.0.0-2.

Any ship applying for registration under the Luxembourg flag must have been inspected by the maritime administration of a Member State of the European Union or by an organisation recognised in accordance with Regulation (EC) No 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations, hereinafter referred to as a “recognised organisation”, and duly authorised by the Minister in accordance with Article 2.0.0-6 in accordance with the procedures laid down by Grand-Ducal regulation, hereinafter referred to as an “authorised organisation”. The registration certificate may only be obtained after the results of the inspection have been communicated to the Maritime Affairs Commissioner.

No ship over 15 years of age from the date of keel laying may be registered for the first time under the Luxembourg flag.

For ships registered in Luxembourg, continued registration once the ship reaches 15 years of age shall be conditional on the ship fully maintaining its class rating, in accordance with the criteria established by international classification societies.

Article 2.0.0-3.

All natural or legal persons must hold civil liability insurance (protection and indemnity insurance) issued by an insurance company with the requisite professional experience and headquartered in one of the Member States of the European Union. That insurance must cover all damage that may be caused by the ship and its cargo for which registration is sought.

Any ship carrying more than 2 000 tonnes of bulk oil as cargo shall be required to take out insurance or other financial security, such as a bank guarantee or a certificate issued by an international compensation fund, in an amount determined by applying the limits of liability provided for in the International Convention on Civil Liability for Oil Pollution Damage of 29 November 1969.

A certificate attesting that insurance or financial security is in force shall be issued by the Commissioner. That certificate shall comply with the model set out in the International Convention of 29 November 1969. The conditions for the issue and validity of the certificate shall be specified, as far as may be necessary, by Grand-Ducal regulation.

The certificate shall be annexed to the ship's papers.

Article 2.0.0-4.

The following shall be subject to a special regime to be determined by Grand-Ducal regulation:

- a) ships sailing exclusively in a restricted navigation zone along a coastline, demarcated by estuaries. That navigation restriction shall be mentioned on the registration certificate issued to that category of ships;
- b) ships, other than pleasure craft, undertaking a special voyage.

Article 2.0.0-5.

In so far as the international conventions in force, duly ratified by Luxembourg, relating to ship safety conditions do not provide for this, one or more Grand-Ducal regulations shall determine the standards relating to ship safety according to the service and navigation for which they are intended, and in particular the requirements relating to:

- a) the construction and state of repair of the hull;
- b) life-saving appliances;
- c) equipment and gear, as well as fitting-out items, including fire-fighting equipment and spare parts;
- d) nautical instruments, propulsion devices, mechanical and electrical equipment, signalling equipment, and radiotelegraphy and telephony equipment;
- e) physical fitness, certificates, licences and other similar attestations that may be required of the master and crew, as well as the number of crew members;
- f) the number of passengers per category that may be carried;
- g) the habitability of the accommodation, hygiene and sanitation;
- h) draught scales and freeboard marks;

- i) stability, stowage and ballasting;
- j) lifting gear.

The Commissioner may, in exceptional cases, grant exemptions from one or more of those provisions, taking into account the international conventions ratified by Luxembourg.

Article 2.0.0-6.

For the purpose of processing registration applications in accordance with Article 0.2.0 1, the Commissioner may accept certificates issued by foreign maritime authorities or authorised organisations designated by the Minister.

For the purpose of issuing the certificates required under this Law and the regulations implementing it, the Commissioner may:

- secure the cooperation of foreign maritime or port authorities on the basis of agreements to be concluded with those authorities;
- mandate classification societies to perform certain acts falling within his/her competence.

The Minister shall authorise the organisations recognised in accordance with the abovementioned Regulation (EC) No 391/2009 which the Commissioner may mandate. The Minister may limit the number of organisations that he or she authorises in line with the needs of the Luxembourg State for authorised organisations, on transparent and objective grounds. With a view to authorising a recognised organisation located in a third country, the Minister may require that third country to grant reciprocal treatment to organisations located in the European Union. The terms and conditions of authorisation shall be laid down by Grand-Ducal regulation.

Article 2.0.0-7.

When a ship flying the Luxembourg flag is abroad and unable to renew an expiring certificate, the Commissioner shall be informed immediately and may indicate the procedure to be followed to obtain a provisional certificate, which may only be issued in order to complete the voyage and the validity of which shall in no case exceed five months.

When a ship flying the Luxembourg flag has suffered serious damage or its structure has undergone significant modifications, the registration certificate shall be suspended automatically. It may only be revalidated by the Commissioner under the conditions set out in Article 2.0.0-6.

Apart from the cases provided for in the preceding subparagraph, when a ship flying the Luxembourg flag enters a port after suffering damage, or when there is a risk of damage following technical or other incidents, the voyage may not be continued until the master has informed the Commissioner or the port authorities of those facts.

The Commissioner may require the drawing-up of experts' reports and the communication of extracts from the logbook.

Article 2.0.0-8.

In exercising his/her powers as defined in Article 0.2.0-1, the Commissioner shall perform his/her control duties in cooperation with foreign maritime authorities, in accordance with the international conventions governing the matter.

Where necessary, he/she may mandate authorised organisations as referred to in Article 2.0.0-6 to perform certain acts in accordance with such terms and conditions as he/she shall determine.

Article 2.0.0-9.

In exercising his/her powers as defined in Article 0.2.0-1, the Maritime Affairs Commissioner may mandate a natural or legal person with recognised experience in the maritime field to carry out ad hoc checks, inspections or investigations on ships flying the Luxembourg flag.

Article 2.0.0-10.

The Commissioner or duly mandated officers as referred to in Articles 2.0.0-6 and 2.0.0-9 shall have the right to board ships and other vessels covered by this Law and the regulations implementing it at any time of the day or night.

The master or owner of a ship flying the Luxembourg flag shall provide the persons referred to in the preceding subparagraph with such information and assistance as the latter deem necessary for the performance of their duties.

Article 2.0.0-11.

1. The Commissioner or duly mandated officers as referred to in Article 2.0.0-6 shall have the right to detain any ship that does not comply with the conditions laid down in this Law.

They shall also have the right to detain any ship not flying the Luxembourg flag if there are serious grounds for believing that its safety or that of its crew or passengers is compromised.

In accordance with the conventions of the International Maritime Organization, the Commissioner shall only exercise the right provided for in this paragraph in respect of foreign ships or vessels after informing the consul of the country whose flag the ship or vessel flies. He/she shall indicate the measures to be taken and the reasons for the intervention. In urgent cases, that information shall be provided without delay after the measures have been taken.

The ship or vessel may depart as soon as the required conditions have been met, after receiving a favourable opinion from an inspector employed by an authorised organisation.

Notification of decisions taken in this regard shall be given to the port authorities of the place where the ship is located.

2. The Commissioner or duly mandated officers as referred to in Article 2.0.0-6 shall have the right to prohibit the departure of a ship flying the Luxembourg flag:

- a) if the ship or vessel does not have the requisite valid certificates;
- b) if, in the case provided for in Article 2.0.0-8, the inspection carried out reveals that the ship does not satisfy the prescribed legal or regulatory conditions;
- c) if there are grounds for believing that failure to comply with the conditions laid down in Article 2.0.0-5 compromises the safety of the crew or passengers. The prohibition on departure shall be lifted when the legal and regulatory conditions are met.

Article 2.0.0-12.

The crew may at any time submit a reasoned request to the Commissioner if they consider that the ship or vessel does not offer all the necessary safety guarantees. The Commissioner shall appoint a delegate to hear the crew before taking the measures required by the circumstances.

BOOK 3 – LABOUR LAW APPLICABLE TO SEAFARERS**PRELIMINARY TITLE – Definitions, scope of application and public policy provisions****Article 3.0.0-1.**

For the purposes of this Book, the following definitions shall apply:

- 1° “shipowner”: means the owner of the ship or another organisation or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with this Convention, regardless of whether any other organisation or persons fulfil certain of the duties or responsibilities on behalf of the shipowner;
- 2° “ILO Office”: means the International Labour Office;
- 3° “maritime labour certificate”: means the certificate referred to in Article 3.4.0-3;
- 4° “seafarers’ employment agreement”: means the agreement as defined in Article 3.1.2-1 et seq. of this Law;
- 5° “declaration of maritime labour compliance”: means the declaration referred to in Article 3.4.0-3;

- 6° “seafarer”: means a person employed or engaged or working in any capacity whatsoever on board a ship to which the provisions of this Law apply;
- 7° “ship”: means any vessel flying the Luxembourg flag other than one which navigates exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply;
- 8° “ILO”: means the International Labour Organization;
- 9° “WHO”: means the World Health Organization;
- 10° “piracy”: means any act constituting piracy within the meaning of the 1982 United Nations Convention on the Law of the Sea;
- 11° “seafarer recruitment and placement service”: means any person, company, institution, agency or other organisation, in the public or the private sector, which is engaged in recruiting seafarers on behalf of shipowners or placing seafarers with shipowners;
- 12° “STCW”: means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, adopted on 7 July 1978;
- 13° “armed robbery”: means any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a State's internal waters, archipelagic waters and territorial sea or any act of inciting or of intentionally facilitating an act described above.

Article 3.0.0-2.

(1) A Grand-Ducal regulation, adopted after consultation with the most representative organisations of shipowners and seafarers concerned, shall specify the categories of personnel not covered by the concept of seafarers on the basis of the occasional and short-term nature of their activity on board.

Notwithstanding the preceding subparagraph, workers excluded from the category of seafarers, whether self-employed or employed, shall benefit from the provisions of this Book relating to welfare at sea and repatriation.

(2) The provisions of this Book shall apply to all ships whether publicly or privately owned, ordinarily engaged in commercial activities, other than ships engaged in fishing or in similar pursuits and ships of traditional build such as dhows and junks. This Book shall not apply to warships or naval auxiliaries.

Article 3.0.0-3.

The contract under which a seafarer commits to the shipowner, the shipowner's representative or the ship's master is a seafarers' employment agreement governed by the law chosen by the parties, subject to the mandatory provisions of this Law applicable to all seafarers sailing under the Luxembourg flag or to more favourable provisions arising from conventions or collective bargaining agreements applicable to them.

Regardless of the law applicable to the employment agreement, the conditions of employment, work and life on board a ship flying the Luxembourg flag may not be less favourable than those resulting from the mandatory provisions of the 2006 Maritime Labour Convention or European regulations.

Article 3.0.0-4.

Except where special jurisdiction is determined in criminal matters, in disputes between the shipowner and the seafarer relating to the provisions of this Book:

- 1° an action by the shipowner may only be brought before the courts of the seafarer's domicile;
- 2° an action by the seafarer may be brought:
 - a) before the courts of the shipowner's domicile;
 - b) before the courts of the place where the work is usually performed; or
 - c) before the courts of the place of hiring.

Article 3.0.0-5.

(1) The Commissioner shall issue to any Luxembourg national who is employed as a seafarer and who so requests a seafarer's identity document as provided for in Convention No. 185 on Seafarers' Identity Documents, as revised (2003). A Grand-Ducal regulation shall determine the conditions for issuing such documents.

(2) In accordance with Article 3.1.1-20, all seafarers sailing under the Luxembourg flag must have a seaman's book issued by the Commissioner.

Article 3.0.0-6.

Without prejudice to the criminal provisions laid down by this Law, by the Criminal Code or by other special laws, any person on board a ship flying the Luxembourg flag shall be subject to the provisions of the Law of 14 April 1992 establishing a disciplinary and criminal code for the merchant fleet, as amended, hereinafter referred to as the "aforementioned Law of 14 April 1992".

Article 3.0.0-7.

Unless expressly provided otherwise, the provisions of the Preliminary Title, Book I, Book II and Title I of Book VI of the Labour Code shall not apply on board ships flying the Luxembourg flag.

Unless expressly provided otherwise, the provisions of Book III of the Labour Code shall not apply to the protection of the health and safety and accident prevention of seafarers on board ships flying the Luxembourg flag.

Books IV and V of the Labour Code shall apply unless expressly provided otherwise. Specific provisions adapting to the maritime environment may be adopted by Grand-Ducal regulation.

TITLE 1 – Individual and collective labour relations**Chapter 1 - *Minimum conditions required for the work of all seafarers working on board a ship flying the Luxembourg flag******Section 1 – Minimum age*****Article 3.1.1-1.**

The employment, engagement or work on board a ship of any person under the age of eighteen shall be prohibited.

Article 3.1.1-2.

In the event of a breach of Article 3.1.1-1, the Commissioner shall order the immediate cessation of work by the seafarer concerned.

Any shipowner who employs a seafarer in breach of the provisions of Article 3.1.1-1 shall be liable to imprisonment for a term of between eight days and six months and a fine of between EUR 251 and EUR 25 000, or one of those penalties only.

In the event of a repeat offence within two years, those penalties may be doubled.

Section 2 – Medical certificates**Article 3.1.1-3.**

When recruiting seafarers and before allowing them to begin serving on board, the shipowner shall be required to demand that they produce a valid medical certificate attesting that they are medically fit to perform the duties they are to carry out at sea and that their embarkation does not pose any danger to their own health or that of the crew.

Article 3.1.1-4.

The medical certificate must genuinely reflect seafarers' state of health, in light of the duties they are to perform. Duly authorised medical practitioners as defined in Article 3.1.1-6 shall follow the guidelines for conducting pre-embarkation medical examinations and periodic medical examinations of seafarers published by the ILO Office/WHO and any other applicable international guidelines published by the ILO, IMO or WHO.

Article 3.1.1-5.

This Title shall apply without prejudice to the STCW. A medical certificate issued in accordance with the requirements of the STCW shall also be accepted for the purposes of this Chapter. A medical certificate that complies in substance with those requirements, in the case of seafarers who are not covered by the STCW, shall also be accepted.

Article 3.1.1-6.

(1) The medical certificate shall be issued to the seafarer and at the shipowner's expense by a medical practitioner duly authorised in his/her country of establishment in accordance with the regulations applicable there. The following shall be considered duly authorised medical practitioners:

- 1° a doctor licensed or certified by a Member State of the European Union or of the European Free Trade Association, in accordance with the requirements of the State in question;
- 2° a doctor licensed or certified by a State that has ratified the 2006 Maritime Labour Convention, in accordance with the requirements of the State in question;
- 3° a doctor licensed or certified by a State appearing on the STCW White List, in accordance with the requirements of the State in question.

The doctor must have complete professional independence with regard to medical examination procedures.

(2) A certificate relating solely to eyesight may be issued by a person authorised to issue such certificates by the competent authority of the country in which he/she is registered. A separate certificate for colour perception shall not be mandatory.

Article 3.1.1-7.

The medical certificate must indicate that:

- 1° the hearing and sight of the seafarer concerned, and the colour vision in the case of a seafarer to be employed in capacities where fitness for the work to be performed is liable to be affected by defective colour vision, are all satisfactory;
- 2° the seafarer is medically fit for the work that he or she is to perform;
- 3° the seafarer concerned is not suffering from any medical condition likely to be aggravated by service at sea or to render the seafarer unfit for such service or to endanger the health of other persons on board.

Medical confidentiality must be strictly observed. The medical certificate may only be transmitted between shipowners with the seafarer's consent.

The form of the medical certificate may be specified by Grand-Ducal regulation.

Article 3.1.1-8.

Unless a shorter period is prescribed due to the nature of the duties to be performed by the person concerned or under the STCW:

- 1° a medical certificate shall remain valid for a maximum of two years from its date of issue;
- 2° a certificate relating to colour vision shall remain valid for a maximum of six years from its date of issue.

Article 3.1.1-9.

Seafarers that have been refused a certificate or have had a limitation imposed on their ability to work, in particular with respect to time, field of work or trading area, may, in accordance with the procedure applicable in the country issuing the certificate:

- 1° either arrange to be examined by another doctor meeting the requirements referred to in Article 3.1.1-6; or
- 2° appeal to the competent medical authority or court in the event of a dispute over a medical certificate stating that the seafarer is unfit for work.

Article 3.1.1-10.

In urgent cases, the Commissioner may, at the request of the shipowner, permit a seafarer to work without a valid medical certificate until the next port of call where the seafarer can obtain a medical certificate from a qualified medical practitioner, provided that:

- 1° the period of such permission does not exceed three months; and
- 2° the seafarer concerned is in possession of an expired medical certificate of recent date.

Article 3.1.1-11.

If the period of validity of a certificate expires in the course of a voyage, the certificate shall continue in force until the next port of call where the seafarer can obtain a medical certificate from a qualified medical practitioner, provided that the period shall not exceed three months.

Article 3.1.1-12.

The medical certificates for seafarers working on ships ordinarily engaged on international voyages must as a minimum be provided in English.

Article 3.1.1-13.

In the event of a breach of Articles 3.1.1-3 to 3.1.1-11, the Commissioner shall order the immediate cessation of work by the seafarer concerned.

The following persons shall be liable to imprisonment for a term of between eight days and six months and a fine of between EUR 251 and EUR 25 000, or one of those penalties only:

- 1° a shipowner or master who employs a seafarer who has not undergone medical examinations and does not have a valid medical certificate in accordance with the conditions set out in Articles 3.1.1-3 to 3.1.1-11;
- 2° any shipowner who employs a seafarer who has been declared unfit for work or for a particular job.

In the event of a repeat offence within two years, those penalties may be doubled.

Section 3 – Training and qualifications

Article 3.1.1-14.

Seafarers shall not work on a ship unless they are trained or certified as competent or otherwise qualified to perform their duties.

Article 3.1.1-15.

Seafarers shall not be permitted to work on a ship unless they have successfully completed training for personal safety on board ship.

Article 3.1.1-16.

Seafarers must satisfy the professional training requirements corresponding to the duties they are called upon to perform on board ships. Training and qualifications in accordance with the STCW or other mandatory instruments adopted by the IMO shall be deemed to meet the requirements of this Article.

A Grand-Ducal regulation shall lay down the procedures for recognising maritime professional training qualifications. It shall also specify the conditions under which professional qualifications, diplomas and certificates obtained or acquired in another Member State of the European Union or in a State party to the Agreement on the European Economic Area or in a third country are recognised in Luxembourg. It shall in addition specify measures to prevent fraud and other illegal practices.

Article 3.1.1-17.

In the event of a breach of Articles 3.1.1-14 to 3.1.1-16, and unless an exemption has been duly granted, the Commissioner shall order the immediate cessation of work by the seafarer concerned.

Unless an exemption has been duly granted:

- 1° any shipowner or master who employs or authorises seafarers to sail without holding the requisite qualifications or other training certificates corresponding to the duties that they are called upon to perform on board the ship in accordance with Articles 3.1.1-14 and 3.1.1-16 shall be liable to imprisonment for a term of between eight days and two years and a fine of between EUR 750 and EUR 25 000, or one of those penalties only;
- 2° any person who exercises command of the ship or any other function on board without fulfilling the requirements of Articles 3.1.1-14 and 3.1.1-16 shall be liable to imprisonment for a term of between eight days and three months and a fine of between EUR 251 and EUR 5 000, or one of those penalties only;
- 3° any person who obtains employment by deception or false documents shall be punished in accordance with Article 58 of the Law of 14 April 1992 establishing a disciplinary and criminal code for the merchant fleet, as amended.

*Section 4 – Crew and minimum manning***Article 3.1.1-18.**

(1) Every ship shall be manned with a sufficient number of seafarers possessing the appropriate professional qualifications to ensure the safety and security of the ship and of the persons on board, as well as compliance with watchkeeping, working hours and rest requirements.

To that end, the Minimum Safe Manning Document, where required in accordance with Article 1.1.2-5, shall be issued by the Commissioner. It shall specify the minimum safe manning and shall be annexed to the registration certificate. In determining the minimum manning, the Commissioner shall take into account the relevant international and European conventions and recommendations for the type of ship concerned.

(2) A crew list identifying the seafarers on board each ship shall be kept available for inspection by any competent authorities of the flag State and the port State upon request. A Grand-Ducal regulation may specify the procedures whereby the master is required to keep the crew list up to date.

Article 3.1.1-19.

Without prejudice to Article 2.0.0-11, a shipowner or master who authorises a ship to sail without holding the requisite Minimum Safe Manning Document or with a crew numbering fewer than the minimum prescribed by the Commissioner shall be liable to imprisonment for a term of between eight days and two years and a fine of between EUR 750 and EUR 25 000, or one of those penalties only.

Section 5 – Recruitment and placement

Article 3.1.1-20.

All seafarers sailing under the Luxembourg flag must have a seaman's book issued by the Commissioner. The book must not contain any assessment of the services rendered by the seafarer.

The issue of the seaman's book shall not confer any right of entry, residence or employment on the territory of Luxembourg.

A Grand-Ducal regulation shall determine the form, content and conditions of issue of the book.

Article 3.1.1-21.

Seafarers shall be engaged directly by the shipowner or made available to the shipowner by a private or public placement and recruitment service.

Article 3.1.1-22.

(1) A contract for the supply of a seafarer must be concluded in writing between the placement and recruitment service and the shipowner.

(2) The shipowner may only enter into such supply contract with a private seafarer recruitment and placement service if the service in question has been approved by the authorities of the State in which it is established and if it guarantees seafarers access to an efficient, adequate and transparent system for finding employment on board a ship free of charge.

Where no accreditation procedure exists, or where recruitment and placement services are established in States or territories to which the 2006 Maritime Labour Convention or ILO Convention No. 179 concerning the recruitment and placement of seafarers does not apply, the shipowner shall ensure, through appropriate measures, that those services comply with the requirements of Standard A.1.4 of the 2006 Maritime Labour Convention. In addition, the shipowner shall inform the Commissioner, who may require the production of any documentation necessary to ensure compliance with Standard A.1.4 of the 2006 Maritime Labour Convention. In any event, the Commissioner may object to the recruitment of seafarers within five days of notification if he/she is in possession of conclusive evidence that the requirements of Standard A.1.4 of the 2006 Maritime Labour Convention are not being complied with in the said State or territory.

Article 3.1.1-23.

Notwithstanding the existence of a contract for the supply of a seafarer, the shipowner shall remain responsible for the fulfilment of all obligations incumbent upon him/her/it under this Law and under the 2006 Maritime Labour Convention.

In the event of any failure on the part of the placement and recruitment services, the shipowner shall bear, in particular, the financial consequences of:

- 1° sickness, injury or death occurring in connection with the seafarer's employment;
- 2° payment of any outstanding wages and, where applicable, social security contributions relating to periods of employment on board;
- 3° repatriation.

Any clause in the contract between the shipowner and the placement and recruitment service that seeks to circumvent the provisions of this Article shall be null and void.

Article 3.1.1-24.

(1) A contract for the supply of a seafarer entered into with a private recruitment and placement service that does not meet the requirements referred to in Article 3.1.1-22 shall be null and void.

(2) In the case referred to in paragraph (1), the shipowner and the seafarer concerned shall be deemed to be bound by a seafarers' employment agreement of indefinite duration from the beginning of the period of service.

However, the seafarer may terminate the agreement without notice or compensation at any time up until the end of the period for which he/she has been made available to the shipowner.

Article 3.1.1-25.

Any shipowner who recruits seafarers through a private recruitment and placement service without complying with the requirements laid down in Article 3.1.1-22 shall be liable to a fine of between EUR 500 and EUR 10 000 and, in the event of a repeat offence, imprisonment for a term of between two and six months and a fine of between EUR 1 250 and EUR 12 500, or one of those penalties only.

The fine provided for in this Article shall be applied as many times as there are seafarers in respect of whom the said provisions have been infringed.

Chapter 2 – Seafarers’ employment agreements

Section 1 – Seafarers’ employment agreements generally

Subsection 1 – General provisions

Article 3.1.2-1.

A seafarers’ employment agreement may be concluded for a specific voyage or for a fixed or indefinite period. The parties to the seafarers’ employment agreement may derogate from the provisions of this Title in a manner more favourable to seafarers.

Any clause contrary to the provisions of this Title shall be null and void in so far as it seeks to restrict the rights of seafarers or increase the scope of their obligations.

Article 3.1.2-2.

Without prejudice to the rules governing the free movement of workers within the European Union, a seafarers’ employment agreement shall not confer any right of entry, residence or employment on the territory of Luxembourg.

Subsection 2 - Form of the seafarers’ employment agreement

Article 3.1.2-3.

The following requirements shall apply on board ships flying the Luxembourg flag:

- 1° At the latest upon entry into service, seafarers must be in possession of a written seafarers’ employment agreement signed by the seafarer and the shipowner or the latter’s representative or agent, or, if the seafarer in question is not an employee, evidence of contractual or similar arrangements providing him/her with decent working and living conditions on board the ship as required by this Law. Where the seafarer is engaged by a representative, including a placement agency as defined in Article 3.1.1-21 et seq. of this Law, the said representative or agent must clearly state in the employment agreement that he or she is acting in that capacity;
- 2° The employment agreement must clearly state that seafarers signing such agreement are to be given sufficient time to examine and seek advice on the agreement before signing, as well as such other facilities as are necessary to ensure that they have freely entered into an agreement with a sufficient understanding of their rights and responsibilities;
- 3° Both the shipowner and seafarer concerned shall each have a signed original of the seafarers’ employment agreement;
- 4° The master of the ship shall keep on board, and make available to the flag State authorities or persons acting on their behalf and the authorities of the port where the ship calls, the text of the relevant legal provisions, including the 2006 Maritime Labour Convention, and a copy of the applicable contracts and collective bargaining agreements.

The master shall keep on board, at the seafarer's disposal, the text of the legal or contractual provisions governing the agreement.

Access thereto may be provided electronically;

- 5° To facilitate access to other employment or to satisfy the conditions of service at sea required for the purposes of advancement or promotion, every seafarer shall receive a document together with a translation thereof into English, setting out his or her record of employment on board the ship and specifying the start and end dates of the contract and the nature of the work performed. The certificate may not contain any other information or assessment relating to the quality of the seafarer's work or his/her wages. The seaman's book referred to in Article 3.1.1-20 may, if it meets the various requirements, constitute a sufficient document establishing the seafarer's record of employment.

Article 3.1.2-4.

Where the language of the seafarers' employment agreement and any applicable collective bargaining agreement is not in English, the following shall also be available in English (except for ships engaged only in domestic voyages):

- 1° a copy of a standard form of the agreement;
2° the portions of the collective bargaining agreement that are subject to a port State inspection under Regulation 5.2. of the 2006 Maritime Labour Convention.

Article 3.1.2-5.

(1) A seafarers' employment agreement governed by Luxembourg law shall include the following information:

- 1° the seafarer's full name, usual place of residence, date of birth or age, and place of birth;
2° the surname, first name and domicile of the shipowner or, if the shipowner is a legal person, its company name and registered office and, where applicable, the name under which the shipowner conducts business with members of the public;
3° the place where and date when the seafarers' employment agreement is entered into;
4° the capacity in which the seafarer is to be employed and, where applicable, a description of that position or of the voyages to be undertaken, as well as the place and date of entry into service;
5° the amount of the basic wages or, where applicable, the formula used for calculating them and, where applicable, any wage supplements, ancillary wages, gratuities or profit-sharing arrangements agreed upon;
6° the amount of paid annual leave or, where applicable, the formula used for calculating it;
7° the termination of the agreement and the conditions thereof, including:
a) 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,
b) if the agreement has been made for a definite period or a voyage, the provisions set out in Article 3.1.2-9 of this Law;
8° the health and social security protection benefits to be provided to the seafarer by the shipowner;
9° the duration of any probationary period provided for;
10° the seafarer's entitlement to repatriation;
11° where applicable, a reference to the applicable collective bargaining agreements;
12° any additional clauses agreed upon by the parties.

The details referred to in the first subparagraph may derive from a reference to the applicable legislative, regulatory or administrative provisions or to collective bargaining agreements governing the matters referred to therein.

Where the agreement is governed by foreign law, the information specified in Standard A.2.1, paragraph 4, of the 2006 Maritime Labour Convention shall constitute the minimum information that must be included in the employment agreement.

(2) Any modification to the matters referred to in paragraph (1) shall be made by means of a written amendment to the agreement. The amending document, signed by both parties, shall be drawn up in duplicate, with one copy being given to the seafarer and the other to the shipowner, at the latest when the relevant amendments take effect.

However, the written document referred to in the preceding subparagraph shall not be mandatory in the event of amendments to the legislative, regulatory or administrative provisions or collective bargaining agreements to which the seafarers' employment agreement refers.

(3) In the absence of a written document, the seafarer may establish the existence and content of the seafarers' employment agreement by adducing any evidence, regardless of the value of the amount in dispute.

Subsection 3 – Probationary period

Article 3.1.2-6.

(1) Without prejudice to the provisions of the second subparagraph of Article 3.1.2-15, a seafarers' employment agreement concluded for an indefinite period may include a clause providing for a probationary period.

The probationary clause must be recorded in the document referred to in paragraph (1) of Article 3.1.2-5, for each seafarer individually, by no later than the date on which the seafarer enters into service; otherwise, it shall be null and void.

In the absence of a written document establishing that the agreement has been concluded on a probationary basis, it shall be deemed to have been concluded for an indefinite period. Evidence to the contrary shall not be admissible.

(2) The probationary period shall commence when the seafarer actually embarks.

(3) The probationary period agreed between the parties may not be less than two weeks and may not exceed:

1° six months for officers;

2° two months for other personnel.

A probationary period not exceeding one month shall be expressed in whole weeks. A probationary period exceeding one month shall be expressed in whole months.

(4) A probationary clause may not be renewed.

(5) A probationary agreement may not be terminated during the minimum probationary period of two weeks, except on serious grounds in accordance with Article 3.1.2-59.

Without prejudice to the provisions of paragraph (4), the shipowner or seafarer may terminate the probationary agreement in the manner provided for in paragraph (2) of Article 3.1.2-54. In such cases, the agreement shall terminate upon expiry of a period of notice which shall not be less than:

1° the number of days equal to the duration, in terms of number of weeks, of the probationary period provided for in the agreement;

2° four days for each probationary month provided for in the agreement, but not less than fifteen days.

Where the probationary agreement is terminated by the shipowner, the termination shall take effect only in a port of embarkation or disembarkation.

(6) Where the probationary agreement is not terminated in the circumstances referred to in paragraph (5) before the expiry of the probationary period agreed by the parties, the seafarers' employment agreement shall be deemed to have been concluded for an indefinite period commencing on the date of entry into service.

Subsection 4 – Liability for risks

Article 3.1.2-7.

The shipowner shall bear the risks arising from the activities of the undertaking. The seafarer shall bear the consequences of any damage caused by his or her wilful acts or gross negligence.

Section 2 – Fixed-term or voyage-based seafarers' employment agreements

Subsection 1 – Recourse to, and form of, fixed-term contracts

Article 3.1.2-8.

In maritime matters, employment contracts may be concluded for a fixed term or for the duration of a voyage. Unless otherwise specified, the provisions of this Section applicable to fixed-term contracts shall apply to contracts concluded for the duration of a given voyage.

Article 3.1.2-9.

Without prejudice to the provisions of paragraph (1) of Article 3.1.2-5, a seafarers' employment agreement concluded for a fixed term must include the following information:

- 1° where it is concluded for a specific period, the date of expiry of the term;
- 2° where it is concluded for a given voyage, the name of the port where the voyage will end and the time when the commercial and maritime operations carried out in that port will be deemed to have ended. Where the designation of that port does not allow the approximate duration of the voyage to be assessed, the agreement must set a maximum duration after which the seafarer may request to be put ashore at the first port of call, even if the voyage for which the agreement was concluded has not been completed;
- 3° the duration of any probationary period provided for;
- 4° where applicable, the renewal clause referred to in Article 3.1.2-12.

In the absence of a written document or a document specifying that the seafarers' employment agreement is concluded for a fixed term, it shall be deemed to have been concluded for an indefinite term. Evidence to the contrary shall not be admissible.

Subsection 2 – Duration of fixed-term contracts

Article 3.1.2-10.

A fixed-term contract must specify a precisely defined term effective as from the conclusion thereof. However, it may refrain from specifying a precise term when it is concluded in the following cases:

- 1° in order to replace a seafarer who is temporarily absent or whose employment contract has been suspended for reasons other than a collective labour dispute, or to replace a seafarer whose position has become vacant before his or her successor has taken up his or her duties;
- 2° for seasonal jobs as referred to in Article L. 122-1, paragraph 2, point 2, of the Labour Code and the Grand-Ducal regulation implementing it.

Where, in such cases, the contract does not specify a precise term, it must be concluded for a minimum period and shall expire at the end of the period of unavailability of the absent seafarer or, in the case of seasonal employment, upon achievement of the object for which it was concluded.

Article 3.1.2-11.

- (1) With the exception of seasonal contracts, the duration of a fixed-term contract may not exceed twenty-four months, including renewals, for the same seafarer.
- (2) Seasonal contracts may not be concluded for a period exceeding seven months within the space of the same consecutive period of twelve months, including renewals.

Subsection 3 – Renewal of fixed-term contracts

Article 3.1.2-12.

- (1) A fixed-term contract may be renewed twice for a fixed term within the limits provided for in Article 3.1.2-11.

The principle of renewal and the conditions for renewal must be set out in a clause in the initial seafarers' employment agreement or in a subsequent rider thereto.

In the absence of a written document complying with this provision, the renewed seafarers' employment agreement shall be deemed to have been concluded for an indefinite period. Evidence to the contrary shall not be admissible.

(2) Without prejudice to the provisions of paragraph (2) of Article 3.1.2-11, a seasonal employment contract may include a clause providing for renewal for the following season.

A contract concluded for the fixed term of a season shall constitute a fixed-term contract even if it is renewed for subsequent seasons. However, this shall not be the case where there is a renewal clause; in that case, the repeated continuance for more than two seasons of contractual relations between the shipowner and the same seafarer shall operate to transform all such relations into a relationship of overall indefinite duration.

Subsection 4 – Succession of fixed-term contracts

Article 3.1.2-13.

If a seafarers' employment agreement continues after the expiry of a fixed-term contract, it shall become a contract of indefinite duration.

Article 3.1.2-14.

Upon expiry of a fixed-term contract or a contract for a specific voyage, the job of the seafarer whose contract has come to an end may not be filled either by the same seafarer or by another seafarer on the basis of a fixed-term contract, or a contract concluded for a specific voyage, before the end of a period equal to one third of the duration of the expired contract, including any renewals thereof.

The provisions of the first subparagraph shall not apply:

- 1° in the event of early termination for reasons attributable to the seafarer;
- 2° in the event of refusal by the seafarer to renew his or her contract, where it contains a renewal clause, for the remaining term of the non-renewed contract;
- 3° to the filling of seasonal jobs, particularly in the yachting sector;
- 4° to contracts concluded in order to enable seafarers to complete their professional training, or to complete the period of time that they need to spend at sea in order to continue their studies or obtain their diploma;
- 5° in the case of a seafarer who is temporarily absent or whose employment contract has been suspended;
- 6° where urgent work needs to be carried out;
- 7° in the event of a further absence of the seafarer who is being replaced.

Article 3.1.2-15.

When, at the end of a fixed-term contract, the contractual relationship is continued in accordance with Articles 3.1.2-12 to 3.1.2-14, the seafarer shall retain the seniority acquired by him or her at the end of the previous contract.

In such cases, the new contract may not include a probationary period.

Subsection 5 – Penalties

Article 3.1.2-16.

Any contract entered into in breach of Articles 3.1.2-10, 3.1.2-11, 3.1.2-12 and 3.1.2-14 shall be deemed to be of indefinite duration.

Subsection 6 – Equal treatment

Article 3.1.2-17.

Unless otherwise provided by law, the legal and contractual provisions applicable to seafarers employed under a contract of indefinite duration shall also apply to seafarers employed under a fixed-term contract or a contract concluded for a specific voyage.

In the event that recruitment under a contract of indefinite duration is to take place with a view to filling a vacancy on board his/her/its ships, the shipowner shall be obliged to give notice to that effect to the seafarers employed by him/her/it who are working under a fixed-term contract as at the time when the vacancy arises. Such information shall be posted on the ship's notice board in a conspicuous place accessible to seafarers.

Subsection 7 – Probationary period

Article 3.1.2-18.

(1) A fixed-term contract may include a clause providing for a probationary period in accordance with the provisions of Article 3.1.2-6, subject to the following:

- 1° the probationary period may not be agreed in a contract having a duration of less than two months;
- 2° save in the case of a collective bargaining agreement providing for a shorter period, and within the limits set out in paragraph (3) of Article 3.1.2-6 relating to officers and rank-and-file employees,
 - a) for contracts having a duration of two months or more and less than three months, the probationary period may not exceed three weeks;
 - b) for contracts having a duration of six months or more and less than nine months, the probationary period may not exceed two months;
 - c) for contracts having a duration of nine months or more and less than twelve months, the probationary period may not exceed three months;
 - d) for contracts having a duration of twelve months or more and less than fifteen months, the probationary period may not exceed four months;
 - e) for contracts having a duration of fifteen months or more and less than eighteen months, the probationary period may not exceed five months;
 - f) for contracts having a duration of eighteen months or more, the probationary period may not exceed six months.

In the absence of a specific term, the probationary period shall be calculated in the same way, by reference to the minimum duration of the contract.

Where the contract is concluded for a specific voyage, the probationary period shall be calculated by reference to the approximate duration of the contract. If this cannot be established, the probationary period shall be calculated by reference to the maximum duration specified in the contract, after which the seafarer may request to be put ashore pursuant to point 2° of the first subparagraph of Article 3.1.2-9.

(2) The probationary period shall be taken into account when calculating the term of the agreement.

(3) A contract containing a probationary clause may be terminated in accordance with the procedures and conditions set out in paragraph (5) of Article 3.1.2-6.

(4) Where the probationary contract is not terminated under the conditions referred to in paragraph (3) before the expiry of the probationary period agreed by the parties, the contract shall be deemed to have been concluded for the duration agreed therein, commencing on the date of the employee's entry into service.

Subsection 8 – Termination of fixed-term contracts

Article 3.1.2-19.

(1) A fixed-term contract shall automatically terminate upon expiry of the period for which it was concluded.

Where the term of the contract expires during the course of a voyage, the seafarer's contract shall terminate upon arrival at the first port where the ship carries out a commercial operation.

(2) A seafarers' employment agreement concluded for the duration of a voyage shall terminate upon completion of the voyage and, more specifically, at the moment when the commercial and maritime operations carried out in the port of destination are deemed to have been completed.

Notwithstanding the preceding subparagraph, where it has been necessary to stipulate a maximum duration in accordance with point 1° of the first paragraph of Article 3.1.2-9, a seafarers' employment agreement concluded for the duration of a voyage shall terminate at the end of that period at the initiative of the seafarer if he or she requests to be put ashore at the first port of call, even if the voyage has not been completed.

Article 3.1.2-20.

Save in the case referred to in Article 3.1.2-59, a fixed-term contract may not be terminated before the expiry of the term, as defined in Article 3.1.2-15.

Failure by the shipowner to comply with the provisions of the preceding subparagraph shall entitle the seafarer to damages in an amount equal to the wages, not including overtime, that he or she would have received up until the end of the contract, without that amount exceeding the wages corresponding to the notice period that would have had to be observed if the contract had been concluded without a fixed term.

Failure by the seafarer to comply with the provisions of the first subparagraph above shall entitle the shipowner to damages in an amount corresponding to the actual loss suffered, without that amount exceeding the wages corresponding to the period of notice that would have had to be observed by the seafarer if the contract had been concluded without a fixed term.

Section 3 – Performance of the seafarers' employment agreement

Subsection 1 – General obligations of the shipowner

Article 3.1.2-21.

The shipowner shall be required:

- 1° to ensure and observe propriety and morality during performance of the employment agreement;
- 2° to have the seafarer work under the conditions, at the time and in the place agreed upon and in compliance with this Law, its implementing regulations and the collective labour agreements, regulations and customs in force;
- 3° to provide, where necessary and unless otherwise stipulated, the assistance, tools and materials necessary for the performance of the work;
- 4° to ensure, with due diligence, that the work is carried out in conditions that are suitable from the point of view of the seafarer's safety and health and that first aid is provided to the seafarer in the event of an accident;
- 5° to pay remuneration in accordance with the provisions of Chapter 3 of Title 2 of this Book;
- 6° to provide the seafarer with accommodation on board the ship that is well appointed, proportionate to the number of occupants and exclusively reserved for their use in accordance with the terms and conditions set out in Chapter 4 of Title 2 of this Book, if applicable;
- 7° to provide, at his/her/its own expense, healthy and sufficient food and satisfactory sanitary facilities in accordance with the provisions of Chapter 4 of Title 2 of this Book, if applicable;
- 8° to take reasonable care to preserve the seafarer's work tools and personal effects that the seafarer is obliged to deposit, without the shipowner, the latter's agent or the master having the right to retain those work tools or effects.

Article 3.1.2-22.

In accordance with Article 3.1.2-68, when the employment agreement ends, the shipowner shall be required to hand over to the seafarer all social documents and the certificate referred to in point 5° of Article 3.1.2-3.

At the seafarer's request, the Commissioner may validate the certificate of service issued in accordance with the preceding subparagraph on the basis of the seaman's book and any other document deemed necessary to corroborate the information contained in the certificate of service.

Subsection 2 – Abandonment, repatriation and financial security

Part 1 – Right to repatriation

Article 3.1.2-23.

Seafarers shall be entitled to repatriation in the following cases:

- 1° when the seafarers' employment agreement, concluded for a specific voyage or for a fixed period, expires at the end of its normal term and the seafarer is in a country other than his or her country of residence;
- 2° in the event of dismissal or disembarkation on serious grounds or for disciplinary reasons within the meaning of the aforementioned Law of 14 April 1992 ;
- 3° in the event of dismissal with notice, including during the probationary period, at the end of the notice period provided for in paragraph (5) of Article 3.1.2-54 or, in the event of exemption from serving the notice period, upon termination of the seafarer's activities;
- 4° in the event of resignation by the seafarer on genuine and serious grounds or for serious reasons;
- 5° when the seafarer is no longer able to perform the duties specified in the seafarers' employment agreement or when it is not possible to require him or her to perform those duties on account of special circumstances, namely:
 - a) sickness, injury or any other medical condition which require his or her repatriation when the seafarer is recognised as being medically fit to travel;
 - b) exemption from working for pregnant women recommended by a doctor in accordance with the procedure referred to in Article 3.3.4-11 or rendered necessary for technical or objective reasons;
 - c) shipwreck;
 - d) when the shipowner is no longer able to fulfil his/her/its legal or contractual obligations as an employer by reason of the initiation of collective proceedings, a change of registration, sale of the ship or any other similar reason;
 - e) when the ship is sailing to an area of armed conflict, as defined by a collective bargaining agreement or the employment agreement, to which the seafarer refuses to go;
 - f) in the event of termination or suspension of the seafarers' employment agreement in accordance with this Law or a collective bargaining agreement, or in the event of termination of the contract for any other similar reason.

Article 3.1.2-24.

The shipowner shall be relieved of the obligation to repatriate the seafarer if the latter does not ask to be repatriated within thirty days of disembarkation or within any other period specified in a collective bargaining agreement, unless the seafarer is being held captive as a result of an act of piracy or armed robbery against ships.

Article 3.1.2-25.

Without prejudice to Article 3.1.2-23, seafarers shall have the right to be repatriated after a maximum period of nine months on board. A collective bargaining agreement may provide for periods of service on board that are more favourable to seafarers, taking into account factors that affect the seafarer's working environment. The collective bargaining agreement shall endeavour to reduce those periods in line with changes and developments in technology, and may draw on the recommendations of the ILO Joint Maritime Commission in this regard.

Article 3.1.2-26.

(1) Subject to paragraph (3), repatriation shall be arranged at the shipowner's expense.

The shipowner may not require seafarers, at the commencement of their employment, to make an advance payment towards the cost of repatriation.

(2) In order to ensure that seafarers are duly repatriated, the shipowner shall provide financial security in accordance with the provisions of Article 3.1.2-34.

(3) The costs of repatriation of a seafarer who has been disembarked for serious misconduct or as a result of injury or sickness arising from wilful misconduct or gross negligence shall be borne by the seafarer. However, the shipowner shall be required to advance those costs. The burden of proof shall lie with the shipowner.

(4) Without prejudice to the costs referred to in Article 3.1.2-36 in the event of abandonment of the seafarer, the costs of repatriation must include at least the following:

- 1° passage to the destination selected for repatriation by appropriate and rapid means, normally by aeroplane;
- 2° accommodation and food from the moment the seafarer leaves the ship until he/she reaches the repatriation destination;
- 3° pay and allowances from the moment the seafarer leaves the ship until he/she reaches the repatriation destination;
- 4° transportation of 30 kg of the seafarers' personal luggage to the repatriation destination;
- 5° medical treatment when necessary until the seafarer is medically fit to travel to the repatriation destination.

(5) Repatriation costs must be covered and paid until the seafarer is disembarked at the destination specified in accordance with paragraph (2) of Article 3.1.2-27, or until he or she obtains suitable employment on board a ship bound for one of the destinations mentioned therein.

Article 3.1.2-27.

(1) The shipowner shall be responsible for organising repatriation by appropriate and rapid means. Air transport shall, as far as possible, be the normal mode of transport.

(2) Repatriation shall be to a destination of the seafarer's choice with which he or she is deemed to have effective ties, namely:

- 1° the place at which the seafarer agreed to enter into the engagement;
- 2° the place stipulated by collective bargaining agreement;
- 3° the seafarer's country of residence;
- 4° such other place as may be mutually agreed at the time of engagement.

Article 3.1.2-28.

In accordance with Article 3.2.2-14, the time spent waiting for repatriation and the time spent travelling shall not be deducted from any paid leave that the seafarer has accrued or from parental leave.

Article 3.1.2-29.

The shipowner shall have the right to recover the cost of repatriation under contractual arrangements with third parties.

Article 3.1.2-30.

(1) Immediately upon becoming aware of any failure by the shipowner to fulfil his/her/its repatriation obligations, the Commissioner shall give formal notice to the shipowner requiring the latter to justify the measures that he/she/it intends to take to fulfil his/her/its obligations.

(2) If no response is received within two days of the formal notice being given, and the shipowner has not by then repatriated the seafarer:

- 1° the Commissioner shall organise the seafarer's repatriation. If he/she omits to do so, the State from whose territory the seafarer is to be repatriated or the State of which he or she is a national may organise the repatriation and recover the costs from the Luxembourg State;
- 2° the Luxembourg State may recover from the shipowner the costs incurred for the repatriation of the seafarer;
- 3° the costs of repatriation shall in no case be borne by the seafarer, except under the conditions provided for in paragraph (3) of Article 3.1.2-26.

Article 3.1.2-31.

Taking into account the applicable international instruments on the arrest of ships, if the Luxembourg State has paid the cost of repatriation, the Commissioner may have the ships of the shipowner concerned detained by means of arrest until reimbursement has been made in accordance with the provisions of Article 3.1.2-30.

Article 3.1.2-32.

A copy of the national provisions applicable to repatriation, including collective bargaining agreements, shall be kept on board and made available to seafarers in the appropriate language and in English.

Part 2 – Abandonment and financial security

Article 3.1.2-33.

For the purposes of this Part, any seafarer working on board a ship flying the Luxembourg flag shall be considered to have been abandoned where, in contravention of the provisions of this Law or the terms of the seafarers' employment agreement, the shipowner:

- 1° fails to bear the costs of repatriating the seafarer; or
- 2° leaves the seafarer without the necessary maintenance and support, including insufficient food or drinking water or fuel necessary for survival on board the ship, or medical care, or in conditions falling short of the standards prescribed by this Law; or
- 3° causes a breakdown in relations with the seafarer and, in particular, fails to pay the contractual wages referred to in Chapter 3 of Title 2 of this Book for a period of at least two months.

Article 3.1.2-34.

Every shipowner must provide a rapid and effective financial security mechanism designed to assist seafarers employed on any ship flying the Luxembourg flag in the event of abandonment.

The financial security referred to in the first subparagraph must be such as to ensure direct access, adequate cover and prompt financial assistance in accordance with the provisions of this Part, and in particular Articles 3.1.2-35 and 3.1.2-36.

A Grand-Ducal regulation shall determine, after consultation with the social partners, the form that the financial security may take.

Article 3.1.2-35.

Assistance under the financial security mechanism shall be provided without delay by the duly authorised security provider(s) at the duly justified request of the seafarer or his or her designated representative, in accordance with Article 3.1.2-33.

In the event that the seafarer's request for assistance is partially contested, the seafarer must immediately receive assistance for the part of the request that is not contested or the validity of which has been established.

Article 3.1.2-36.

In order to be acceptable, the assistance provided by way of the financial security must, at the very least, cover the following, having regard to the provisions on the payment of wages and repatriation:

- 1° outstanding wages and other entitlements due from the shipowner to the seafarer under the latter's employment agreement, a collective bargaining agreement or this Law; the amount covered may be limited to four months' arrears for accumulated wages and four months' arrears for outstanding entitlements;

- 2° all expenses reasonably incurred by the seafarer, including the cost of repatriation referred to in Article 3.1.2-37;
- 3° the essential needs of the seafarer including such items as: adequate food, clothing where necessary, accommodation, drinking water supplies, essential fuel for survival on board the ship, necessary medical care and any other reasonable costs or charges from the act or omission constituting the abandonment until the seafarer's arrival at home.

Article 3.1.2-37.

Repatriation costs in the event of abandonment shall cover:

- 1° travel to the seafarer's home by appropriate means as defined in paragraph (1) of Article 3.1.2-27; ;
- 2° the provision of food and accommodation for the seafarer from the time of leaving the ship until arrival at his or her home;
- 3° necessary medical care;
- 4° passage and transport of personal effects;
- 5° any other reasonable costs or charges arising from the abandonment.

Article 3.1.2-38.

The financial security may not be terminated before its expiry date by the provider thereof unless the provider has given at least thirty days' notice to the shipowner and has notified the Commissioner within the same period. In the absence of notification to the Commissioner, the provider of the financial security shall remain liable to third parties.

Article 3.1.2-39.

If the provider of the financial security has made any payment whatsoever pursuant to the provisions of this subsection, it shall be automatically subrogated to the rights of the seafarer up to the amount it has paid, in accordance with the provisions of Articles 1251 and 1252 of the Civil Code.

Article 3.1.2-40.

Nothing in this Part shall affect the right of recourse of the provider of the financial security against a third party.

Article 3.1.2-41.

All amounts payable arising from rights, claims or proceedings that may give rise to compensation under this Part shall be deducted from amounts received or receivable in the same respect from other sources.

Article 3.1.2-42

- (1) Any ship subject to MLC certification pursuant to Article 3.4.0-3 and the Grand-Ducal regulations implementing it must keep on board a certificate or other documentary evidence of the financial security issued by the providers of such security.
- (2) The certificate or other documentary evidence of the financial security shall include the information specified in Appendix A2-I to the 2006 Maritime Labour Convention. The document shall be in English or accompanied by an English translation.
- (3) A copy of those certificates or documentary evidence shall be posted on the ship's notice board in a conspicuous place accessible to seafarers.

Part 3 – Criminal penalties

Article 3.1.2-43.

Any shipowner who fails to procure the financial security required under Article 3.1.2-34 shall be liable to imprisonment for a term of between eight days and two years and a fine of between EUR 2 500 and EUR 100 000, or one of those penalties only.

Article 3.1.2-44.

The offence of abandonment of seafarers is committed where the shipowner, placement agency or master abandons seafarers ashore or on board a ship by failing to fulfil one of the obligations referred to in Article 3.1.2-33.

The offence of abandonment is also committed where the shipowner or placement agency fails to provide the master of the ship with the means to ensure compliance with the obligations set out in Article 3.1.2-33.

The commission of an offence of abandonment as defined in the first and second subparagraphs above shall be punishable by imprisonment for a term of between eight days and six months and a fine of between EUR 251 and EUR 50 000, or one of those penalties only.

In the event of a repeat offence within two years, those penalties may be doubled.

Subsection 3 – Seafarers compensation for the ship's loss or foundering

Article 3.1.2-45.

The shipowner shall be liable to pay every seafarer on board compensation in the event of unemployment resulting from the duly recorded loss, foundering or total unseaworthiness of the ship. Such compensation shall be paid for all days of the seafarer's actual period of unemployment at the rate of the wages payable under the employment agreement. Unless the employment agreement or the collective bargaining agreement contains more favourable provisions, the total amount of compensation payable to each seafarer shall be limited to two months' wages.

Article 3.1.2-46.

The provisions of Article 3.1.2-45 are without prejudice to any other rights that seafarers may have under Luxembourg or foreign legislative or contractual provisions arising from the ship's loss or foundering.

Subsection 4 – General obligations of seafarers

Article 3.1.2-47.

All seafarers working on board a ship flying the Luxembourg flag are required:

- 1° to perform their work with care, integrity and diligence, at the agreed place and time and under the agreed conditions, in compliance with this Law and collective labour agreements, the regulations in force on board the ship to which they are assigned and the customs of international maritime law;
- 2° to act in accordance with the orders and instructions of their superiors and to take care of the ship and any cargo;
- 3° to return the work tools entrusted to them in good condition to the shipowner, the shipowner's representative or the master.

Article 3.1.2-48.

Seafarers must refrain from doing anything that could harm either their own safety or that of other seafarers, the shipowner, the shipowner's agent, the master, or third parties.

Article 3.1.2-49.

- (1) Seafarers shall be required to report to the ship on which they are engaged for service at the date and time specified by the shipowner, the shipowner's representative or the master.
- (2) The master shall determine the conditions under which seafarers may go ashore.

Article 3.1.2-50.

Seafarers shall be required to cooperate in the rescue of their own ship, passengers and crew, any other ship or debris, and effects and cargoes from shipwrecks, and to assist any vessel in distress.

Unless otherwise agreed, seafarers shall not be required to perform a function other than that agreed in their employment agreement, except in cases of force majeure, as determined by the master.

Article 3.1.2-51.

Seafarers may not load any goods onto the ship on their own account without the shipowner's permission. Where goods have been improperly loaded onto the ship, the seafarer concerned shall pay the freight at the highest rate stipulated at the place and time of loading for the same voyage and goods of the same kind.

Article 3.1.2-52.

Vis-à-vis the shipowner and in accordance with Article 3.1.2-7, seafarers shall only be liable for damage caused by their wilful acts or gross negligence.

*Section 4 – Termination of the contract**Subsection 1 – Termination with notice***Article 3.1.2-53.**

- (1) A seafarers' employment agreement concluded without a fixed term may be terminated on the initiative of the contracting parties, subject to the application of the rules set out in this Section.
- (2) However, an agreement containing a probationary clause may be terminated during the probationary period in the manner and under the conditions provided for in paragraph (5) of Article 3.1.2-6.
- (3) The closure of the company shall not, except in cases of force majeure, release the shipowner from the obligation to comply with the rules laid down in this Section.
- (4) Where, as a result of an act of piracy or armed robbery against the ship, a seafarer is held captive on board the ship or elsewhere, his/her seafarers' employment agreement shall not be terminated and shall continue to have effect even if the date specified for its expiry has passed or either party has given notice of its suspension or termination.

Article 3.1.2-54.

- (1) A seafarers' employment agreement concluded for an indefinite period shall end in a port of loading or unloading of the ship after notice of termination of the agreement has been given, provided that the period of notice referred to in paragraph (5) has been observed.
- (2) Notice of dismissal of the seafarer must be given by the shipowner or by the shipowner's representative acting under special authority, by one of the following means, failing which the dismissal shall be invalid on grounds of procedural irregularity:
 - 1° if the seafarer is on board, by delivery by hand of a written document against a receipt signed by the seafarer; or
 - 2° if the seafarer is not on board, by registered letter.
- (3) Notice of the seafarer's resignation must be given by one of the following means:

- 1° by registered letter addressed to the shipowner or the shipowner's representative; or
- 2° if the resigning seafarer is not the master, by delivery by hand of a written document against a receipt signed by the master.

(4) Any termination of the seafarers' employment agreement shall be recorded in the ship's logbook.

(5) In the event of notification of termination, the seafarers' employment agreement shall terminate:

- 1° at the end of a one-week notice period, where the seafarer can prove that he or she has been in continuous service with the same shipowner for less than three months;
- 2° at the end of a two-week notice period, where the seafarer can prove that he or she has been in continuous service with the same shipowner for three months or more but less than three years;
- 3° at the end of a six-week notice period, where the seafarer can prove that he or she has been in continuous service with the same shipowner for at least three years.

(6) The notice periods referred to in paragraph (5) shall commence:

- 1° on the fifteenth day of the calendar month during which the notice of termination was given, where it was given before that day;
- 2° on the first day of the calendar month following that during which the notice of termination was given, where it was given after the fourteenth day of the month.

Article 3.1.2-55.

(1) Within fifteen days of being given notice of dismissal in accordance with paragraph (2) of Article 3.1.2-54, the seafarer may request the shipowner to give reasons for the dismissal relating to his or her ability or conduct or based on the operational needs of the company, establishment or service, which must be genuine and serious.

(2) Seafarers wishing to exercise this right must submit their request by registered letter accompanied by a request for acknowledgement of receipt. However, the written request may be handed to the master. That request shall be recorded in the logbook and countersigned by the seafarer.

(3) The shipowner or the master, if the latter has a special mandate from the shipowner, shall give the reasons for the dismissal related to the seafarer's ability or conduct or based on the operational needs of the company, establishment or service, which must be genuine and serious, in a written document sent or handed to the seafarer no later than 15 days after the request is made. That response shall be made either by registered letter requesting acknowledgement of receipt or by being handed to the person concerned, giving rise to an entry in the logbook countersigned by the seafarer.

(4) In the absence of written reasons given before the expiry of the period referred to in paragraph (3), the dismissal shall be unfair.

(5) Without prejudice to the provisions of paragraph (2) of Article 3.1.2-59, a seafarer who has not exercised the option reserved unto him or her by paragraph (1) of this Article within the specified period shall retain the right to establish by any means that his or her dismissal is unfair.

Article 3.1.2-56.

A party that terminates a contract concluded for an indefinite period without being authorised to do so by Article 3.1.2-59 or without observing the notice periods referred to in Article 3.1.2-54 shall be required to pay the other party compensation in lieu of notice equal to the remuneration corresponding to the length of the notice period or, as the case may be, to the portion of that period remaining to be served.

The compensation provided for in the first subparagraph is not to be confused with the severance pay referred to in Article 3.1.2-57 or the reparation referred to in Article 3.1.2-60.

Article 3.1.2-57.

(1) A seafarer bound by a contract of indefinite duration who is dismissed by the shipowner shall be entitled, except in the case of dismissal on serious grounds as referred to in Article 3.1.2-59, to severance pay if he or she can prove that he/she has been in continuous service with the same shipowner for at least five years.

Seniority shall be assessed as at the date of expiry of the notice period, even if the seafarer benefits from the exemption referred to in Article 3.1.2-58.

The severance pay shall be equal to:

- 1° one month's salary after at least five years of continuous service with the same shipowner;
- 2° two months' salary after at least ten years of continuous service with the same shipowner;
- 3° three months' salary after at least fifteen years of continuous service with the same shipowner.

Severance pay is not to be confused with the reparation referred to in Article 3.1.2-60.

(2) Severance pay shall be calculated on the basis of the gross wages actually paid to the seafarer for the twelve months immediately preceding the month in which notice of dismissal was given.

(3) The shipowner shall pay the compensation at the time when the seafarer actually disembarks from the ship.

Article 3.1.2-58.

(1) In the event of termination of the contract at the initiative of the seafarer or the shipowner, the latter may exempt the seafarer from performing work during the notice period. The exemption must be mentioned in the registered letter giving notice of dismissal or in another written document delivered to the person concerned, giving rise to an entry in the logbook countersigned by the seafarer. The exemption shall only take effect after the seafarer has disembarked.

Pending the expiry of the notice period, the exemption referred to in the first subparagraph shall not result in any reduction in the seafarer's wages, allowances and other benefits to which he or she would have been entitled if he/she had performed his/her work.

Seafarers who are exempted from working shall be entitled to take up employment with a new shipowner. In the event of taking up new employment, the shipowner shall be obliged, where applicable, to pay the seafarer, each month for the remainder of the notice period yet to run, the difference between the wages paid by the shipowner to the seafarer before the latter's redeployment and those received by him/her following his/her redeployment. The difference thus payable shall be subject to the social security contributions and taxes generally applicable to wages.

(2) In the event of termination of the contract at the seafarer's initiative, the exemption from working requested in writing by the seafarer and granted by the shipowner shall constitute termination by mutual agreement within the meaning of Article 3.1.2-62.

Subsection 2 – Termination of the contract on serious grounds

Article 3.1.2-59.

(1) Either party may terminate the contract without notice and, where applicable, before the expiry of the contractual term or the voyage, on one or more serious grounds attributable to any act or fault on the part of the other party, with damages being payable by the party whose fault caused the immediate termination.

A seafarer dismissed in accordance with the first subparagraph shall not be entitled to the compensation provided for in Article 3.1.2-57.

(2) Any act or fault that makes it immediately and definitively impossible to maintain the employment relationship shall be considered a serious ground for the application of the provisions of paragraph (1).

In assessing the acts or misconduct arising from the seafarer's professional conduct, the court shall take into account the seafarer's level of education, professional background, social situation and any other factors that may have an impact on the seafarer's responsibility and the consequences of the dismissal.

(3) Notice of termination on serious grounds by the shipowner or the master, if the latter has a special mandate, shall be given to the seafarer in writing by registered letter, if the seafarer is not on board, or delivered by hand and signed for, with a note being made in the ship's logbook. The notice shall specify the acts of misconduct of which the seafarer is accused and the circumstances that are such as to render them serious grounds for dismissal. In the absence of a written statement of reasons, the dismissal shall be deemed unfair.

The master or the shipowner's representative shall immediately record in the logbook any immediate termination on serious grounds, indicating that the seafarer has been notified of the allegations against him or her and the circumstances that are such as to render them serious grounds for dismissal.

(4) The acts or misconduct that may justify termination on serious grounds may not be invoked after a period of one month from the date on which the party invoking them became aware of them, unless the matter has given rise to criminal proceedings within the course of that month.

The time-limit provided for in the first subparagraph shall not apply where a party invokes a previous act or misconduct in support of a new act or misconduct.

(5) The seafarer's unfitness, duly established in accordance with Article 3.1.1-3 et seq., shall not constitute serious grounds within the meaning of this Article.

The seafarer's refusal to enter an armed conflict zone as referred to in a collective bargaining agreement shall not constitute serious grounds within the meaning of this Article.

Subsection 3 – Wrongful termination of the contract by the shipowner

Article 3.1.2-60.

(1) Dismissal that is contrary to the law or that is not based on genuine and serious grounds related to the seafarer's ability or conduct or on the operational needs of the company, establishment or service is unfair and constitutes a socially and economically abnormal act.

(2) Legal proceedings for compensation for wrongful termination of a seafarers' employment agreement must be brought before the labour court within three months of the notification of dismissal or the statement of reasons therefor, failing which they will be time-barred. In the absence of a statement of reasons, the time limit shall run from the expiry of the period referred to in paragraph (1) of Article 3.1.2-55.

That period shall be validly interrupted in the event of a written complaint lodged with the shipowner or the shipowner's representative by the seafarer, his/her agent or his/her trade union. That complaint shall trigger a new time-limit of one year, failing which the claim shall be time-barred.

(3) In the event of a dispute, the burden of proving the materiality and the genuine and serious nature of the grounds for the dismissal shall lie with the shipowner.

The shipowner may, during the course of the proceedings, amplify the reasons given for the dismissal.

(4) Refusal by a seafarer to perform his/her work due to a professional strike, declared under legitimate and lawful conditions, shall not constitute serious grounds within the meaning of Article 3.1.2-59, nor serious grounds within the meaning of paragraph (1) of this Article.

Article 3.1.2-61.

(1) Where it finds that there has been an abuse of the right to terminate a contract of indefinite duration, the labour court shall order the shipowner to pay the seafarer damages reflecting the damage suffered by him/her as a result of his/her dismissal.

(2) When determining the damages to be awarded to the unfairly dismissed seafarer, the labour court may, upon application by the seafarer made during the proceedings and when it considers that the conditions for continuing or resuming the employment relationship are met, recommend that the shipowner agree to reinstate the seafarer as compensation for his or her unfair dismissal.

The effective reinstatement of the seafarer with retention of his or her seniority rights shall release the shipowner from having to pay the damages that it has been ordered to pay as compensation for the unfair dismissal.

A shipowner who does not wish to agree to the reinstatement of an unfairly dismissed seafarer as recommended by the labour court may be ordered, upon application by the seafarer, to supplement the damages referred to in paragraph (1) by paying compensation corresponding to one month's salary.

(3) Where the labour court finds that the dismissal is procedurally irregular due to a breach of a formality which it considers to be material, it shall examine the substance of the dispute and, if it finds that the dismissal is not unfair on the merits, order the shipowner to pay the seafarer compensation not exceeding one month's salary.

The compensation referred to in the first subparagraph may not be awarded if the labour court finds that the dismissal is unfair on its merits.

(4) Where the dismissal is declared null and void under the law, the labour court shall order that the seafarer be reinstated in the company if he or she so requests. In such cases, the provisions of Articles 2059 to 2066 of the Civil Code shall apply.

The provisions of Article 3.1.2-60 shall apply to legal proceedings for nullity.

Subsection 4 – Termination by mutual consent

Article 3.1.2-62.

A seafarers' employment agreement concluded for a fixed term, for an indefinite term or for a voyage may be terminated by mutual consent between the shipowner and the seafarer.

Such mutual consent must be recorded in writing in duplicate, in a document signed by the shipowner or the shipowner's representative and by the seafarer, failing which it shall be null and void.

Section 5 – Termination of the seafarers' employment agreement

Subsection 1 – Cessation of the shipowner's business; Death of the seafarer

Article 3.1.2-63.

(1) Without prejudice to the provisions of Article 3.1.5-1, a seafarers' employment agreement shall be terminated with immediate effect in the event of cessation of the business as a result of the shipowner's death, physical incapacity or declaration of bankruptcy.

In the event of a transfer of company, including the transfer of a ship as part of the transfer of a company, an establishment or part of a company or establishment, within the meaning of the provisions of Article 3.1.5-1, terminated agreements shall be automatically reinstated upon the resumption of business following the transfer, under the conditions set out in Articles L. 127-3 to L. 127-5 of the Labour Code. In the latter case, however, the business must be resumed within three months of the cessation thereof. That period may be extended or reduced by the agreement referred to in paragraph (2) of the afore-mentioned Article L. 127-5.

(2) A seafarers' employment agreement shall terminate upon the death of the seafarer.

However, the following persons shall be entitled to continued payment of wages up until the end of the month in which the seafarer's death occurred and to an allowance equal to three months' wages:

- 1° the surviving spouse in respect of whom no final decree of divorce or legal separation order has been pronounced, or the surviving person who was living with the insured at the time of death in a partnership declared to be in accordance with the conditions laid down by the Law of 9 July 2004 on the legal effects of certain partnerships, as amended;
- 2° the minor children of the deceased seafarer and any adult children for whose maintenance and education he was providing at the time of death; otherwise,
- 3° ascendants who were living in the same household as the seafarer, provided that he or she was responsible for providing for them.

If the deceased seafarer had the use of free accommodation ashore, the shipowner must make that accommodation available free of charge to the persons referred to in the second subparagraph until the expiry of three months following the month in which the death occurred.

Subsection 2 – Automatic termination of the seafarers' employment agreement

Article 3.1.2-64.

A seafarers' employment agreement shall automatically terminate on the day the seafarer is declared unfit to perform the occupation envisaged at the time of the pre-employment medical examination, in accordance with the provisions of Article 3.1.1-3 et seq.

Article 3.1.2-65.

A seafarer's employment agreement shall automatically terminate on the day the seafarer is granted an old-age pension and, at the latest, upon reaching the age of sixty-five, provided that the seafarer is entitled to an old-age pension.

Article 3.1.2-66.

Regardless of the nature thereof, a seafarers' employment agreement shall terminate automatically:

- 1° on the date of the decision granting the seafarer a disability pension; if the seafarer continues to work or resumes professional activity in accordance with the legal provisions governing disability pensions, a new seafarers' employment agreement may be concluded;
- 2° on the day the seafarer's entitlement to sickness benefit granted in accordance with the Social Security Code expires; ;
- 3° in the event of the duly recorded loss, foundering or total unseaworthiness of the ship for which the seafarers' employment agreement was exclusively concluded;
- 4° by reason of the seafarer's refusal to sail to an area of armed conflict as defined by the collective bargaining agreement.

In these cases, the notice period provided for in Article 3.1.2-54 shall not apply.

Subsection 3 – Effects of termination of the contract

Article 3.1.2-67.

(1) The receipt acknowledging full and final settlement of all accounts issued by the seafarer to his or her shipowner upon termination or expiry of his or her contract must be drawn up in duplicate, with one copy being given to the seafarer.

The receipt must state that it has been drawn up in duplicate.

The said receipt shall be effective as a discharge only vis-à-vis the shipowner. It shall release the shipowner from the payment of wages or compensation envisaged at the time of settlement of the account.

(2) The receipt acknowledging full and final settlement of all accounts may be revoked by registered letter within three months of its being signed. A summary statement of reasons for the revocation must be given, and the notice of revocation must indicate the rights invoked. Revocation in accordance with this paragraph shall deprive the receipt of its discharging effect only with respect to the rights invoked.

(3) The discharging effect referred to in paragraph (1) may not be invoked against the seafarer if the words "in full and final settlement" are not written out in full in his or her own hand and followed by his or her signature, or if the receipt does not clearly indicate the extinctive time-limit referred to in paragraph (2).

A receipt acknowledging full and final settlement which has been duly revoked or which cannot have the effect of a discharge within the meaning of this Article shall only have the value of a simple receipt for the sums appearing therein.

Article 3.1.2-68.

Upon expiry of the contract, the seafarer shall receive from the shipowner the documents referred to in point 5° of Article 3.1.2-3.

Article 3.1.2-69.

(1) Seafarers shall receive an accurate and detailed monthly statement in accordance with the provisions of Article 3.2.3-5.

(2) Upon termination of the seafarers' employment agreement, the statement referred to in paragraph (1) shall be provided and any outstanding wages shall be paid no later than five days after the agreement comes to an end.

Article 3.1.2-70.

Article L. 125-9 of the Labour Code shall apply to seafarers whose employment agreement has been terminated on grounds relating to the operational needs of the company. The employer's obligation under the said article shall be extended to the shipowner.

*Section 6 – Non-competition clause***Article 3.1.2-71.**

A non-competition clause as defined in Article L. 125-8 of the Labour Code may not be included in a seafarers' employment agreement.

Any non-competition clause shall be null and void and deemed unwritten.

Chapter 3 – Collective labour relations**Article 3.1.3-1.**

The provisions of Book I of Title VI of the Labour Code relating to collective labour relations shall apply.

Article 3.1.3-2.

In accordance with the provisions of Book I of Title VI of the Labour Code relating to collective relations, the shipowner or a Luxembourg professional organisation representing shipowners may conclude, for seafarers serving on board his/her/its ships flying the Luxembourg flag, a collective labour agreement with the Luxembourg trade unions.

However, by way of derogation from Articles L. 164-4 to L. 164-8 of the Labour Code, trade unions may substantiate their sectoral representativeness of seafarers either through direct affiliation or through an organic or contractual link with a foreign trade union representing seafarers.

Article 3.1.3-3.

A seafarer who is a member or alternate member of a special negotiating body or of a European Works Council shall be authorised by the shipowner to attend a meeting of the special negotiating body or European Works Council, or any other meeting provided for by the procedures established pursuant to Article L. 432-19 et seq. of the Labour Code, if, when the meeting takes place, he or she is not at sea or in a port located in a country other than that in which the shipping company is domiciled.

As far as possible, meetings shall be scheduled to facilitate the participation of seafarers who are members or alternate members of a special negotiating body or of a European Works Council. If it is not possible to ensure the presence of seafarers who are members or alternate members of a special negotiating body or of a European Works Council, consideration shall be given to the possibility of using new information and communication technologies, where appropriate.

Chapter 4 – Guarantee of seafarers' wage claims in the event of bankruptcy**Article 3.1.4-1.**

(1) Article L. 126-1 of the Labour Code shall apply to seafarers' wage claims without prejudice to the shipowner's contractual and legal obligations, particularly those relating to the payment and guarantee of payment of remuneration.

(2) In the event of abandonment within the meaning of Article 3.1.2-33, the amounts received by the seafarer in respect of outstanding wages and other benefits shall, in accordance with Article 3.1.2-41, be deducted from the sums received or to be received in the same connection from the Employment Fund.

Chapter 5 – Company transfers

Article 3.1.5-1.

Title II of Chapter VII of Book I of the Labour Code shall apply to the transfer of ships forming part of the transfer of an company or establishment, provided that the transferee is located in the territory of the Grand Duchy of Luxembourg or that the company, establishment or part of the company or establishment to be transferred continues to be located within that territory. The said chapter shall not apply where the subject-matter of the transfer consists exclusively of one or more ships.

Chapter 6 – Employment and unemployment

Article 3.1.6-1.

With the exception of Articles L. 511-28 and L. 511-29, the provisions of Chapter I of Title I of Book V of the Labour Code shall apply to shipowners established or having their registered office in Luxembourg who directly recruit and employ seafarers on board ships flying the Luxembourg flag or who use the services of a placement agency solely for the purpose of recruiting them.

Article 3.1.6-2.

The provisions of Titles III and V of Book V of the Labour Code shall not apply to the maritime sector.

TITLE 2 – Rights and obligations of seafarers

Chapter 1 – Working hours

Article 3.2.1-1.

The provisions of this Chapter shall apply to all seafarers working on board ships flying the Luxembourg flag.

Section 1 – Hours of work and hours of rest

Article 3.2.1-2.

For the purposes of this Chapter, the following definitions shall apply:

- 1° “hours of work”: means time during which the seafarer is required to do work on account of the ship and is at the disposal of the master in areas other than the quarters serving as his or her accommodation;
- 2° “hours of rest”: means time outside hours of work during which the seafarer is entitled to stay in the accommodation provided for him or her. This definition does not include short breaks.

Article 3.2.1-3.

The hours of work for seafarers are eight hours per day and forty-eight hours per week.

Seafarers must be given one day of rest per week.

A collective bargaining agreement may set limits below these thresholds.

Article 3.2.1-4.

Taking into account the dangers posed by excessive fatigue of seafarers, especially those whose duties involve navigational safety and the safe and secure operation of the ship, a collective bargaining agreement may provide that seafarers may be employed on a daily basis other than that specified in Article 3.2.1-3, provided that the minimum number of hours of rest referred to in Articles 3.2.1-5 and 3.2.1-6 is observed.

Article 3.2.1-5.

The minimum number of hours of rest for seafarers shall not be less than:

- 1° ten hours in any 24-hour period; and
- 2° seventy-seven hours in any seven-day period.

Hours of rest may be divided into no more than two periods,

One of those periods shall be at least six consecutive hours, and the interval between two consecutive periods of rest shall not exceed fourteen hours.

Article 3.2.1-6.

A collective bargaining agreement may derogate from the provisions of the first subparagraph of Article 3.2.1-5 for seafarers who are called upon to respond to exceptional operating conditions or in the event of an emergency.

In such cases, the collective bargaining agreement must determine, by type of ship, navigation or category of personnel, the terms of the derogation, providing in particular for the adjustment and distribution of working periods during the week, or during a period of time other than the week, in order to take into account the type of activities in which the ship is engaged and its operating constraints.

The collective bargaining agreement shall provide for:

- 1° measures to ensure compliance with the watchkeeping obligation in all circumstances;
- 2° the granting of consecutive rest periods to prevent fatigue;
- 3° the granting of compensatory leave to make up for derogations from the limits mentioned above;
- 4° measures to monitor the effective taking of rest on board and to prevent fatigue.

Article 3.2.1-7.

Musters, fire-fighting and lifeboat drills, and drills prescribed by national laws and regulations and by international instruments, shall be conducted in a manner that minimises the disturbance of rest periods and does not induce fatigue.

Article 3.2.1-8.

If seafarers are on call, for example when an engine room is unattended, they must be given adequate compensatory rest if the normal rest period is disturbed by call-outs to work. As soon as practicable after the situation has returned to normal, the master shall ensure that seafarers who have worked during their rest period are granted compensatory rest equivalent to the period worked, as soon as possible and at the latest within seventy-two hours. The conditions under which that rest is taken shall take into account the requirements of safety and the necessities of navigation.

Article 3.2.1-9.

The master of a ship may require a seafarer to perform any hours of work necessary for the immediate safety of the ship, persons on board or cargo, or for the purpose of giving assistance to other ships or persons in distress at sea.

In such cases, the master may suspend the normal hours of work or rest and require seafarers to work the hours necessary until such time as the situation returns to normal. As soon as practicable after the situation has returned to normal, the master shall ensure that seafarers who have worked during their rest period are granted compensatory rest equivalent to the period worked, as soon as possible and at the latest within seventy-two hours. The conditions under which that rest is taken shall take into account the requirements of safety and the necessities of navigation.

Article 3.2.1-10.

(1) Subject to the provisions of Article 3.2.1-11, each hour worked in excess of the daily and weekly limits set out in Article 3.2.1-3 shall be considered overtime.

Each hour of overtime shall be compensated either by equivalent paid rest or by increased remuneration. The uplift for overtime shall not be less than 25 per cent.

A collective bargaining agreement may provide for, or the parties to the contract may agree on, different overtime pay arrangements, provided they are not less favourable.

(2) The master, or a person designated by him or her, shall keep a record of all overtime worked. That record shall be endorsed by the seafarer.

(3) A flat-rate method of remuneration for overtime work may be established by collective bargaining agreement, taking into account the provisions and terms set out in Article 3.2.3-11.

Article 3.2.1-11.

The maximum daily hours of work may be exceeded without additional remuneration for work of the following kinds:

1° work that the master considers necessary and urgent in order to safeguard the safety of the ship, the cargo or the persons on board;

2° work required by the master in order to assist other ships or persons in distress.

As soon as practicable after the situation has returned to normal, the master shall ensure that seafarers who have worked during their rest period according to the normal schedule are given adequate rest.

*Section 2 – Organisation of working time***Article 3.2.1-12.**

Seafarers working more than six consecutive hours must be given a break of at least twenty minutes.

Breaks may be subdivided into periods of at least ten minutes each.

Article 3.2.1-13.

A table, drawn up in accordance with a model standardised by Grand-Ducal regulation in the working language(s) of the ship as well as in English, specifying the organisation of work on board, must be displayed in an easily accessible place and shall contain for every function at least:

1° the schedule of service at sea and service in port;

2° the minimum hours of rest required by national laws or regulations or the applicable collective bargaining agreement.

Article 3.2.1-14.

Records of seafarers' daily hours of work or of their daily hours of rest must be maintained to allow monitoring of compliance with Articles 3.2.1-5 to 3.2.1-10 and 3.2.1-13. The records shall be in a standardised format established by Grand-Ducal regulation, taking into account any available ILO guidelines or any standard format prepared by the ILO. They shall be in the languages specified in Article 3.2.1-13. The seafarers shall receive a copy of the records pertaining to them which shall be endorsed by the master, or a person authorised by the master, and by the seafarers.

Section 3 – Final provisions

Article 3.2.1-15.

Any contrary clause or agreement that is less favourable than the provisions of this Title shall be deemed null and void.

Article 3.2.1-16.

Any person who:

- 1° has employed seafarers without respecting the minimum rest periods laid down in this Title or in the Grand-Ducal regulations or collective bargaining agreements implementing it; or
- 2° has failed to comply with the provisions on record-keeping and information set out in Article 3.2.1-14;

shall be liable to imprisonment for a term of between eight days and six months and a fine of between EUR 251 and EUR 20 000, or one of those penalties only.

Those penalties may be doubled in the event of a repeat offence within two years.

Chapter 2 – Public holidays, weekly rest and annual holiday leave

Section 1 – Statutory public holidays

Article 3.2.2-1.

All seafarers working on ships flying the Luxembourg flag shall be entitled to rest corresponding to public holidays, in addition to the weekly rest day provided for in Article 3.2.1-3.

The public holidays shall be determined by collective bargaining agreement or, failing that, by the seafarers' employment agreement.

The public holidays shall be chosen from among the statutory holidays of the countries of which the seafarers are nationals.

In the absence of a collective bargaining agreement or specific provisions in the employment agreement, the public holidays shall be those specified in Article L. 232-2 of the Labour Code.

Article 3.2.2-2.

Statutory public holidays shall count towards the computation of the duration of the working week.

Article 3.2.2-3.

(1) For each public holiday falling on a working day, seafarers shall be entitled to remuneration corresponding to pay for the number of hours of work that would normally have been worked on that day.

(2) For each public holiday falling on a weekly rest day, seafarers shall be entitled to a compensatory day off. In that case, seafarers shall be entitled to pay for the number of hours that would normally have been worked during that compensatory day off.

(3) Where the compensatory leave referred to in paragraph (2) cannot be granted due to service requirements, seafarers shall be entitled to pay corresponding to the duration of that leave.

Article 3.2.2-4.

(1) Without prejudice to the average monthly salary, each public holiday worked shall be compensated:

- 1° by a period of exemption from duty and presence on board of at least equivalent duration, or by compensatory leave and by pay for the hours actually worked plus at least 25 per cent;
- or

2° if the compensatory leave referred to in point 1° cannot be granted due to service requirements, by pay corresponding to the duration of said leave and by pay for the hours actually worked plus at least 25 per cent.

(2) If a public holiday falls on the weekly rest day, the seafarer employed shall be entitled to the compensation referred to in paragraph (1) and the wage uplift provided for in paragraph (4) of Article 3.2.2-7, without prejudice to paragraph (5) of Article 3.2.2-7.

Article 3.2.2-5.

The provisions of Articles 3.2.2-3 and 3.2.2-4 shall not preclude the application of any provisions of agreements or regulations that are more favourable to seafarers.

Article 3.2.2-6.

Any person who requires or allows seafarers to work in contravention of the provisions of this Section shall be liable to imprisonment for a term of between eight days and three months and a fine of between EUR 251 and EUR 50 000, or one of those penalties only.

Section 2 – Weekly rest

Article 3.2.2-7.

(1) In accordance with the provisions of Article 3.2.1-3, seafarers shall be entitled to one day of rest per week, preferably on Sunday, consisting of twenty-four consecutive hours of rest.

(2) When this coincides with a public holiday, he/she will still be entitled to this weekly rest.

(3) Seafarers who, for reasons related to the operation of the ship, have not taken their weekly rest shall be entitled to a period of exemption from duty and presence on board of at least equivalent duration, or to supplementary leave.

(4) Work done on the day fixed for weekly rest shall entitle the seafarer concerned to a wage uplift of not less than 25 per cent.

(5) The provisions of paragraphs (1) to (4) shall not preclude the application of any provisions of agreements or regulations that are more favourable to seafarers.

Article 3.2.2-8.

Work of any kind shall not be considered as infringing the weekly rest rule where it is necessitated by:

1° circumstances of force majeure;

2° circumstances in which the master has reason to believe that the safety of the ship, persons on board or cargo is at stake;

3° urgent work needing to be carried out immediately in order to organise assistance or rescue measures, to prevent imminent accidents or to repair accidents that have occurred to the installations or to the ship itself.

As soon as practicable after the situation has returned to normal, the master shall ensure that seafarers who have worked during their rest period according to the normal schedule are given adequate rest.

Article 3.2.2-9.

Any person infringing Article 3.2.2-7 shall be liable to imprisonment for a term of between eight days and one month and a fine of between EUR 251 and EUR 5 000, or one of those penalties only.

Section 3 – Annual leave

Article 3.2.2-10.

The provisions of this Section shall apply to all seafarers sailing under the Luxembourg flag, regardless of the law applicable to their seafarers' employment agreement.

Subsection 1 – Calculation of leave entitlements

Article 3.2.2-11.

All seafarers shall be entitled to paid holiday leave each year.

The leave year shall be the calendar year.

Article 3.2.2-12.

(1) Subject to any more favourable provisions laid down in a collective bargaining agreement, paid annual leave shall be calculated on the basis of a minimum of three working days per month of employment.

(2) Working days are all calendar days except weekly rest days and public holidays.

Article 3.2.2-13.

Any period of service completed outside the ambit of the seafarers' employment agreement is to be counted as part of the period of service.

The following shall also be considered as justified absences and counted as part of the period of service:

- 1° absences from work to attend an approved maritime vocational training course;
- 2° periods of incapacity for work due to sickness or injury, or for maternity reasons.

Article 3.2.2-14.

The following shall not be counted as part of the period of leave to which the seafarer is entitled:

- 1° absences provided for in Article 3.2.2-13;
- 2° official public holidays, whether or not they fall during the paid annual leave;
- 3° temporary shore leave granted to a seafarer while under an employment agreement;
- 4° absences due to force majeure or causes beyond the seafarer's control, with the exception of absences resulting from imprisonment;
- 5° time spent awaiting repatriation and the duration of the journey.

If, during his or her holiday leave, the seafarer falls ill to such an extent that he or she is no longer able to enjoy that leave, the days of sickness recognised as such shall not count as days of leave.

Article 3.2.2-15.

The level of remuneration during annual leave shall be that of the seafarer's normal remuneration as established by the seafarers' employment agreement. In the case of seafarers employed for periods of less than one year, or in the event of cessation of the employment relationship, the remuneration in respect of leave shall be calculated on a pro rata basis.

Article 3.2.2-16.

Entitlement to special leave shall be determined by Grand-Ducal regulation or a collective bargaining agreement.

Subsection 2 – Taking, division and accumulation of leave

Article 3.2.2-17.

The period during which the leave is to be taken shall be determined by the shipowner after consultation and, as far as possible, by agreement with the seafarers concerned or their representatives, unless it is fixed by a collective bargaining agreement.

Article 3.2.2-18.

(1) Unless otherwise agreed by the parties in the seafarers' employment agreement, seafarers shall be entitled to take their annual leave at the place where they have effective ties, i.e. generally the place to which they are entitled to be repatriated.

(2) Seafarers who are obliged to take their annual leave while at a place other than that authorised in paragraph (1) shall be entitled to free transport to the place nearest to their home, whether that be the place of employment or the place of recruitment. Their maintenance costs and other expenses directly related to that travel shall be borne by the shipowner, and the travelling time shall not be deducted from the paid annual leave to which they are entitled.

Article 3.2.2-19.

Leave shall consist of an uninterrupted period, unless otherwise agreed between the shipowner and the seafarer in the employment agreement or by a collective bargaining agreement. In such cases, a fraction of the leave must be at least fifteen consecutive days.

Article 3.2.2-20.

Leave must be granted and taken during the calendar year. However, it may be carried over to the following year at the seafarer's request if it involves the proportional leave entitlement for the first year which could not be used in its entirety during the current year.

Article 3.2.2-21.

Seafarers may not waive their right to leave, even in exchange for compensation, unless the parties agree to replace the leave with compensation in the event of cessation of the employment relationship upon the seafarer leaving his/her job before having taken all of the leave due to him/her. The compensation corresponding to the leave not yet taken shall be paid to him/her at the time of his/her departure, without prejudice to his/her other rights.

Article 3.2.2-22.

Any person infringing the provisions of Articles 3.2.2-11 to 3.2.2-15 or Articles 3.2.2-19 to 3.2.2-21 or their implementing regulations shall be liable to imprisonment for a term of between eight days and one month and a fine of between EUR 251 and EUR 5 000, or one of those penalties only.

Section 4 – Parental leave

Article 3.2.2-23.

(1) Articles L. 234-43 to L. 234-48 of the Labour Code shall apply to seafarers employed on board a ship flying the Luxembourg flag if they meet the requirements laid down in those articles.

(2) By way of derogation from Article L. 234-44 of the Labour Code, seafarers may only take full-time parental leave.

(3) By way of derogation from paragraph (1) of Article L. 234-45 of the Labour Code, the first period of parental leave shall commence on a date fixed following consultation between the shipowner and the

seafarer. In the absence of agreement within two months of the date of the request for parental leave, the first period of parental leave shall take effect after the repatriation of the seafarer, which must be organised from the first port of loading or unloading where he or she can be replaced as from the dates specified in paragraph (1) or paragraph (3) of Article L. 234-45, as the case may be, of the Labour Code.

In accordance with Article 3.1.2-28, the time taken for the repatriation shall not be included in the duration of parental leave.

The period within which the consultation referred to in the first subparagraph may fix the start date of the first period of parental leave shall be determined by way of a collective bargaining agreement declared to be generally binding by Grand-Ducal regulation.

(4) By way of derogation from the sixth subparagraph of paragraph (4) of Article L. 234-46 of the Labour Code, the seafarer concerned or any natural or legal person authorised by him/her may refer the matter to the Commissioner in the event of disagreement on the grounds for postponing the second period of parental leave, in accordance with the complaint procedure provided for in point 2° of Article 3.4.5-1.

Chapter 3 – Wages

Article 3.2.3-1.

Unless otherwise specified, the provisions of this Chapter shall apply to all seafarers working on board ships flying the Luxembourg flag.

Section 1 – Specific definitions

Art. 3.2.3-2.

For the purposes of this Chapter, the following definitions shall apply:

- 1° “able seaman”: means any seafarer who is deemed competent to perform any duty which may be required of a rating serving in the deck department, other than the duties of a supervisory or specialist rating, or who is defined as such by collective bargaining agreement;
- 2° “basic pay or wages”: means the pay, however composed, for normal hours of work; it does not include payments for overtime worked, bonuses, allowances, paid leave or any other additional remuneration;
- 3° “consolidated wage”: means a wage or salary which includes the basic pay and other pay-related benefits; a consolidated wage may include compensation for all overtime hours which are worked and all other pay-related benefits, or it may include only certain benefits in a partial consolidation;
- 4° “normal hours of work”: the definition given in Article 3.2.1-3 shall apply;
- 5° “overtime”: the definition given in Article 3.2.1-10 shall apply.

Section 2 – Entitlement to remuneration

Article 3.2.3-3.

Payments due to seafarers shall be made at no greater than monthly intervals and in accordance with any applicable collective bargaining agreement.

In the event of legitimate and urgent special needs, the seafarer may obtain an advance payment of the portion of wages corresponding to work performed.

Article 3.2.3-4.

For seafarers whose contract is subject to Luxembourg law, the right to claim payment of wages of any kind owed to the seafarer shall lapse after three years in accordance with Article 2277 of the Civil Code.

Article 3.2.3-5.

Seafarers shall be given a monthly account of the payments due and the amounts paid, including wages, additional payments and the rate of exchange used where payment has been made in a currency or at a rate different from the one agreed to.

Article 3.2.3-6.

The shipowner must take the necessary measures to provide seafarers with a means to transmit all or part of their earnings to their families or dependants or legal beneficiaries.

In particular, the shipowner shall in that regard:

- 1° put in place a system for enabling seafarers, at the time of their entering employment or during it, to allot, if they so desire, a proportion of their wages for remittance at regular intervals to their families by bank transfers or similar means;
- 2° ensure that such allotments should be remitted in due time and directly to the person or persons nominated by the seafarers.

Article 3.2.3-7.

Any charge for the service referred to in Article 3.2.3-6 shall be reasonable in amount, and the rate of currency exchange, unless otherwise provided, shall, in accordance with national laws or regulations applicable to the seafarers' employment agreement, be at the prevailing market rate or the official published rate and not unfavourable to the seafarer.

Article 3.2.3-8.

In the event of the capture of the seagoing ship, or in the event of a declaration of unseaworthiness or seizure, the seafarer shall be entitled to his or her remuneration for as long as he or she is ordered by the master to remain on board.

In accordance with paragraph (4) of Article 3.1.2-53, if a seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships, wages and other entitlements under the seafarers' employment agreement, including the remittance of any allotments shall continue to be paid during the entire period of captivity and until the seafarer is released and duly repatriated in accordance with Article 3.1.2-23 et seq. The contract, payments and allotments shall cease upon the seafarer's death in captivity.

Article 3.2.3-9.

Without prejudice to paragraph (2) of Article 3.1.2-63, if a seafarer whose employment agreement is subject to Luxembourg law dies during the term of his or her contract, the remuneration and allowances to which the seafarer was entitled up to the date of his/her death shall be payable to his/her legal beneficiaries.

*Section 3 – Calculation and payment***Article 3.2.3-10.**

For seafarers whose remuneration includes separate compensation for overtime worked, the provisions of Article 3.2.1 10 shall apply.

Article 3.2.3-11.

For seafarers whose wages are fully or partially consolidated under a collective bargaining agreement:

- 1° the seafarers' employment agreement must specify clearly, where appropriate, the number of hours of work expected of the seafarer in return for this remuneration, and any additional allowances which might be due to him/her;

- 2° where overtime as defined in Article 3.2.1-10 is payable for hours worked in excess of those covered by the consolidated wage, the hourly rate should be not less than 25 per cent higher the basic rate corresponding to the normal hours of work as defined in Article 3.2.1-2. The same principle shall be applied to the overtime hours included in the consolidated wage;
- 3° remuneration for that portion of the fully or partially consolidated wage representing the normal hours of work as defined in Article 3.2.1-2 must not be less than the applicable minimum wage;
- 4° for seafarers whose wages are partially consolidated, records of all overtime worked must be maintained and endorsed.

Article 3.2.3-12.

When concluding a seafarers' employment agreement or a collective bargaining agreement, the following principles must be taken into account:

- 1° equal remuneration for work of equal value shall apply to all seafarers employed on the same ship without discrimination based upon race, colour, sex, religion, political opinion, national extraction;
- 2° the seafarers' employment agreement specifying the applicable wages or wage rates must be carried on board the ship; information on the amount of wages or wage rates must be made available to each seafarer, either by providing at least one signed copy of the relevant information to the seafarer in a language which the seafarer understands, or by posting a copy of the agreement in a place accessible to seafarers or by some other appropriate means;
- 3° wages must be paid in legal tender; where appropriate, they may be paid by bank transfer, bank cheque, postal cheque or money order;
- 4° on termination of engagement all remuneration due must be paid within five days;
- 5° wages should be paid directly to seafarers' designated bank accounts unless they request otherwise in writing;
- 6° subject to the provisions of point 7°, the shipowner may not impose any limit on seafarers' freedom to dispose of their remuneration;
- 7° deductions from wages are only permitted on the basis of a legal provision. The provisions of Book II of Title II of Chapter IV of the Labour Code are therefore applicable ;
- 8° the Commissioner or his/her delegate shall be authorised to inspect stores and services provided on board ship to ensure that fair and reasonable prices are applied for the benefit of the seafarers concerned.

Article 3.2.3-13.

The Commissioner may impose an administrative fine of up to EUR 5 000 on any shipowner who unduly delays or fails to pay any remuneration due in relation to a seafarer whose employment agreement is subject to Luxembourg law or foreign law.

Section 4 – Minimum wages

Article 3.2.3-14.

Without prejudice to any more favourable provisions laid down in collective bargaining agreements or in their employment contract, the wages of seafarers working on board ships flying the Luxembourg flag and not residing in Luxembourg may not be less than the amount fixed by Grand-Ducal regulation, by reference to the rates of remuneration established by the International Labour Office in application of the Maritime Labour Convention.

Article 3.2.3-15.

The Commissioner or his/her delegate shall be authorised to verify that the wages paid, as defined in Article 3.2.3-14, are not lower than the established rates. He/she may carry out checks on board or may require the shipowner to provide relevant documentation.

Article 3.2.3-16.

A shipowner who has paid wages below the rates applicable under the provisions of this Section shall be liable to a fine of between EUR 251 and EUR 25 000.

However, in the event of a repeat offence within two years, the penalties provided for in the first subparagraph may be increased to twice the maximum.

Article 3.2.3-17.

Nothing in this Section shall be construed as affecting agreements between shipowners, or their organisations, and seafarers' organisations concerning the regulation of minimum conditions of employment, provided that such conditions are in accordance with the law.

Chapter 4 – Accommodation, recreational facilities, food and catering**Section 1 – Accommodation and recreational facilities****Article 3.2.4-1.**

(1) The requirements of this Chapter relating to the construction and equipment of ships shall apply only to ships constructed on or after 20 August 2013.

For ships constructed before that date, the requirements relating to ship construction and equipment that are set out in the Accommodation of Crews Convention (Revised), 1949 (No. 92), and the Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133), shall continue to apply to the extent that they were applicable prior to that date.

(2) A ship shall be deemed to have been constructed on the date when its keel is laid or when it is at a similar stage of construction.

Article 3.2.4-2.

Shipowners shall ensure that ships flying the Luxembourg flag provide and maintain, at no expense to seafarers, decent accommodation and recreational facilities for seafarers working and living on board, consistent with promoting the seafarers' health and well-being.

Article 3.2.4-3.

(1) In order to ensure that seafarers' accommodation and recreational facilities on board are safe, decent and in accordance with the provisions of this Chapter, and that they take into account the requirements relating to health protection, safety and accident prevention, minimum standards must be met. To that end, a Grand-Ducal regulation shall specify the requirements relating to:

- 1° the size of rooms and other accommodation spaces;
- 2° heating and ventilation;
- 3° noise and vibration and other ambient factors;
- 4° sanitary facilities;
- 5° lighting;
- 6° hospital accommodation.

(2) After consulting shipowners' and seafarers' organisations, and taking into account the size of the ship and the number of persons on board, the Commissioner may grant exemptions to ships having a gross tonnage of less than 200, where such exemptions are reasonable. Exemptions shall only apply to:

- 1° air conditioning in accommodation spaces on board, radio rooms and any centralised machinery control rooms;
- 2° the mandatory provision of washbasins supplied with hot and cold fresh water in each room or in an adjoining toilet on ships other than passenger ships;
- 3° laundry facilities;

4° the minimum size of rooms.

Article 3.2.4-4.

(1) In order to ensure initial and ongoing compliance with the provisions of this Section and the Grand-Ducal regulation implementing it, all ships shall be subject to inspections as referred to in Article 3.4.0-2 and by the Grand-Ducal regulations implementing it, which must take place at least:

- 1° when a ship is registered or re-registered;
- 2° when the seafarers' accommodation on a ship has been substantially altered.

(2) Without prejudice to paragraph (1), the shipowner shall ensure that the master or a person acting under his or her authority carries out frequent inspections, at intervals not exceeding seven days, on board ships, to ensure that seafarers' accommodation is clean, decently habitable and maintained in a good state of repair. The results of each such inspection shall be recorded and be available for review.

Article 3.2.4-5.

In the case of ships where there is need to take account, without discrimination, of the interests of seafarers having differing and distinctive religious and social practices, the Commissioner may, after consultation with the shipowners' and seafarers' organizations concerned, permit fairly applied variations in respect of the provisions of this Chapter on condition that such variations do not result in overall facilities less favourable than those which would have resulted from the application of the said Chapter.

Article 3.2.4-6.

Ships regularly trading to mosquito-infested ports shall be fitted with appropriate devices.

Article 3.2.4-7.

Any person infringing the provisions of this Section or the regulations implementing it shall be liable to imprisonment for a term of between eight days and six months and a fine of between EUR 251 and EUR 25 000, or one of those penalties only.

Section 2 – Food and catering

Article 3.2.4-8.

The shipowner shall ensure that food and drinking water of appropriate quality and satisfactory variety are provided on board ships, the nutritional value and quantity of which adequately cover the requirements of the persons on board, taking into account the differing cultural and religious backgrounds and the duration and nature of the voyage.

A Grand-Ducal regulation may lay down the health-related, environmental and nutritional criteria that food and drinking water must meet.

Article 3.2.4-9.

Seafarers on board a ship shall be provided with food free of charge during the period of engagement.

Article 3.2.4-10.

In addition to the requirements of Article 3.2.4-8, the shipowner shall ensure:

- 1° the organisation and equipment of the catering department shall be such as to permit the provision to the seafarers of adequate, varied and nutritious meals prepared and served in hygienic conditions;
- 2° catering staff shall be properly trained or instructed for their positions.

Article 3.2.4-11.

(1) The shipowner shall ensure that seafarers who are engaged as cooks responsible for preparing meals are trained, qualified and found competent for the position in accordance with the provisions of paragraph (3).

(2) Seafarers who meet the following requirements may be employed as cooks on board ships:

1° they hold a cook's certificate that has been obtained following specific training in that field or is considered equivalent by the Commissioner and issued by an approved Luxembourg or foreign institution. A Grand-Ducal regulation may specify the type and content of the training. A certificate of competency as a ship's cook issued by Member States that have ratified the 2006 Maritime Labour Convention or the Certification of Ships' Cooks Convention, 1946 (No. 69), or by any other approved institution, shall also be accepted.

The certificate of competency as a ship's cook shall in all cases be recognised by the Commissioner;

2° they have completed at least one month's service on board one or more ships as a ship's cook or assistant cook.

(3) The requirements referred to in paragraph (2) shall include the successful completion of a training course approved by the Commissioner covering practical cookery, food and personal hygiene, food storage, stock control, and environmental protection and catering health and safety.

Article 3.2.4-12.

Without prejudice to the second subparagraph, the Commissioner may, upon a duly reasoned request from the shipowner, agree that a fully qualified cook need not be carried on board ships operating with a manning of fewer than ten persons, by virtue of the size of the crew or the trading pattern.

In such cases, the seafarer processing food in the galley shall however be trained or instructed in areas including food and personal hygiene as well as handling and storage of food on board ship.

Article 3.2.4-13.

In circumstances of exceptional necessity, the Commissioner may issue a dispensation permitting a non-fully qualified cook to serve in a specified ship for a specified limited period, until the next convenient port of call or for a period not exceeding one month, provided that the person to whom the dispensation is issued is trained or instructed in areas including food and personal hygiene as well as handling and storage of food on board ship.

Article 3.2.4-14.

The Commissioner may issue recommendations regarding food and catering.

Article 3.2.4-15.

The shipowner shall ensure that the master or a person acting under his or her authority carries out properly documented and frequent inspections, at intervals of no more than seven days, to verify:

1° supplies of food and drinking water;

2° the suitability of all spaces and equipment used for the storage and handling of food and drinking water;

3° the galley and other equipment for the preparation and service of meals.

The results of each inspection must be recorded in writing and made available for consultation.

Article 3.2.4-16.

(1) Any shipowner who fails to comply with the minimum requirements set out in Article 3.2.4-8 and the regulation adopted for its implementation, or in Articles 3.2.4-9 and 3.2.4-10, any shipowner or master who authorises seafarers to cook without the training prescribed in Articles 3.2.4-11 to 3.2.4-13, and any shipowner who fails to carry out the inspections referred to in Article 3.2.4-15 shall be liable to imprisonment

for a term of between eight days and two years and a fine of between EUR 251 and EUR 25 000, or one of those penalties only.

(2) The Commissioner may order the immediate cessation of work by any cook who does not meet the training or qualification requirements laid down in Article 3.2.4-11.

Chapter 5 – *Equal treatment of men and women*

Article 3.2.5-1.

Title IV of Book II of the Labour Code shall apply to seafarers working on board ships flying the Luxembourg flag.

Chapter 6 – *Processing of personal data for the purpose of monitoring seafarers in the workplace*

Article 3.2.6-1.

Title VI of Book II of the Labour Code shall apply to seafarers.

TITLE 3 – *Protection, medical care and well-being on board*

Chapter 1 – *Medical care on board ships and ashore*

Article 3.3.1-1.

The provisions of this Title relating to health protection and access to prompt and adequate medical care throughout their period of service shall apply to all seafarers working on ships flying the Luxembourg flag.

Article 3.3.1-2.

Medical care and health protection services shall be provided free of charge to seafarers on board or ashore. Measures to ensure health protection and medical care for seafarers must, as far as possible, be comparable to those generally available to workers ashore, including prompt access to the necessary medicines, medical equipment and facilities for diagnosis and treatment and to medical information and expertise.

Article 3.3.1-3.

Every shipowner must ensure that seafarers have the right to visit a qualified medical doctor or dentist without delay in ports of call, where practicable.

Article 3.3.1-4.

The shipowner's obligations regarding medical care shall not be limited to the treatment of sick or injured seafarers, but shall also include measures of a preventive character, medical surveillance, the prevention of accidents and occupational diseases, and the development of health promotion and health education programmes.

Article 3.3.1-5.

The requirements concerning facilities, equipment, training and medical reports for use by masters and competent personnel on board and ashore are laid down in the Law of 29 April 2000 transposing Council Directive 92/29/EEC of 31 March 1992 on the minimum safety and health requirements for improved medical treatment on board ships.

Article 3.3.1-6.

Any person infringing the obligations relating to free healthcare and access to a qualified medical doctor or dentist resulting from Articles 3.3.1-2 and 3.3.1-3 shall be liable to imprisonment for a term of between eight days and two years and a fine of between EUR 750 and EUR 25 000, or one of those penalties only.

Chapter 2 – Shipowners' liability**Article 3.3.2-1.**

Without prejudice to other legal remedies available to them, seafarers working on board ships flying the Luxembourg flag shall be entitled to material assistance and support from the shipowner with respect to the financial consequences of sickness, injury or death occurring during the period referred to in point 1° of Article 3.3.2-2, while they are serving under a seafarers' employment agreement or arising from their employment under such agreement.

Article 3.3.2-2.

Without prejudice to Article 3.3.2-5, the shipowner shall be responsible for the health protection and medical care of all seafarers working on board and shall bear:

- 1° the costs in respect of sickness and injury of the seafarers occurring between the date of commencing duty and the date upon which they are deemed duly repatriated, or arising from their employment between those dates;
- 2° expense of medical care, including medical treatment and the supply of the necessary medicines and therapeutic appliances, and board and lodging away from home until the sick or injured seafarer has recovered, or until the sickness or incapacity has been declared of a permanent character;
- 3° the cost of financial cover, as provided for by Grand-Ducal regulation, a collective bargaining agreement or the seafarers' employment agreement, guaranteeing compensation for contractual claims in respect of loss and damage suffered by seafarers or their legal beneficiaries in the event of their death or long-term incapacity resulting from an accident in the workplace, an occupational disease or an occupational hazard, as provided for in the Social Security Code, less any compensation received from other health insurance schemes or compulsory statutory accident insurance schemes;
- 4° shipowners shall be liable to pay the cost of burial expenses in the case of death occurring on board or ashore during the period of service.

Article 3.3.2-3.

Where the sickness or injury results in incapacity for work, the shipowner shall be liable to pay:

- 1° the full wages as long as the sick or injured seafarer remain on board or until the seafarer has been repatriated;
- 2° the wages of a seafarer who has been disembarked or repatriated until his/her recovery or, if earlier, until he/she is entitled to cash benefits.

Article 3.3.2-4.

(1) The shipowner's obligations referred to in points 2° and 4° of Article 3.3.2-2 shall cease as soon as the health insurance scheme or the statutory accident insurance scheme or compensation scheme for injured workers under which the seafarer is covered takes over the costs of medical care, accommodation, food and burial.

(2) The shipowner's obligations referred to in point 2° of Article 3.3.2-2 and point 2° of Article 3.3.2-3 shall be limited to sixteen weeks from the date of the accident or the onset of the sickness.

Article 3.3.2-5.

The shipowner shall be exempt from liability in the following cases:

- 1° injury incurred otherwise than in the service of the ship;
- 2° injury or sickness due to the wilful misconduct of the sick, injured or deceased seafarer;
- 3° sickness or infirmity intentionally concealed when the engagement is entered into.

Article 3.3.2-6.

Shipowners or their representatives shall take measures for safeguarding property left on board by sick, injured or deceased seafarers and for returning it to them or to their legal beneficiaries.

Article 3.3.2-7.

Any person infringing the obligations laid down in Articles 3.3.2-2, 3.3.2-3 or 3.3.2-6 shall be liable to imprisonment for a term of between eight days and six months and a fine of between EUR 251 and EUR 25 000, or one of those penalties only.

Chapter 3 – Health protection, safety and accident prevention**Section 1 – Obligations of shipowners****Subsection 1 – General obligations of shipowners****Article 3.3.3-1.**

- (1) The shipowner shall ensure the safety and health of seafarers in all aspects related to their work on board ships flying the Luxembourg flag, and shall ensure that they are provided with occupational health protection and live, work and train on board ship in a safe and hygienic environment.
- (2) The obligations of seafarers in the field of occupational health and safety on board shall not affect the principle of shipowner liability.

Article 3.3.3-2.

- (1) As part of his/her/its responsibilities, the shipowner shall adopt, for each ship, occupational health and safety policies and programmes in accordance with the general principles relating to the protection of the safety and health of seafarers set out in this Chapter, including occupational risk prevention and information and training activities, as provided for in this Chapter and in any Grand-Ducal regulations adopted for its implementation. Those on-board policies and programmes shall, in accordance with Article 3.3.3-10, be developed with the participation of the members of the safety committee or, failing that, the seafarers' representatives and the representatives of all persons concerned with their implementation, taking into account preventive measures, including design control and engineering measures.
- (2) The shipowner shall implement the on-board programmes and policies.
- (3) The shipowner shall adapt the measures taken to implement the on-board programmes and policies so as to take account of developments in technology and research and to improve the protection of safety and health at work. Where necessary, the shipowner shall arrange for the processes and procedures applicable to collective and individual tasks to be replaced, with the participation of the members of the safety committee in accordance with Article 3.3.3-10, alternatively of the seafarers' representatives, and of representatives of all interested parties.
- (4) Compliance with the requirements of applicable international instruments on the acceptable levels of exposure to workplace hazards on board ships and on the development and implementation of ships' occupational safety and health policies and programmes shall be considered as meeting the requirements of this subsection.

Subsection 2 – General principles

Article 3.3.3-3.

(1) The shipowner shall implement the measures provided for in Article 3.3.3-2, on the basis of the following general preventive principles:

- 1° avoiding risks;
- 2° assessing risks that cannot be avoided;
- 3° combating risks at source;
- 4° adapting work to the persons doing it, particularly as regards the design of workstations and the choice of work equipment and working methods;
- 5° taking account of the state of technological development;
- 6° replacing what is dangerous with what is not dangerous or what is less dangerous;
- 7° planning prevention by seeking to create a coherent whole integrating elements of technology, work organisation, working conditions, social relations and the influence of ambient factors at work;
- 8° prioritising collective protection measures over individual protection measures;
- 9° giving appropriate instructions to seafarers.

(2) The preventive measures listed in points 1°, 3°, 4° and 6° of paragraph (1) must take precedence over the use of individual protective equipment for seafarers.

Article 3.3.3-4.

Measures taken by shipowners in relation to management of occupational health and safety must comply with the general principles set out in this Chapter and in the Grand-Ducal regulation implementing it, covering the following points:

- 1° general and basic provisions;
- 2° structural features of the ship, including means of access and asbestos-related risks;
- 3° machinery;
- 4° the effects of the extremely low or high temperature of any surfaces with which seafarers may be in contact;
- 5° the effects of noise in the workplace and in shipboard accommodation;
- 6° the effects of vibration in the workplace and in shipboard accommodation;
- 7° the effects of ambient factors, other than those referred to in points 5° and 6°, to which seafarers are exposed in the workplace and in shipboard accommodation, including tobacco smoke;
- 8° special safety measures on and below deck;
- 9° loading and unloading equipment;
- 10° fire prevention and fire-fighting;
- 11° anchors, chains and lines;
- 12° dangerous cargo and ballast;
- 13° personal protective equipment for seafarers;
- 14° work in enclosed spaces;
- 15° physical and mental effects of fatigue;
- 16° the effects of drug and alcohol dependency;
- 17° HIV/AIDS protection and prevention;
- 18° emergency and accident response.

Article 3.3.3-5.

Measures relating to safety, hygiene and health on board must not, under any circumstances, result in financial burdens for seafarers.

Subsection 3 – Risk evaluation

Article 3.3.3-6.

The shipowner shall keep a list of all work-related accidents and shall draw up a report on such accidents, which shall be communicated without delay to the Commissioner.

Article 3.3.3-7.

(1) The shipowner, taking into account the nature of the ship's activities, shall evaluate the risks to the safety and health of seafarers, including in the choice of work equipment, chemical substances or preparations, and in the layout of workplaces. That evaluation shall take into account groups of seafarers at particular risk, including any pregnant women who may be employed on board.

(2) The risk evaluation and reduction of harmful exposure in relation to the matters listed in Article 3.3.3-4 shall take into account physical effects, including those resulting from the handling of loads, noise and vibration, chemical and biological effects and mental impacts on occupational health, the effects of fatigue on physical and mental health, and work-related accidents.

(3) When conducting risk evaluation in relation to management of occupational safety and health, the shipowner shall refer to appropriate statistical information from its ships and from general statistics provided by the Commissioner.

(4) Following that evaluation, and where necessary, the shipowner shall adapt the measures taken under Article 3.3.3-2 concerning its prevention activities and the working and production methods implemented in order to ensure a higher level of protection of the safety and health of seafarers and to reduce exposure to risks.

Article 3.3.3-8.

A Grand-Ducal regulation may define, taking into account the specific characteristics of the ship or groups of seafarers concerned, the obligations to be fulfilled by shipowners with regard to the carrying-out of evaluations.

Subsection 4 – Persons responsible on board for protection and prevention, and for consultation of seafarers

Article 3.3.3-9.

(1) Without prejudice to the obligations and responsibility of the shipowner referred to in Articles 3.3.3.1 and 3.3.3-2, the master, or a person designated by him/her, or both, hereinafter referred to as the "designated seafarers", shall be responsible for implementing and ensuring compliance with the measures taken in accordance with Article 3.3.3-2 on board the ship.

(2) The designated seafarers shall carry out, under the responsibility of the shipowner, regular safety inspections of all parts of the ship at reasonable intervals. Such inspections shall also cover instruments, equipment, machinery and protective equipment on which the safety of seafarers may depend.

Article 3.3.3-10.

(1) For any ship with five or more seafarers on board, a safety committee shall be established, comprising the designated seafarers and representatives of the seafarers elected by them as safety delegates.

(2) The main tasks of the safety committee shall be as follows:

- 1° participating in the development and review of policies and programmes for the protection of the safety and health of seafarers on board the ship concerned;
- 2° ensuring that the requirements deriving either from the guidelines, standards and general principles, and the policies and programmes at national level for the protection of the safety and health of seafarers, or from the policies and programmes adopted for the ship concerned, are met;

- 3° submitting complaints and recommendations to the shipowner on behalf of seafarers concerning the protection of safety and health on board;
- 4° examining issues affecting seafarers in relation to safety and health and taking the necessary measures on that basis;
- 5° evaluating safety and protective equipment, including life-saving appliances;
- 6° studying accident reports.

(3) The safety committee shall have the right to request the shipowner to take appropriate measures and to submit to the shipowner proposals to that end, with a view to mitigating any risk to seafarers or eliminating sources of danger.

(4) The safety committee shall have the right to refer the matter to the Commissioner if it considers that the measures taken and the resources committed by the shipowner are not sufficient to ensure safety and health at work on board.

Article 3.3.3-11.

Without prejudice to the other provisions of this Chapter, the shipowner shall be required, taking into account the nature of the ship's activities, to consult the safety committee or, failing that, the seafarers' representatives on matters relating to safety and health protection on board, or directly with the seafarers on the following subjects:

- 1° any action, including the planning and introduction of new technologies, related to the choice of equipment, the organisation of working conditions or the impact of ambient factors in the workplace, which may have a substantial effect on the safety and health of seafarers;
- 2° information relating to the provisions of Articles 3.3.3-6 and 3.3.3-7, paragraph (1) of Article 3.3.3-13, Article 3.3.3-14 and Articles 3.3.3-19 to 3.3.3-21;
- 3° the design and organisation of the training provided for in Articles 3.3.3-15 and 3.3.3-16.

Article 3.3.3-12.

(1) Designated seafarers and members of the safety committee must have the necessary capabilities and resources to enable them to exercise the rights and perform the duties arising from this Chapter.

(2) Designated seafarers and other members of the safety committee, where applicable, must be given adequate time to perform their duties. The shipowner shall be required to grant designated seafarers sufficient time off work without loss of wages.

(3) Designated seafarers and other members of the safety committee, where applicable, must be sufficient in number to carry out the protection and prevention activities, taking into account the characteristics of the ship and the risks to which they are exposed.

(4) Designated seafarers and other members of the safety committee, where applicable, must be given the opportunity to make representations during visits and inspections organised by the Commissioner. Designated seafarers and other members of the safety committee, where applicable, must not suffer any prejudice as a result of their respective activities.

(5) A Grand-Ducal regulation may determine the necessary skills and abilities and the sufficient number of seafarers referred to in paragraphs (1) to (4). It may also provide for and regulate the establishment of the safety committee, the election of its delegates, its composition, the holding of its meetings, and its obligations and responsibilities.

Subsection 5 – Provision of information to seafarers

Article 3.3.3-13.

(1) Without prejudice to the other provisions of this Chapter, the shipowner, in cooperation with the safety committee, must inform recruited seafarers of the risks they face, taking into account the nature of the ship's activities. That information shall include, in particular, the following:

- 1° the risks to safety and health on board, particularising any specific increased risks associated with each type of job or function;
- 2° protection and prevention programmes for the promotion of safety and health at work;
- 3° maximum levels of exposure to potentially harmful ambient factors and other risks, including the dangers to hearing and health of prolonged exposure to high levels of noise or vibration;
- 4° the specific professional qualifications or skills required.

(2) The information referred to in paragraph (1) shall be provided on a continuous basis and may take the following forms or any other form laid down by Grand-Ducal regulation:

- 1° educational audiovisual material, such as films, for use in vocational training centres for seafarers and where possible shown on board ships;
- 2° display of posters on board ships;
- 3° inclusion in periodicals read by seafarers of articles on the hazards of maritime employment and on occupational safety and health protection and accident prevention measures;
- 4° special campaigns using various publicity media to instruct seafarers, including campaigns on safe working practices.

(3) The information referred to in paragraph (1) shall take account of the different nationalities, languages and cultures of the seafarers on board the ship.

(4) Article L. 334-1 of the Labour Code shall apply to seafarers.

Article 3.3.3-14.

The shipowner shall take appropriate measures to ensure that designated seafarers and other members of the safety committee on board, where applicable, have access to the following for the performance of their function:

- 1° the risk evaluation provided for in Article 3.3.3-7;
- 2° the list and reports provided for in paragraph (1) of Article 3.3.3-6; ;
- 3° information derived both from protection and prevention activities and measures and from inspection services or competent health and safety organisations.

Subsection 6 – Training of seafarers

Article 3.3.3-15.

(1) Each seafarer shall receive, under the responsibility of the shipowner, sufficient and appropriate training in matters of safety and health relating specifically to his or her job and function, including in the form of information and instructions on the occasion of:

- 1° his or her initial engagement;
- 2° a change of job or function;
- 3° the introduction or change of any item of equipment;
- 4° the introduction of new technology.

(2) Such training, developed in collaboration with the safety committee, must be adapted to changing risks and the emergence of new risks, and repeated periodically if necessary.

(3) Training programmes must be periodically reviewed and updated, in cooperation with the safety committee, to take account of developments and changes occurring in the equipment used, the organisation of crews, nationalities, languages and working methods on board.

(4) Seafarers engaging in hazardous tasks shall receive appropriate training, supplemented by periodic refresher training in matters relating to safety and health. Only seafarers who have received adequate instruction shall be allowed access to zones and places posing serious and specific hazards.

Article 3.3.3-16.

Designated seafarers and other members of the safety committee, where applicable, shall be entitled to receive appropriate training and periodic refresher training.

Article 3.3.3-17.

- (1) The cost of the training provided for in this subsection shall not be borne by seafarers or their representatives.
- (2) Time spent undergoing such training shall be counted in the period of service in accordance with Article 3.2.2-13.

Article 3.3.3-18.

The content, programme and modalities of the training courses provided for in this subsection may be determined by Grand-Ducal regulation.

Subsection 7 – Other precautionary measures

Article 3.3.3-19.

The shipowner shall take all reasonable precautions to prevent accidents at work and occupational injuries and illnesses on board ships.

Article 3.3.3-20.

- (1) The shipowner shall take reasonable measures to reduce and prevent the risk of seafarers being exposed to harmful levels of ambient factors and chemicals.
- (2) The shipowner shall take reasonable measures to reduce and prevent any risk of injury or sickness that may arise from the use of equipment and machinery on board ships;

Article 3.3.3-21.

- (1) The shipowner shall provide personal protective equipment or other accident prevention devices on board ships flying the Luxembourg flag.
- (2) In addition to being provided with such protective equipment and other accident prevention devices on board, seafarers must be required to use those devices and to observe the accident prevention and health protection measures applying to them.

Article 3.3.3-22.

A Grand-Ducal regulation may specify, taking into account the specific characteristics of the ship, the precautionary measures referred to in Articles 3.3.3-19 to 3.3.3-21 in accordance with the international instruments listed in Annex I.

Section 2 – Obligations of seafarers and other persons on board, apart from passengers

Article 3.3.3-23.

- (1) It shall be the responsibility of every seafarer to take care, as far as possible, of his/her own safety and health and that of other persons affected by his/her actions or omissions at work.
- (2) A seafarer who, in the event of serious and immediate danger that cannot be avoided, leaves his or her post or a dangerous area may not be penalised. Termination of the employment contract by an employer in violation of the provisions of this paragraph shall constitute unfair dismissal.

Article 3.3.3-24.

Seafarers and all other persons on board, apart from passengers, must:

- 1° comply with applicable standards and with the policies and programmes applicable to the ship relating to occupational health and safety;
- 2° use machinery, apparatus, equipment, tools, hazardous substances and other facilities in the correct manner;
- 3° use the personal protective equipment made available to them in the correct manner and, after use, return such equipment to its proper place;
- 4° refrain from arbitrarily disabling, changing or moving safety devices specific to machinery, apparatus, equipment, tools and installations, and use such safety devices in the correct manner;
- 5° immediately report to designated seafarers, members of the safety committee or, failing that, the shipowner, any work situation which they have reasonable grounds to believe poses a serious and immediate danger to the safety and health of persons on board, as well as any defects found in the protection systems.

Article 3.3.3-25.

A Grand-Ducal regulation may specify the obligations of seafarers and other persons concerned pursuant to this Section.

*Section 3 – Obligations of the flag State***Article 3.3.3-26.**

The Commissioner shall cooperate with shipowners' and seafarers' organisations to take measures to bring to the attention of all seafarers information concerning particular hazards on board the ships on which they work.

*Section 4 – Special provisions***Article 3.3.3-27.**

(1) Implementing measures of a technical nature arising from this Chapter may be laid down by Grand-Ducal regulation, after consultation with organisations representing shipowners and seafarers and taking into account international instruments, codes, guidelines and standards applicable or recommended by international organisations or maritime sector bodies.

(2) The Grand-Ducal regulation thus adopted shall be reviewed regularly in consultation with representatives of shipowners' and seafarers' organisations, taking into account developments in technology and research, in order to facilitate the continuous improvement of occupational safety and health policies and programmes and to ensure a safe working environment for seafarers employed on board ships flying the Luxembourg flag.

Article 3.3.3-28.

(1) Any person infringing the provisions of paragraphs (1) to (3) of Article 3.3.3-2, Articles 3.3.3-5 and 3.3.3-6, paragraphs (1) and (4) of Article 3.3.3-7, paragraph (2) of Article 3.3.3-9, paragraph (1) of Article 3.3.3-10, paragraph (1) of Article 3.3.3-13, paragraph (1) of Article 3.3.3-15, Article 3.3.3-16, paragraph (1) of Article 3.3.3-17, or Articles 3.3.3-19, 3.3.3-20 or 3.3.3-21 shall be liable to imprisonment for a term of between eight days and six months and a fine of between EUR 251 and EUR 25 000, or one of those penalties only.

(2) Any person infringing the provisions of paragraph (2) of Article 3.3.3-23 or Article 3.3.3-24, or of the regulations adopted pursuant thereto, shall be liable to a fine of between EUR 251 and EUR 3 000.

Chapter 4 – Special provisions applicable to the employment of women on board

Section 1 – Definitions

Article 3.3.4-1.

For the purposes of this Chapter, the following definition shall apply:

“pregnant woman” means any woman employed as a seafarer who is pregnant and who has informed the shipowner of her condition in accordance with Article 3.3.4-2.

Section 2 – Obligation to declare pregnancy

Article 3.3.4-2.

(1) The seafarer must inform the shipowner of her pregnancy as soon as she becomes aware of it.

(2) The pregnancy must be declared either by sending a medical certificate to the shipowner by registered post or by handing the medical certificate to the master, whose signature on the duplicate thereof shall serve as acknowledgement of receipt.

Section 3 – Prohibition of dismissal

Article 3.3.4-3.

(1) Notice of dismissal may not be given to a seafarer during her pregnancy and for a period of twelve weeks following childbirth, save in cases of serious misconduct.

(2) The prohibition of dismissal shall not prevent the expiry of a fixed-term employment agreement.

(3) In the event that notice of dismissal is given before the pregnancy has been medically confirmed, the seafarer may prove her condition by producing a certificate by the means referred to in paragraph (2) of Article 3.3.4-2 within eight days of arriving at the first port of call where a consultation can be carried out.

(4) Any notice of dismissal given in contravention of the dismissal prohibition referred to in this Article shall be null and void.

Article 3.3.4-4.

(1) In the event of dismissal in violation of Article 3.3.4-3, the seafarer may, within 15 days of her repatriation as provided for in Article 3.1.2-23, apply by way of simple application to the president of the labour court for a declaration that the dismissal is null and void and an order that she be reinstated. The president shall rule as a matter of urgency in summary proceedings, after hearing or duly summoning the parties.

The order of the president of the labour court shall be immediately enforceable. It may be appealed against by simple application made within forty days of service via the court registry to the president of the chamber of the *Cour d'appel* [Court of Appeal] to which appeals in labour law cases are assigned. The ruling thereon shall be handed down as a matter of urgency, with the parties being heard or duly summoned.

(2) In the event of serious misconduct, the shipowner may immediately suspend the seafarer pending the final decision of the labour court on the shipowner's application for termination of the employment contract. The shipowner shall then arrange for the seafarer's repatriation.

If the labour court refuses to allow that application, the suspension shall be rescinded and its effects shall be automatically nullified.

(3) Within 15 days of her repatriation, the seafarer may submit a simple application to the president of the labour court, who, ruling in summary proceedings and after hearing or duly summoning the parties, shall rule on the maintenance or suspension of payment of her wages pending the final outcome of the proceedings. The order of the president of the labour court may be appealed against under the same conditions as judgments handed down by the labour court. It shall be immediately enforceable, if necessary on the authority of the original written judgment and prior to registration.

In the event of unfair dismissal not accompanied by suspension under the conditions provided for in paragraph (2), the president shall order the reinstatement of the seafarer.

Article 3.3.4-5.

Where a pregnant woman is hired on the basis of a contract of indefinite duration with a probationary clause, the probationary period shall be suspended from the date on which the medical certificate attesting to the pregnancy is submitted to the shipowner. The remaining part of the probationary period shall resume at the end of the period during which dismissal is prohibited.

Article 3.3.4-6.

The seafarer concerned shall retain the right to terminate her seafarers' employment agreement, subject to compliance with the applicable notice periods.

*Section 4 – Adaptation of the working conditions of pregnant women***Article 3.3.4-7.**

A pregnant woman may not be kept on in her position if it poses a risk to her safety and health and if this entails possible repercussions on her pregnancy.

Article 3.3.4-8.

(1) When a pregnant woman wishes to avail herself of the provisions of Article 3.3.4-7, she must send a request to that effect to the shipowner, either by registered letter or by handing it to the master, whose signature on the duplicate copy thereof shall count as acknowledgement of receipt.

(2) The shipowner shall be required to ensure that the pregnant woman does not perform activities that involve a risk of exposure to the agents and processes listed in Annex 1 and Section A of Annex 2 to the Labour Code, even in the absence of a request to that effect made in accordance with paragraph (1).

(3) Within eight days of receiving the letter, if a doctor is on board, or otherwise at the first port where a medical consultation is possible, the shipowner must refer the matter to a doctor who meets the conditions set out in Article 3.1.1-6 so that the doctor can give his or her opinion on the continuation of work, temporary adjustment of work or temporary redeployment of the pregnant woman or her exemption from working.

Article 3.3.4-9.

(1) If the doctor thus consulted recommends a temporary adjustment to the working conditions or working hours of the pregnant woman with a view to avoiding a risk to her safety or health and any impact on her pregnancy, the shipowner must ensure that the pregnant woman's schedule is modified for the entire period specified by the doctor and necessary for the protection of her safety or health.

(2) If such an adjustment is not technically or objectively possible or cannot reasonably be required for duly substantiated reasons, the shipowner shall be required, with the approval of the doctor, to assign the pregnant woman to other duties ashore for the entire period specified by the doctor and necessary for the protection of her safety or health, while maintaining her previous wages.

(3) If the change of assignment is not technically or objectively possible or cannot reasonably be required for duly substantiated reasons, the employer shall be obliged to exempt the pregnant woman from work for the entire period determined by the doctor and necessary for the protection of her safety or health.

(4) The measures taken to adjust the working conditions of seafarers pursuant to paragraph (1) must be such as to at least prevent pregnant women from being exposed to the agents, processes and working conditions listed in Annex 1 and Section A of Annex 2 to the Labour Code. A Grand-Ducal regulation may specify the measures for adjusting working conditions or working hours that may be recommended by the doctor to whom the matter was referred.

Pregnant women must also be able to attend prenatal examinations as provided for in Article 277 of the Social Security Code. If necessary, they must be exempted from working without loss of wages.

Article 3.3.4-10.

(1) If a measure to redeploy a pregnant woman is recommended, the shipowner shall be required to assign her to another position ashore in accordance with the advice of the doctor to whom the matter was referred, without any reduction in wages, for the entire period determined by the doctor and necessary for the protection of her safety or health.

(2) If a transfer to a position ashore is not technically or objectively possible or cannot reasonably be required for duly substantiated reasons, the shipowner shall be obliged to exempt the pregnant woman from working for the entire period determined by the doctor and necessary for the protection of her safety or health.

(3) Title III of Book III of the Labour Code shall apply to pregnant women temporarily reassigned to a position ashore.

Article 3.3.4-11.

If an exemption from working is recommended, the shipowner shall exempt the pregnant woman from working for the entire period necessary to protect her safety or health, as determined by the doctor consulted.

Article 3.3.4-12.

In the event that the shipowner or the pregnant woman disputes the doctor's opinion within fifteen days of communication of the opinion, the woman shall be re-examined by another doctor meeting the requirements set out in Article 3.1.1-6 or, where possible, by an independent medical arbitrator. The request for re-examination shall not have any suspensive effect.

*Section 5 – Maternity leave***Article 3.3.4-13.**

(1) Articles L. 332-1 to L. 332-4 of the Labour Code shall apply to pregnant women.

(2) The obligations incumbent upon employers under Articles L. 332-1 to L. 332-4 of the Labour Code shall extend to shipowners.

*Section 6 – Marriage***Article 3.3.4-14.**

The provisions of Articles L. 337-5 and L. 337-6 of the Labour Code shall apply to seafarers.

*Section 7 – Miscellaneous provisions***Article 3.3.4-15.**

Any contractual provision contrary to the provisions of this Chapter shall be ipso facto null and void.

Article 3.3.4-16.

Article L. 338-2 of the Labour Code shall apply to seafarers.

Article 3.3.4-17.

Any person infringing the provisions of paragraph (1) of Article 3.3.4-3, Article 3.3.4-7, paragraphs (2) and (3) of Article 3.3.4-8, Articles 3.3.4-9 to 3.3.4-11 and/or Article 3.3.4-13 shall be liable to imprisonment for a term of between eight days and six months and a fine of between EUR 251 and EUR 25 000, or one of those penalties only.

TITLE 4 – Compliance and enforcement of provisions

Chapter 1 – General provisions

Article 3.4.1-1.

In order to ensure compliance with the applicable obligations regarding the living and working conditions of seafarers, shipowners shall submit their ships to the inspection and certification system.

The effectiveness of the inspection and certification system shall be periodically assessed in accordance with a quality management system established by Grand-Ducal regulation.

Article 3.4.1-2.

For the purposes of this Title, the following definitions shall apply:

- 1° “Maritime labour certificate” means the certificate referred to in Article 3.4.3-1 et seq., certifying that the requirements in respect of living, working and employment conditions are met on board the ship;
- 2° “Social certification” means the procedure for issuing Part I of the declaration of maritime labour compliance, verifying the commitments made by the shipowner in Part II of the declaration of maritime labour compliance and endorsing Part II, and then issuing, endorsing and, where applicable, renewing the maritime labour certificate, in accordance with Chapter 3;
- 3° “Declaration of maritime labour compliance” means the document issued by the Commissioner setting out the mandatory national requirements concerning the working and living conditions of seafarers, supplemented by a second document detailing the measures taken by the shipowner to ensure compliance with those requirements;
- 4° “Inspectors” means, for the purposes of flag State control, the Commissioner or an authorised organisation and, by extension, any employee of that organisation assigned to carry out social inspection tasks;
- 5° “Inspections” means, for the purposes of flag State control, inspections of Luxembourg ships carried out in accordance with Article 3.4.4-1 et seq. concerning compliance with requirements concerning living, working and employment conditions, whether or not related to the issue, endorsement or renewal of the maritime labour certificate and, where applicable, the suspension, return or withdrawal of the maritime labour certificate;
- 6° “Organisation” means any natural or legal person, including a person from another Member State of the European Union, applying for recognition in the field of social matters;
- 7° “Authorised organisation” means a body authorised pursuant to Chapter 2 to carry out social inspections or social certification.

Chapter 2 – Procedure for authorising social welfare organisations

Article 3.4.2-1.

(1) In order to ensure an effective system of inspections and social certification, the Commissioner shall, depending on the State’s needs for inspectors, authorise one or more organisations to carry out social inspections or social certification, provided that such organisations satisfy the conditions of independence and competence for carrying out inspections or issuing certificates, or both.

(2) Organisations authorised pursuant to Article 2.0.0-6 shall be deemed to meet the requirements of this Article, provided they have a system for qualifying and updating their competence in social matters.

(3) Only the authorised organisations referred to in paragraph (2) may carry out inspection and certification tasks of ships with a gross tonnage of 500 or more.

(4) For the inspection and certification of ships with a gross tonnage of less than 500, an organisation other than one referred to in paragraph (2) shall demonstrate, in order to obtain authorisation, that, to the extent necessary for the performance of the activities covered by the authorisation:

- 1° it is of the appropriate size, structure, experience and capability commensurate with the type and degree of authorisation;
- 2° it has the ability to maintain and update the expertise of its inspectors;
- 3° it meets the requirements of independence.

Its inspectors must have the necessary theoretical knowledge and practical experience concerning ships and their operation. They must be familiar with the relevant requirements of maritime labour law and the applicable inspection procedures specified by Grand-Ducal regulation. Their knowledge and skills regarding compliance with obligations relating to the living, working and employment conditions of seafarers must have been obtained through training programmes recognised by the Commissioner. Inspectors must, as a minimum:

1° firstly:

- a) hold the necessary qualifications issued by a maritime or nautical institute and have relevant experience of service at sea as a ship's officer holding a valid STCW II/2 or III/2 certificate, without limitation as to the area of operation, propulsion power or tonnage; or
- b) hold an appropriate university degree or equivalent and have an inspector's certificate and training in:
 - i. the minimum requirements for seafarers to work on board a ship;
 - ii. conditions in respect of employment, accommodation and recreational facilities;
 - iii. food and catering;
 - iv. accident prevention;
 - v. health protection, medical care, welfare and social security protection;
 - vi. ship operation;
 - vii. compliance with and implementation of provisions, including complaint procedures;
 - viii. ship inspection, including ships with a gross tonnage of less than 500, and social certification;
 - ix. port State inspections;

2° and, secondly:

- a) have served for at least one year as an inspector responsible for social inspections and social certification in accordance with the relevant requirements of maritime labour law, or the supervision of the activities of authorised organisations entrusted with regulatory tasks, or
- b) have acquired an equivalent level of competence after completing at least one year of on-the-job training consisting of participation in social inspections under the direction of experienced officers.

Inspectors are considered to have relevant experience if they have acquired at least five years of maritime experience, including periods during which they performed duties at sea as a deck or engine officer, as the case may be, or as an assistant inspector.

Inspectors must be able to communicate orally and in writing in English.

An organisation shall be regarded as satisfying the requirements of independence if it provides evidence that it is not susceptible to being influenced by changes in the government of the State in whose territory it is located or to undue influence from third parties. The authorised organisation shall also demonstrate that it allows inspectors a degree of autonomy in the performance of their duties, notwithstanding any relationship of subordination.

(5) All organisations must submit an application for authorisation. A Grand-Ducal regulation shall specify the procedures to be followed and the documents to be provided by the organisation in order to demonstrate that it meets the requirements set out in paragraph (4).

(6) Any substantial change in the ownership or the administrative or managerial structure of the authorised organisation must be reported to the Commissioner as soon as possible and no later than one month after the change in question.

Article 3.4.2-2.

(1) The Commissioner shall verify that the authorised social welfare organisation continues to meet the conditions that prevailed at the time of its authorisation. Upon request, the authorised social welfare organisation shall provide the Commissioner with any document showing that those conditions continue to be met.

(2) If the authorised organisation no longer meets the conditions that prevailed at the time of its authorisation, or is no longer able to fulfil its mission, the Commissioner shall terminate the agreement referred to in Article 3.4.2-3.

Article 3.4.2-3.

The Commissioner shall conclude an agreement with the authorised organisation, which shall include a detailed description of the tasks entrusted to it. The form of the agreement shall be specified by Grand-Ducal regulation.

Article 3.4.2-4.

The authorisation granted shall allow the authorised organisation to call for rectification of any deficiencies or violations found in relation to the living, working and employment conditions of seafarers.

Chapter 3 – Social certification and declaration of maritime labour compliance**Article 3.4.3-1.**

(1) Each ship shall carry on board a valid maritime labour certificate and a declaration of maritime labour compliance, both of which shall have been previously endorsed by the Commissioner. A Grand-Ducal regulation shall specify the form to be taken by the maritime labour certificate and the declaration of maritime labour compliance.

(2) Ships with a gross tonnage of less than 200 are not required to obtain social certification. However, they must draw up and hold a declaration of maritime labour compliance.

(3) Notwithstanding paragraphs (1) and (2), any ship may also be certified on a voluntary basis.

(4) The valid maritime labour certificate and declaration of maritime labour compliance, translated into English if the originals are not in that language, shall be kept on board and kept up to date. A copy shall be displayed in a conspicuous place accessible to seafarers.

Article 3.4.3-2.

(1) The declaration of maritime labour compliance shall comprise two parts:

1° Part I, drawn up by the Commissioner, shall summarise the requirements that must be met with regard to the living, working and employment conditions of seafarers;

2° Part II, drawn up by the shipowner, shall set out the measures taken by the latter to ensure ongoing compliance with the various requirements relating to the living, working and employment conditions of seafarers, as well as the measures proposed to ensure continuous improvement in those areas. Once drawn up, it shall be certified by the Commissioner or an authorised organisation.

(2) The declaration of maritime labour compliance shall be drafted in clear terms designed to help all persons concerned, such as flag State inspectors, authorised officers in port States and seafarers, to check that the requirements relating to living, working and employment conditions are being properly implemented.

(3) The results of all inspections or other verifications carried out on the ship and any significant deficiencies found by the inspectors, as well as the date on which the deficiencies were found to have been rectified, shall be recorded therein.

Article 3.4.3-3.

Any ship in possession of a valid maritime labour certificate and a valid declaration of maritime labour compliance shall, unless proven otherwise, be presumed to have been duly inspected by an inspector and to comply with the applicable requirements concerning the working and living conditions of seafarers within the scope of the items covered by the certification.

Article 3.4.3-4.

The maritime labour certificate shall be valid for five years from its date of issue. The maritime labour certificate shall be issued following an initial inspection as referred to in Article 3.4.4-2.

Article 3.4.3-5.

(1) Without prejudice to any other inspections to which the ship may be subject, every certified ship shall undergo an intermediate inspection in order to verify the continued compliance of the ship. That inspection must be as comprehensive and thorough as the inspections carried out for the renewal of the certificate as provided for in Article 3.4.3-6.

(2) The intermediate inspection shall be carried out between the second and third anniversaries of the date of issue of the certificate. The anniversary date shall be understood to mean the day and month of each year corresponding to the expiry date of the maritime labour certificate.

(3) Upon satisfactory completion of the intermediate inspection, the certificate shall be endorsed by the Commissioner or an authorised organisation.

Article 3.4.3-6.

(1) The maritime labour certificate may be renewed by the Commissioner or an authorised authorisation once a new inspection has verified that the living, employment and working conditions of seafarers on board continue to be met.

(2) By way of derogation from the provisions of Article 3.4.3-4, the period of validity of the renewed maritime labour certificate may exceed five years if the renewal inspection takes place within three months prior to the expiry of the current certificate. In that case, the new maritime labour certificate shall be valid from the date on which the inspection in question was carried out, for a period not exceeding five years from the expiry date of the current certificate.

(3) Notwithstanding Article 3.4.3-4, where an inspection for the renewal of a maritime labour certificate prior to its expiry shows that the ship continues to comply but a new certificate cannot be issued and made available on board immediately, the Commissioner or an authorised organisation may extend and endorse the maritime labour certificate for a period not exceeding five months from the expiry date of the current certificate. The new maritime labour certificate shall be valid for a period not exceeding five years from the dates specified in paragraph (2).

Where the inspection for renewal purposes was carried out more than three months before the expiry date of the current certificate, the period of validity of the new maritime labour certificate shall not exceed five years from the date on which that inspection was carried out.

Article 3.4.3-7.

(1) All maritime labour certificates, including the interim certificate referred to in Article 3.4.3-10, shall cease to be valid and shall be withdrawn if:

- 1° the inspections required under Articles 3.4.3-5, 3.4.3-6 and 3.4.3-14 are not carried out within the prescribed time-limits;
- 2° the certificate and the declaration of maritime labour compliance have not been properly endorsed, where so required, by the Commissioner;
- 3° there is a change of flag;
- 4° a shipowner ceases to be responsible for the operation of a ship;
- 5° significant changes have been made to the structure of the ship or to the equipment referred to in Title 3 of the 2006 Maritime Labour Convention.

(2) In the cases referred to in points 3°, 4° or 5° of paragraph (1), the new certificate shall only be issued if the ship meets the conditions for initial issue.

Article 3.4.3-8.

(1) The Commissioner shall, by reasoned decision, withdraw the maritime labour certificate if deficiencies have been found which constitute a serious and repeated breach of the applicable social certification requirements or if they pose a serious risk to the safety or health of seafarers.

(2) The decision shall be communicated by the Commissioner to the shipowner and the master.

Article 3.4.3-9.

(1) Any withdrawal of the maritime labour certificate, in accordance with the preceding articles, shall automatically result in the ship being prohibited from sailing under the Luxembourg flag.

(2) In the event of permanent withdrawal, the shipowner shall be required to return the original certificate to the *Commissariat aux affaires maritimes*.

Article 3.4.3-10.

The Commissioner, or an authorised organisation, may issue a maritime labour certificate on an interim basis:

- 1° to new ships on delivery;
- 2° when a ship changes flag;
- 3° when a shipowner assumes responsibility for the operation of a ship which is new to that shipowner.

A Grand-Ducal regulation shall specify the form that the maritime labour certificate is to take.

Article 3.4.3-11.

An interim maritime labour certificate shall only be issued once it has been established that:

- 1° the ship has been inspected, as far as reasonable and practicable, in accordance with the requirements listed in Appendix A5-1 to the 2006 Maritime Labour Convention, taking into account verification of the items referred to in points 3° and 4°;
- 2° the shipowner has demonstrated to the Commissioner or the authorised organisation that adequate procedures are in place on board to ensure compliance with the provisions relating to living, working and employment conditions on board the ship;
- 3° the master is familiar with the provisions relating to living, working and employment conditions on board the ship and with his or her responsibilities in that regard;
- 4° the relevant information required has been submitted to the Commissioner or the authorised organisation to produce a declaration of maritime labour compliance.

Article 3.4.3-12.

The duration of an interim maritime labour certificate may not exceed six months.

Article 3.4.3-13.

The issue of a declaration of maritime labour compliance shall not be required during the period of validity of the interim certificate.

Article 3.4.3-14.

(1) The issue of a labour certificate with a normal period of validity shall be subject to the carrying-out, before the expiry of the interim certificate, of a full inspection as required for the initial issue of the maritime labour certificate as provided for in Article 3.4.3-4.

(2) An interim certificate may not be renewed, and no new interim certificate shall be issued, after the initial six-month period referred to in Article 3.4.3-12.

Chapter 4 – Inspections and enforcement

Article 3.4.4-1.

All ships flying the Luxembourg flag, whether or not subject to certification requirements, must undergo periodic inspections to ensure that the working and living conditions of seafarers on board meet, and continue to meet, the requisite social standards.

Article 3.4.4-2.

(1) For ships requiring to be certified, inspections must without fail be carried out prior to the issue of the maritime labour certificate and at intervals conforming to the requirements of Chapter 3.

(2) When carrying out the initial inspection, the inspector shall conduct a thorough inspection of living, working and employment conditions. That inspection shall cover, at a minimum, the areas listed in Appendix A5-I to the 2006 Maritime Labour Convention.

Article 3.4.4-3.

Without prejudice to the provisions of Article 3.4.4-2, a special inspection of seafarers' accommodation on board ships flying the Luxembourg flag must without fail be carried out:

- 1° when a ship is registered;
- 2° when a ship is re-registered;
- 3° when the seafarers' accommodation on a ship has been substantially altered.

Article 3.4.4-4.

Notwithstanding the provisions of Articles 3.4.4-2 and 3.4.4-3, in one or more of the circumstances set out below, the Commissioner shall be authorised to take any measures he or she deems necessary, including the carrying-out of an additional inspection without prior notice:

- 1° following a complaint that does not appear to be manifestly unfounded;
- 2° following an accident or serious incident;
- 3° where there is evidence indicating that a ship does not comply with the requirements relating to living, working and employment conditions on board, or that there are serious deficiencies in its implementation of the measures set out in its declaration of maritime labour compliance;
- 4° following detention ordered by the competent authority of the port State.

Article 3.4.4-5.

(1) The inspector shall take all reasonable measures to avoid unduly delaying or detaining the ship for the purposes of the inspection.

(2) Every inspector shall have the right to board ships freely and without prior notice.

(3) Every inspector shall have the right to question the master, seafarers or any other person, including the shipowner or the shipowner's representative, on any matter relating to the application of maritime labour law requirements in order to ensure that the applicable standards are being strictly observed.

(4) The inspector shall take care not to disrupt the hours of work and rest of seafarers.

(5) The inspector shall carry out any examination, test or inquiry that he or she deems necessary in order to ensure that standards and requirements relating to the working and living conditions of seafarers are being strictly observed.

(6) The inspector shall verify that seafarers have access to the text of the legal provisions applicable to the working and living conditions of seafarers.

(7) A Grand-Ducal regulation shall specify the inspection procedure.

Article 3.4.4-6.

(1) Any inspector shall have the discretion to give advice instead of recommending proceedings when there is no clear breach of the applicable requirements relating to living, working and employment conditions that could endanger the safety, health or security of the seafarers concerned and where there is no prior history of similar breaches.

(2) Within the limits provided for in the agreement with the authorised organisation referred to in Article 3.4.2 3, any inspector may, cumulatively or otherwise:

1° require that, within a specified time-limit, all appropriate corrective measures be taken to remedy any deficiencies found that constitute a breach of the requirements relating to living, working and employment conditions or that represent a danger to the safety, security or health of seafarers. The enforcement order prescribing corrective measures shall be communicated to the shipowner or the master by registered letter or by written notice duly certified by a receipt;

2° prohibit a ship from leaving port and continuing any operation whatsoever until the necessary measures have been taken, when he or she has reason to believe that the deficiencies constitute a serious or repeated breach of the requirements relating to living, employment and working conditions on board or represent a serious danger to the health, safety or security of seafarers. To that end, he or she may take any appropriate measures, including requesting the assistance of the competent authorities of the port State with a view to detaining the ship.

Article 3.4.4-7.

The inspector shall verify that measures to rectify the deficiencies found have been properly carried out by no later than the deadline fixed therefor.

The Commissioner shall lift the administrative measures taken as soon as he or she receives proof that the deficiencies found have been rectified.

Article 3.4.4-8.

Notwithstanding the provisions of point 2° of paragraph (2) of Article 3.4.4-6, the Commissioner may authorise the ship to proceed to the nearest port or shipyard in order to rectify the deficiencies found.

Article 3.4.4-9.

Without prejudice to Article 3.4.4-8, an inspector shall immediately inform:

1° the shipowner and the master of any deficiencies found that could affect the safety, security and health of seafarers;

2° the Commissioner of any occupational injuries or diseases affecting seafarers.

Article 3.4.4-10.

(1) For each inspection carried out, the inspector shall draw up a written report worded in clear and precise terms such as to avoid any need for interpretation. The procedures for drawing up the report shall be laid down by Grand-Ducal regulation.

(2) The inspector shall inform the Commissioner of the conclusions of his/her inspections and shall provide the Commissioner with a copy of the report, which shall be duly filed. The Commissioner shall have access to all information held by the inspector.

(3) A copy of the report in English shall be given to the ship's master and a further copy shall be posted on the ship's notice board for the information of seafarers. A copy may also be given to the seafarers' representatives if they so request.

Article 3.4.4-11.

With a view to improving their working conditions, inspectors shall be authorised to provide seafarers who so request with technical information and advice as to the most effective means of implementing the requirements relating to living, employment and working conditions.

Chapter 5 – Complaints**Article 3.4.5-1.**

Any seafarer may lodge a complaint regarding non-compliance with the provisions of this Law.

For the purposes of the first subparagraph, a complaint means:

- 1° a complaint lodged on board the ship with the persons in charge on board, namely the master or the senior officer present on board; or
- 2° a complaint lodged with the Commissioner.

Article 3.4.5-2.

The complaint may be made directly by the seafarer or by any natural or legal person authorised by him or her.

Where the seafarer is represented, his or her identity shall only be disclosed with his or her consent.

Article 3.4.5-3.

The complaint may in all cases be brought by any means. In addition to its subject-matter, it shall state:

- 1° the surname, first names and function of its author or of the person lodging it on his or her behalf;
- 2° the name of the ship and its registration number.

Article 3.4.5-4.

All seafarers shall receive from the shipowner, together with their seafarers' employment agreement, a document written in English setting out the complaint procedure, the contact details of the *Commissariat aux affaires maritimes* and the contact details of the maritime authorities in their country of residence. That document shall also give the name of one or more persons on board or ashore who, in the event of a complaint, can advise the seafarer confidentially and impartially and who has/have the necessary skills to assist him or her in a complaint procedure on board.

Article 3.4.5-5.

A Grand-Ducal regulation shall prescribe in detail the formalities and procedure for complaints.

Article 3.4.5-6.

(1) No prejudicial action, in the sense of a termination of the employment relationship, a unilateral change in working conditions or a discriminatory act, regardless of who commits it, may be taken against a seafarer who has lodged a complaint, except for reasons unrelated to that complaint.

(2) Any act or measure taken against a seafarer in violation of paragraph (1) shall be null and void.

Chapter 6 – Administrative and criminal penalties

Article 3.4.6-1.

(1) In the event of any failure to comply with the Commissioner's or inspectors' requests for rectification within the specified time-limits, the Commissioner shall be entitled to impose an administrative fine on the shipowner, master, owner or employer, or several of them.

The amount of the administrative fine shall be between EUR 25 and EUR 25 000.

The decision imposing the penalty must be duly reasoned.

(2) Notice of the fine shall be given by registered letter or against signature of the duplicate of the decision.

(3) Administrative fines shall be collected by the Registration Duties, Estates and VAT Authority. Recovery shall be effected in the same manner as for registration duties. Administrative fines shall be paid within thirty days of the date of communication of the decision. After that period, a reminder shall be sent by registered letter. The reminder shall trigger the accrual of default interest, calculated at the statutory rate.

(4) The decisions referred to in paragraph (1) may be appealed before the administrative court.

Article 3.4.6-2.

Any person who knowingly obstructs inspectors in the performance of their duties under Chapter 4 shall be liable to imprisonment for a term of between eight days and five years and a fine of between EUR 251 and EUR 125 000, or one of those penalties only.

Article 3.4.6-3.

A shipowner whose ship leaves port or continues operations despite a prohibition communicated by the Commissioner or an inspector shall be liable to imprisonment for a term of between eight days and five years and a fine of between EUR 251 and EUR 125 000, or one of those penalties only.

A shipowner whose ship sails without a valid MLC certificate in accordance with this Section and the Grand-Ducal regulations implementing it shall be liable to the same penalty.

BOOK 4 – SOCIAL PROTECTION OF SEAFARERS

The conventions featuring in Annex 5 to the Law of 9 November 1990 approving certain international conventions relating to maritime matters, listed below, pertain to this Book.

- Convention No. 55 concerning the Liability of the Shipowner in Case of Sickness, Injury or Death of Seafarers, adopted by the General Conference of the International Labour Organization on 24 October 1936, known as the Shipowners' Liability (Sick and Injured Seamen) Convention, 1936;
- Convention No. 56 concerning Sickness Insurance for Seafarers, adopted by the General Conference of the International Labour Organization on 24 October 1936, known as the Sickness Insurance (Sea) Convention, 1936.

Article 4.0.0-1.

(1) The Social Security Code is amended as follows:

- a) (a) Article 1(1) is supplemented by the words "and Luxembourg seafarers or seafarers who are nationals of a country with which Luxembourg is bound by a bilateral or multilateral social security instrument or residents of Luxembourg employed on a ship flying the Luxembourg flag";
- b) After the ninth subparagraph of Article 8, a new tenth subparagraph is inserted, worded as follows:

"The right to benefits in kind for seafarers as referred to in Article 1 shall be suspended for as long as the shipowner is obliged to bear the cost thereof in accordance with Article 101 of the Law of 9 November 1990 establishing a Luxembourg public maritime register."

The current tenth to thirteenth subparagraphs shall become the new eleventh to fourteenth subparagraphs.

- c) The first subparagraph of Article 93 shall read as follows:

“Article 93.-

Workers, assistants, journeymen, apprentices, domestic servants, office staff, operational staff, foremen, technical staff and seafarers who are Luxembourg nationals or nationals of a country with which Luxembourg is bound by a bilateral or multilateral social security instrument, or who are resident in Luxembourg and employed on a ship flying the Luxembourg flag, shall, provided they are employed in one of the companies or engaged in one of the occupations or activities referred to in Article 85, be insured against occupational accidents, up to an amount equal to four times the minimum social wage for an unskilled worker aged at least eighteen.

“

d) After the fourth subparagraph of Article 97, a new fifth subparagraph is inserted, worded as follows:

“The right to benefits in kind for seafarers as referred to in Article 93 shall be suspended for as long as, and to the extent that, the shipowner is obliged to bear the cost thereof in accordance with Article 101 of the Law of 9 November 1990 establishing a Luxembourg public maritime register.”

The current fifth to eleventh subparagraphs shall become the new sixth to twelfth subparagraphs.

e) Article 170 is supplemented by a new second subparagraph, worded as follows:

“The following shall be deemed to be an activity carried out in the Grand Duchy of Luxembourg: any activity carried out as a seafarer on a ship flying the Luxembourg flag by Luxembourg nationals or nationals of a country with which Luxembourg is bound by a bilateral or multilateral social security instrument, or by persons residing in Luxembourg”.

f) The second subparagraph of Article 335 is replaced by the following text:

“Natural and legal persons may, when hiring staff subject to the social security rules, be required by the centre's board of directors either to deposit a bond or to provide a bank guarantee serving as security for the fulfilment of their legal and regulatory obligations. The amount of the guarantee to be provided shall correspond to the presumed sum of six months' worth of contributions, but shall not be less than two thousand four hundred and seventy-eight euros and ninety-four cents. That amount may be adjusted every six months. The bond shall be deposited in accordance with the conditions laid down in the Law of 12 February 1872 and the Grand-Ducal Decree of 9 July 1945 relating to deposits.

The bank guarantee, payable on first demand made by the centre, must be provided by a bank approved in the Grand Duchy of Luxembourg.

The release of either the sums deposited or the bank guarantee shall take place pursuant to a final decision taken by the centre's board of directors at the time of cessation of the employer's activities, in particular in the event of liquidation, bankruptcy or receivership of a company. The bond deposited by way of security, including interest thereon, shall be liquidated in favour of the centre up to the amount of the sums due to it.”

g) A new article is added, worded as follows:

“Article 340.-

A Grand-Ducal regulation may provide for derogations in respect of seafarers with regard to administrative procedures relating to affiliation, the collection of contributions and the payment of benefits.”

h) A new fourth subparagraph is added to Article 1 of the Law of 29 August 1951 on health insurance for civil servants and employees, worded as follows:

“Seafarers employed on a ship flying the Luxembourg flag and performing on board that ship supervisory and control duties involving technical and economic responsibility for the work of other persons, without significant involvement in manual labour, shall also be regarded as private employees within the meaning of point (9) of the first subparagraph of this Article.”

(2) Where, pursuant to a bilateral social security instrument as referred to in Article 1(3) of the Social Security Code, Luxembourg social security legislation is applicable, the shipowner may apply to the Commissioner for an exemption from affiliation to the Luxembourg social security scheme for seafarers who are not resident in Luxembourg. When making the application, the shipowner must provide proof that adequate private insurance exists that meets the same requirements as those set out in the first subparagraph of Article 4.0.0-2. The Commissioner shall only take a decision after consulting the Minister responsible for social security.

Article 4.0.0-2.

In the absence of affiliation to the Luxembourg social security system pursuant to Article 4.0.0-1, shipowners of ship flying the Luxembourg flag must take out and contribute to the financing of a private insurance policy with an approved insurance institution, guaranteeing at least the following types of cover for persons employed on their ships: death, old age, workplace accidents and occupational illnesses.

However, shipowners shall be exempt from taking out the private insurance referred to in the ^{first} subparagraph if they can show that the seafarers employed on a ship flying the Luxembourg flag are affiliated to the social security system of their country of residence under the legislation of that country, provided that it is a State which has ratified the 2006 Maritime Labour Convention.

BOOK 5 – TAX AND FINANCIAL PROVISIONS**Article 5.0.0-1.**

For the purposes of applying the provisions of Article 152bis of the Law of 4 December 1967 on income tax, the condition of physical operation on Luxembourg territory laid down in the first paragraph of that article need not be fulfilled by approved shipping companies, as defined in Article 129, in relation to ships used in international traffic.

Furthermore, the provisions of point 3° of paragraph (4) and point 3° of the second subparagraph of paragraph (7) of that article shall not apply to the aforementioned companies as regards investments in ships used in international traffic, provided that they can show that the ships in question have not already been eligible in the past for any tax credits in Luxembourg granted to a commercial company. To that end, the *Commissariat aux affaires maritimes* or any other authority tasked for that purpose may issue a certificate listing all previous owners of the duly identified ship, by their name(s) or company name.

Article 5.0.0-2.

The last sentence of paragraph (9) of Article 152bis of the Law of 4 December 1967 on income tax is amended as follows:

“Similarly, it shall not be entitled to tax credits for ships used in international traffic.”

Article 5.0.0-3.

The provisions of the Law of 1 December 1936 on municipal business tax, as subsequently amended, shall not apply to income derived from the operation and renting out of ships used in international traffic or to the operating capital represented by such ships.

Article 5.0.0-4.

1. Under the following conditions and by way of derogation from subparagraphs (3) to (6) of Article 157 of the Law of 4 December 1967 on income tax, a Grand-Ducal regulation may provide for the flat-rate taxation of income derived from salaried employment carried out for an accredited maritime company by non-resident taxpayers on board a ship operating in international traffic.
2. The rate of flat-rate tax, which may vary according to the amount of income, may not be lower than 8% or higher than 10%.
3. The Grand-Ducal regulation provided for in subparagraph 1 may also provide:
 - a) that the tax rates provided for in subparagraph 2 are to apply, by way of derogation from the provisions on the determination of taxable income, the tax scale and the tax class, to the gross amount of remuneration, reduced, where applicable, by an allowance which may vary according to the amount of income;
 - b) that the tax withheld, not adjusted in accordance with Article 145 of the Law of 4 December 1967 on income tax, constitutes the final amount of tax payable and that income taxed on a flat-rate basis is not to be subject to assessment;

- c) that the flat-rate withholding tax may be levied, where applicable, by way of derogation from the provisions of Articles 136 and 137 of the Law of 4 December 1967 on income tax and the rules for the implementation of the articles in question.

Article 5.0.0-5.

In the event of disposal by an accredited maritime company of fixed assets consisting of ships operating in international traffic and invested in a domestic establishment, Article 54 of the Law of 4 December 1967 on income tax shall apply to the capital gains realised.

BOOK 6 – MARITIME TRADE

The conventions pertaining to this Book, as well as the provisions relating to general average, are reproduced in Annex 6 to the Law of 9 November 1990 approving certain international conventions in maritime matters:

- International Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels and Protocol of Signature, Brussels, 23 September 1910.
- International Convention for the Unification of Certain Rules with respect to Assistance and Salvage at Sea and Protocol of Signature, Brussels, 23 September 1910.
- International Convention for the Unification of Certain Rules Relating to Bills of Lading and Protocol of Signature, Brussels, 25 August 1924: "Hague Rules".
Protocol amending the International Convention for the Unification of Certain Rules Relating to Bills of Lading signed at Brussels on 25 August 1924, (Brussels, 23 February 1968): "Visby Rules".
Protocol amending the International Convention for the Unification of Certain Rules Relating to Bills of Lading of 25 August 1924, as amended by the amending Protocol of 23 February 1968 (Brussels, 21 December 1979).
- International Convention for the Unification of Certain Rules Relating to the Immunities of State-Owned Ships, Brussels, 10 April 1926.
Additional Protocol to the International Convention for the Unification of Certain Rules Relating to the Immunities of State-Owned Ships, Brussels, 10 April 1926 (Brussels, 24 May 1934).
- International Convention for the Unification of Certain Rules Concerning Civil Jurisdiction in Matters of Collision, Brussels, 10 May 1952.
- International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships, Brussels, 10 May 1952.
- International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships and Protocol of Signature, Brussels, 10 October 1957.
Protocol amending the International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships of 10 October 1957 (Brussels, 21 December 1979).
- 1974 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 (PAL 1974) and Protocol amending the Convention (London, 19 November 1976), (PAL Prot 1976).

Title 1 - Collisions

Article 6.1.0-1.

For the purposes of applying Article 4 of the International Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels of 23 September 1910, where the liability of one of the ships involved in respect of one or more victims or their legal beneficiaries is subject to legal or contractual provisions whereby such liability is excluded or limited, the said victims or their legal beneficiaries may not obtain from the other ship involved anything in excess of the latter's share of liability.

Article 6.1.0-2.

The provisions of the aforementioned Convention shall also apply to the case referred to in point 2 of Article 12 thereof.

Article 6.1.0-3.

For the purposes of applying the rules relating to collisions, the term “ship” refers to all floating craft except those moored at a fixed location. Those rules shall also apply to ships engaged in public service.

Article 6.1.0-4.

For the purposes of this Law, the provisions relating to collisions shall apply to compensation for damage which, whether by act or omission in manoeuvring or by failure to observe regulations, a ship has caused to another ship or to property or persons on board, even where there has been no collision.

Title 2 - Assistance at sea**Article 6.2.0-1.**

In the case referred to in point 2 of Article 15 of the International Convention for the Unification of Certain Rules with respect to Assistance and Salvage at Sea of 23 September 1910, the provisions of the Convention shall apply.

Title 3 - Transportation under bills of lading**Article 6.3.0-1.**

Handling and consignment or other operations taking place in maritime transport that are not governed by the conventions relating to transportation under a bill of lading cited in Book 6 shall be subject to the law of the port where the contractor operates.

Article 6.3.0-2.

For the purposes of applying this Law, the rules of the international conventions referred to in the preceding Article shall also apply to transportation on deck.

Article 6.3.0-3.

Unless otherwise provided, the transportation of live animals under a bill of lading shall be undertaken at the risk of the goods.

Title 4 - General average**Article 6.4.0-1.**

General average is governed by the York and Antwerp Rules, even in the absence of any contractual reference to said Rules. All actions arising from general average shall be time-barred five years from the date on which the shipping was completed.

Title 5 - Repeal provisions**Article 6.5.0-1.**

Articles 190 to 331 and 397 to 436 of the Commercial Code are repealed.

BOOK 7 – CRIMINAL AND DISCIPLINARY PROVISIONS

The conventions pertaining to this Book appear in Annex 7 to the Law of 9 November 1990 approving certain international conventions relating to maritime matters.

- International Convention for the Unification of Certain Rules Concerning Penal Jurisdiction in Matters of Collision or Other Incidents of Navigation (Brussels, 10 May 1952);
- International Convention relating to Stowaways (Brussels, 10 October 1957).

Article 7.0.0-1.

Infringements and disciplinary offences committed on board a Luxembourg ship shall be recorded and prosecuted in accordance with the provisions of the disciplinary and criminal code for the merchant fleet.

Article 7.0.0-2.

Infringements of Articles 1.1.1-5, 1.1.1-8(1)^(f), 1.1.1-10(2)(d) and (e), and 1.1.1-14 of this Law shall be punishable by a fine of between EUR 251 and EUR 10 000.

Article 7.0.0-3.

Infringements of the rules relating to navigation safety and the policing of navigation set out in Book 2 and the conventions mentioned therein, as well as the regulations adopted for to implement them, shall be punishable by imprisonment for a term of between 8 days and 2 years and a fine of between EUR 750 and EUR 25 000, or by one of those penalties alone, without prejudice to the more severe penalties provided for by the Criminal Code or other special laws.

The provisions of Book 1 of the Criminal Code and those of the Law of 18 June 1897 granting courts and tribunals the power to assess and have regard to mitigating circumstances, as amended by the Law of 16 May 1904, shall apply.

Natural or legal persons whose ships are registered in the register may also be fined by the Minister for any infringements of the provisions of Books 1 and 2, up to a maximum of EUR 2 500.

BOOK 8. - ACCREDITATION OF MARITIME COMPANIES

Article 8.0.0-1. Definition of a maritime company

For the purposes of this Law, the term “maritime company” means any natural or legal person governed by Luxembourg or foreign law whose corporate object or activities consist of the purchase, sale, chartering, renting out or management of one or more ships authorised for commercial operation.

Article 8.0.0-2. Accreditation of maritime companies

(1) Any maritime company governed by Luxembourg law must have an accreditation issued by the Minister. Where the company is formed by a natural person residing in the Grand Duchy of Luxembourg, that person shall be subject to the accreditation conditions set out in Articles 8.0.0-4 and 8.0.0-5.

(2) The authorisation shall cease to be valid in the event of:

- 1° failure to use it for more than two years from the date of issue;
- 2° voluntary cessation of activity for more than two years;
- 3° compulsory liquidation;
- 4° a declaration of bankruptcy.

(3) The company must, by agreement, engage the services of an accredited manager of a maritime company within the meaning of Article 8.0.0-4.

The provisions of the first subparagraph shall not apply to a maritime company where that company is a natural person who has received accreditation.

(4) The agreement by which a maritime company governed by Luxembourg law engages the services of a maritime manager must set out unequivocally the powers and duties of that maritime manager.

Article 8.0.0-3. Application for accreditation of a maritime company

An application for the accreditation of a company shall be addressed to the Minister, accompanied by the following documents and information:

- the articles of association and a recent extract from the trade and companies register, if applicable;
- a copy of the domiciliation agreement or lease agreement, if applicable;
- a copy of the agreement whereby the maritime company governed by Luxembourg law engages the services of a maritime manager, setting out the scope of the powers and duties conferred on that manager;
- the name of the company auditor if the company is subject to audit by a company auditor (*réviseur d'entreprise*);
- the address where the accounting records and all other documents relating to its activities are kept;
- a description of the planned maritime commercial activities;
- the VAT number together with a copy of the allocation notice or, failing that, a copy of the application sent to the Registration Duties, Estates and VAT Authority;
- any other document required by the Commissioner for the purposes of examining the application.

A Grand-Ducal regulation shall specify the procedures for implementing this Article.

Article 8.0.0-4. Accreditation of maritime managers

1. In order to be accredited as a maritime manager, a person must be established professionally in Luxembourg and provide evidence of respectability and professional experience.
Respectability shall be assessed by reference to the applicant's criminal record and any other factors that may establish that the person concerned is of good repute and offers every guarantee of irreproachable conduct. Professional experience shall be assessed by reference to whether the person concerned has previously carried out similar activities at a high level of responsibility and autonomy.
2. Where the maritime manager is a legal person, its governing bodies shall be required to provide proof of the qualities required of natural persons as set out in paragraph 1 above. In addition, the accreditation of a legal person designated as a maritime manager in accordance with paragraph (3) of Article 8.0.0-2 of this Law shall be subject to the condition that it has the necessary organisation in Luxembourg enabling it to carry out its activities properly.
3. One and the same maritime manager may be appointed to act for more than one company.
4. Accreditation as a maritime manager shall be valid for five years and shall be renewed if the manager demonstrates that he/she/it still fulfils the conditions referred to in paragraph 1.

Article 8.0.0-5. Application for accreditation of a maritime manager

An application for accreditation of a maritime manager shall be submitted to the Minister, accompanied by supporting documents proving that the conditions set out in the preceding Article are met.

The Commissioner shall examine applications for accreditation and verify whether the person applying for the accreditation has demonstrated the requisite good repute and professional qualifications.

Natural persons responsible for the management of the company may be required to take a test of professional knowledge, organised by the *Commissariat aux affaires maritimes* under the authority of the Minister.

Article 8.0.0-6. Publication

The list of accredited maritime companies and accredited maritime managers shall be published.

Article 8.0.0-7. Departure of the maritime manager

When a person holding an accreditation leaves his or her position in a maritime company, the Minister must be informed and a replacement for that accredited person must be found. The Minister may grant a period of up to six months to find a replacement for the maritime manager.

Article 8.0.0-8. Retention of documents

Maritime companies shall ensure that accounting records are kept and that other documents relating to their activities are permanently retained in the Grand Duchy of Luxembourg.

A Grand-Ducal regulation shall determine the documents and other records that must be permanently retained and kept up to date in the Grand Duchy of Luxembourg.

Article 8.0.0-9. Supervision of maritime companies

1. The Commissioner shall ensure compliance with the obligations incumbent on maritime companies under this Law and its implementing regulations.

2. Any material amendment to the articles of association, any change of auditor, any change of maritime manager, and any extension or modification of the maritime company's activities must be brought to the notice of the Commissioner.

Proof of the filing of the annual accounts and the report of the company auditor of companies referred to in Article 69 of the Law of 19 December 2002 on the trade and companies register, as amended, as well as the accounting records and annual accounts of the companies, must be communicated to the Commissioner within one month of the filing.

3. The company auditor shall be required to provide any information or certifications that the Commissioner may require on matters of which the company auditor is or should be aware in the performance of his or her task.

To that end, the auditor shall be released from his or her professional secrecy obligations vis-à-vis the Commissioner. Officials of the *Commissariat aux affaires maritimes* shall be bound by professional secrecy with regard to information gathered in the performance of their duties. This provision shall not apply in cases where officials of the *Commissariat aux affaires maritimes* are called upon to testify in court, or where they are required or authorised by law to disclose certain facts.

Article 8.0.0-10. Withdrawal of the accreditation

In the event of an infringement of the provisions of Articles 8.0.0-1 to 8.0.0-4 and 8.0.0-7 to 8.0.0-9, the Minister may withdraw the accreditation granted to the maritime company.

A company subject to a prohibition measure shall be required to cease its activities in Luxembourg.

Article 8.0.0-11. Appeals

Decisions adopted by the Minister pursuant to Article 8.0.0-10, as well as those refusing the accreditation provided for in Articles 8.0.0-2 and 8.0.0-3, may be referred to the Administrative Court in accordance with the procedure laid down in the Law of 21 June 1999 on rules of procedure in cases before administrative courts, as amended. They must be duly reasoned and communicated to the maritime company, indicating the appeal procedures available.

Article 140. Transitional provisions

Existing companies operating in the maritime sector shall have one year from the entry into force of this Law in which to comply with the provisions of Articles 8.0.0-1 to 8.0.0-5 of this Law.