

## TRANSPORT TOKELAU CORPORATION RULES 1997

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### 1 Name

These are the Transport Tokelau Corporation Rules 1997.

### 2 Interpretation

In these Rules —

“Authority” means the Transport Tokelau Corporation;

“Corporation” means the Transport Tokelau Corporation established on 9 December 1996, as a body corporate having perpetual succession and a common seal, by the Transport Tokelau Corporation (Interim Board) Rules 1996;

“Tokelau ship” means any ship regardless of tonnage operated by the Authority.

### 3 Purpose of these Rules

- (1) It is the purpose of these Rules to extend the objects of the Corporation and to provide for its operation on a permanent basis.
- (2) The continuance of the Corporation as a body corporate with perpetual succession and common seal is confirmed, notwithstanding the repeal of the Transport Tokelau Corporation (Interim Board) Rules 1996

### 4 Place of operation

The main office of the Corporation shall be at such place in Tokelau as the Chairman of the Board designates by public notice to the Council for the Ongoing Government.

### 5 Objects of the Corporation

- (1) The Corporation shall —
  - (i) operate and manage or arrange for the operation and management of cargo and passenger transport services in the interests of Tokelau;

- (ii) ensure the safe and effective management and operation of Tokelau ships;
  - (iii) keep up-to-date records of shipping in, around, and out of Tokelau;
  - (iv) prepare annual reports for the General Fono on the state of shipping in Tokelau including the cost of operation and maintenance of Tokelau ships and any other relevant matter;
  - (v) in consultation with the villages of Tokelau erect, maintain, manage and improve navigational aids, radio stations, jetties, moorings, services or facilities in connection with the operation of any port or with the operation of any ship or port services;
  - (vi) oversee the detention of ships;
  - (vii) in co-operation with the medical services of the Tokelau Administration to maintain and operate an emergency medical transport service;
  - (viii) maintain a transport facility appropriate to meeting either alone or with other bodies general maritime emergencies;
  - (ix) maintain the facilities and resources necessary for the regular servicing and maintenance of Tokelau ships;
  - (x) on a contract basis provide marine services to departments of the Tokelau Administration;
  - (xi) attend to all other matters as are necessary for the operation and management of shipping in and for Tokelau.
- (2)
- (i) The Corporation shall employ such persons as are necessary to operate and manage Tokelau ships.
  - (ii) Unless otherwise expressly provided by in writing between the parties, the conditions of employment of the crew members of Tokelau ships shall include the conditions set out for these employees in the Schedule to these Rules.

## **6 Powers of the Corporation**

- (1) Subject to these Rules, the Corporation may carry on such activities as appear to the Corporation advantageous, necessary or convenient for it to carry on for or in connection with the discharge of its functions under these Rules.

- (2) The Corporation shall not borrow funds or acquire securities, stocks or shares in an incorporated company or other body corporate.
- (3) The Corporation shall have all the powers of a natural person of full age and capacity unless otherwise expressly provided in these Rules.

## **7 Board of Directors**

- (1) The general direction and management of the affairs of the Corporation shall vest in the Board which may exercise all the powers and do all the acts which may be exercised or done by the Corporation.
- (2) The Board shall consist of the following Directors —
  - (i) the Minister to whom responsibility for transport has been assigned, as Chairperson;
  - (ii) one representative from each village (not being the Faipule) designated by the Taupulega and endorsed by the General Fono;
  - (iii) the General Manager; and
  - (iv) not more than one other person, who may be appointed as Director by the Board because of knowledge or experience relevant to the business of the Corporation.
- (3) A Director appointed under paragraph (2)(ii) shall hold office for such term and on such conditions as the General Fono may decide.
- (4) The General Manager and any Director appointed under paragraph (2)(iv), shall hold office for such term and on such conditions as the Board may decide.
- (5) Till the endorsement of village Directors by the General Fono, the Board shall consist of the three Faipule and the Director of the government department responsible for transport as ‘General Manager’.

## **8 Meetings of the Board**

- (1) The meetings of the Board shall be held at such times and places as may be provided for by rules, made by the Board and until rules are made for that purpose, as and when convened by the Chairman.
- (2) The majority of the Directors in office shall constitute a quorum at the meetings of the Board.
- (3) The Board must meet at least once every three months.

- (4) No rules or proceeding of the Board shall be invalid by reason only of the existence of a vacancy in or defect in the constitution of, the Board.

**9 General Manager**

- (1) The General Manager shall be responsible to the Board for the proper administration and management of the functions and affairs of the Corporation in accordance with the policy laid down by the Board.
- (2) The Corporation may, appoint and employ on such terms and conditions as the Corporation may determine, such officers and employees, as may be necessary for the effective performance of its functions.

**10 Protection for personal liability**

No suit or other legal proceedings shall lie against any Director or officer of the Corporation or other person acting under the direction of the Corporation for anything which is in good faith done or intended to be done in the execution or purported execution of these Rules.

**11 Exemption from liability**

The Corporation shall not be liable in respect of any injury, loss or damage suffered by any person by reason of —

- (i) any failure to provide or delay in providing any transport services or any equipment associated with transport services;
- (ii) any delay, interruption, suspension or restriction of any transport services.

**12 Annual report**

The General Manager shall, within three months after the end of each financial year, submit an annual report on the activities of the Corporation during that year, including the financial statements of that year to the Board.

**13 General duty regarding financial matters**

- (1) The Corporation shall perform its functions under these Rules so as to secure that the total revenue of the Corporation is sufficient to meet its total outgoing properly chargeable to revenue account.
- (2) The balance of the revenue of the Corporation shall be applied to the creation of a general reserve and such other reserves as the Corporation may think fit.

- (3) Any funds of the Corporation may be invested on interest bearing deposits with the Tokelau Administration.

**14 Financial year**

The financial year of the Corporation shall be from 1 July in any year to 30 June of the following year.

**15 Accounts and audit**

- (1) The Corporation shall keep proper accounts and records of all its transactions and affairs.
- (2) The accounts of the Corporation shall be audited by an auditor appointed annually by the Board from among those qualified as auditors in New Zealand.
- (3) The General Manager shall, within three months after the close of the financial year, prepare and submit the financial statements in respect of that year to the auditor who shall audit and report on them in accordance with the auditing standards for public companies in New Zealand.
- (4) The auditor or any person authorised by him is entitled at any reasonable time to full and free access to all accounting and other records relating directly or indirectly to the financial transactions of the Corporation.
- (5) As soon as the accounts of the Corporation and the financial statements have been audited in accordance with these Rules, a copy of the audited financial statements signed by the Chairman, together with a copy of any report made by the auditor, shall be submitted to the General Fono.
- (6)
  - (i) The General Manager shall prepare annual estimates of revenues and expenditures for presentation to the Board each year on or before the commencement of the last quarter of the current financial year.
  - (ii) The Board shall, following review and approval of such estimates, present these to the General Fono.

**16 Transition**

[Spent]

**17 Repeal**

[Spent]

**SCHEDULE**

r 5(2)(ii)

**Crew provisions**

1 All the provisions of this Schedule are in accordance with the Transport Tokelau Corporation Rules 1996 part of any crew agreement for a Tokelau ship.

**Crew agreements**

2 (1) The master of every Tokelau ship when going to sea shall enter into an agreement in writing with every seafarer engaged as one of the crew in accordance with the Maritime Safety Authority of New Zealand standard form crew agreement.

(2) A crew agreement shall be dated at the time it was first signed.

3 (1) A crew agreement shall state —

(i) the place at which it is made;

(ii) the full name of the seafarer;

(iii) the place of birth of the seafarer;

(iv) the age and date of birth of the seafarer;

(v) the name of the ship on which the seafarer undertakes to serve;

(vi) the period of the engagement - whether for a single voyage or a series of voyages;

(vii) the place and date at which the seafarer is to be on board ship or to begin work;

(viii) the capacity in which the seafarer is to serve;

(ix) the amount of wages that the seafarer is to receive;

(x) the time that is to expire after arrival at the port of discharge before the seafarer is to be discharged;

(xi) the leave to which the seafarer is entitled;

(xii) any special provisions as to the conduct of seafarers on board ships.

(2) A crew agreement may contain such other stipulations as are agreed upon by the master of the ship and the seafarer.

(3) The master of a Tokelau ship shall within 48 hours of discharging the crew in Tokelau deliver the crew agreement to the Authority.

4 No seafarer shall be required to make any payment for placement operations.

5 No agreement shall be made with any seafarer unless the seafarer is free from all other agreements for service as a seafarer.

6 Every seafarer seeking employment as deck crew, engine room crew or in general duties on board shall produce evidence of being a certified seafarer.

7 All seafarers must undergo a comprehensive medical examination before signing the crew agreement.

8 (1) The master of a Tokelau ship shall, on the discharge of a seafarer from the ship, make an entry in the crew agreement specifying the period of the seafarer's service and the time and place of discharge and shall sign the entry and deliver a copy of the entry to the seafarer.

(2) An entry under subparagraph (1) shall not contain any statement as to wages or to the quality of work of the discharged seafarer.

(3) The master of a ship shall, on the discharge of every certificated officer whose certificate of competency has been delivered to and retained by the master, return the certificate to the officer.

(4) Where it is shown to the satisfaction of any authorised officer outside Tokelau that a seafarer engaged on a Tokelau ship has wilfully or through misconduct failed to join the ship, the authorised officer shall report the matter to the Authority.

9 Where a seafarer is discharged from a Tokelau ship, the master of the ship may make, sign and deliver to the seafarer a character report in which the master shall report on the conduct, character and qualifications of the seafarer.

10 The master of every vessel shall keep on board the agreement of every seafarer and communicate it to that seafarer on request.

11 The general conditions of employment contained in this Schedule shall be held by the Authority and shall be available to every seafarer on request.

**Duties of Seamen**

*Transport Tokelau Corporation*

- 12 Every seafarer shall be bound to report on board the vessel on which that seafarer is to serve on the day and at the time indicated by the Authority, the representative of the Authority or the master.
- 13 Every seafarer shall perform all duties in accordance with the conditions laid down in the crew agreement.
- 14 Except in the case of force majeure or when the safety of the vessel, the persons on board or the cargo is at stake (of which the master shall be the sole judge) a seafarer shall not be bound to perform work proper to a seafarer of a different rating from that at which that seafarer was engaged, unless the seafarer has signed on as a general purpose seafarer.
- 15 The master shall lay down the conditions upon which a seafarer who is not on duty may go ashore.
- 16 Every seafarer shall obey the lawful orders of superiors concerning the service of the vessel and to take care of the vessel and the cargo. Every seafarer shall be sober and respectful to elders and shall abstain from using foul language to any person on board.
- 17 Every seafarer shall clean the seafarer's quarters and related premises and bedding outside the hours of duty and shall not be entitled to any extra pay for this work.
- 18 Every seafarer shall help in the salvage of the vessel, its wreckage, wrecked articles and cargo.
- 19 No seafarer shall bring alcoholic beverages on board a ship.
- 20 A seafarer shall be responsible for any articles of bedding that have been supplied and shall be liable in the event of any damage caused by that seafarer's fault or negligence.
- 21 A seafarer shall —
- (i) obey the official orders of superiors;
  - (ii) neither neglect the seafarer's own duties, nor obstruct any other members of the crew in the discharge of their duties;
  - (iii) embark on the vessel at the time appointed by the master;
  - (iv) not leave the vessel without permission of the master;
  - (v) not use a boat or other important equipment without the permission of the master;
  - (vi) not waste provisions or fresh water on board;
  - (vii) not smoke in any place where smoking is prohibited;
  - (viii) not take into, or out of, the vessel any articles other than personal necessities without the permission of the master;
  - (ix) not use violence, get intoxicated, or be guilty of any form of bad or insolent behaviour;
  - (x) not commit any act that will disturb good order on board the vessel;
  - (xi) not engage in smuggling or drug trafficking or any similar prohibited activities.

**Duties of Authority**

- 22 A seafarer serving on board a vessel shall be entitled to food for as long as that seafarer remains a member of the crew.
- 23
- (1) The food supplied to seafarer shall be wholesome, sufficient in quantity, of good quality and of a type suitable to the voyage being made.
  - (2) Such food and the composition of the menus served to the crew may be inspected at any time by the Authority.
- 24
- (1) Every seafarer on board shall be provided with suitably equipped quarters having proper ventilation and lighting; such quarters shall be proportionate to the number of persons occupying them and shall be exclusively reserved for such persons use.
  - (2) All articles of bedding on board shall, in the absence of agreement to the contrary be supplied by the Authority in accordance with the rules governing hygiene on board the ship.
- 25 The Authority shall be liable if a seafarer's personal effects are destroyed or lost by shipwreck, fire on board the vessel or any act of God.
- 26 Any seafarer whose contract has been terminated because that seafarer has been put ashore on account of illness or an injury shall have a prior claim to recruitment by the Authority for a period of one year, reckoned from recovery or the stabilisation of the injury.

**Hours of work**

- 27 Normal work on board ship shall be organised on the basis of eight hours a day for six days or 48 hours a week or in some other equivalent manner over a period other than a week, whenever it is possible to do so.
- 28 Subject to the provisions of this Schedule, the rights of seafarers as regards their normal hours of work shall be governed by the following provisions which take into account a fixed week of 48 hours, exclusive of the special obligations to put in extra work as provided in rule 14 —

- (i) every hour worked in excess of the specified daily limits shall be treated as overtime for which the seafarer concerned shall be entitled to a wage adjustment;
- (ii) if a seafarer is engaged for service in a vessel (other than a fishing vessel) in a capacity that implies the seafarer is a "day worker", that seafarer shall be granted a full day's rest for every six days worked, and days of rest may be accumulated;
- (iii) a day's rest means 24 consecutive hours of rest reckoned from the normal time at which the seafarer concerned was due to begin daily work, whenever it is possible to do so;
- (iv) any work done on a day of rest shall cancel the effect of the rest day, unless it is occasioned by an Act of God and does not last longer than 4 hours;
- (v) if a seafarer is employed in a capacity that implies keeping watches that seafarer shall work according to the watches set on board which shall be 4 hours on duty and 4 hours off duty.

**Payment**

29 The rate of a seafarer's pay shall be fixed in the crew agreement. This rate shall be adjusted for each hour of overtime as follows —

- (i) 50 percent increase for hours worked in excess of a 48 hour week, provided that this adjustment shall not be combined with any special allowances provided for by any administrative decision, unless provision to the contrary is made by agreement;
- (ii) a seafarer shall not be paid for hours in excess 48 hours a week for which that seafarer is ordered to work on account of force majeure or circumstances in which the safety of the vessel, the persons on board or the cargo is at stake.

30 A seafarer, other than a general purpose seafarer, who is called upon to perform duties other than those for which that seafarer was engaged shall, if such duties carry a higher rate of remuneration than that seafarer's own, be entitled to wages payable for the new job for such time as that seafarer performs it.

- 31
- (1) Seamen shall collect or be paid their wages whilst in Tokelau at regular intervals at the end of each fortnight.
  - (2) A seafarer can arrange through the master to leave a payment, not exceeding that seafarer's net salary at fortnightly intervals to next of kin or to a Tokelau bank account for the period that seafarer is attached to the vessel.
  - (3) When a vessel is in an overseas port, wage advances may be drawn at weekly intervals whenever possible, to the maximum of the estimated wages due at the time after taxation and payments agreed under paragraph (2) have been deducted.
  - (4) Every seafarer shall be given an itemised account of wages at the end of each pay period showing in sufficient detail how the balance of wages due at the time is arrived at, so the seafarer is in a position to verify the correctness of the account.

- 32
- (1) A seafarer who is paid fortnightly shall be remunerated in proportion to the time for which that seafarer has actually served.
  - (2) Every day that has begun shall be reckoned in full.

33 A voyage shall be deemed to have begun as soon as the master has received clearance for departure from the appropriate authorities, provided that, for the purpose of calculating wages, a voyage shall be deemed to have begun as soon as the seafarer reports for duty on board in accordance with the crew agreement.

- 34
- (1) Subject to paragraph (2), when a voyage cannot be undertaken or continued on account of an act of God or force majeure, the seafarer shall be paid in proportion to the number of days spent in the service of the vessel and shall be entitled to compensation equal to half the wages that would have been due for the estimated duration of the voyage, provided that such compensation shall not exceed 30 days on half pay.

(2) Paragraph (1) shall not be applicable where the Authority or its agent offers alternative employment to the seafarer.

- 35
- (1) Where a vessel is seized or captured, the Authority or master may declare a contract for sea service to be terminated from the moment that the vessel ceases to sail unless it is impossible on account of such events to repatriate the seafarer to the port of embarkation.

(2) If a seafarer remains on board while the vessel is immobilised, that seafarer shall be entitled by way of compensation to half pay at the fortnightly rate for such time as that seafarer remains on board, provided that if that seafarer remains on board while the vessel is interned and is required to work by the Authority or the master, that seafarer shall be entitled to full pay at the fortnightly rate for any days so worked.

- 36 Seamen employed on board a vessel, other than crew employed by a salvage undertaking, who have saved or helped to save another vessel, or have rendered assistance to any vessel, shall be entitled to share in the remuneration awarded to their own vessel.

**Death of a seafarer**

- 37 (1) Where a seafarer dies during the currency of the crew agreement, that seafarer's wages shall be paid to any dependents down to the date of death or to any other person in accordance with the law.
- (2) Where a seafarer is engaged for the duration of an outward voyage, the wages that that seafarer would have drawn during the voyage shall be paid in full if that seafarer dies after the voyage has begun.
- (3) If a seafarer is engaged for the outward and return voyages, half the wages shall be payable if that seafarer dies on the outward voyage or in the port of destination and the whole if that seafarer dies on the return voyage.
- (4) Where a seafarer is engaged for a predetermined period, as stipulated in the crew agreement, and in the course of such voyage that seafarer sustains a serious injury, or dies, that seafarer shall be paid such compensation as would have paid if the injury had occurred in Tokelau.
- (5) Where a seafarer is killed while performing an act of self sacrifice for the safety of the vessel or in its defence, that seafarer's wages shall be payable in full for the whole voyage if the vessel reaches port or until the date on which the crew ceases to serve if the vessel is seized, shipwrecked or declared un-seaworthy.
- 38 The cost of burying, cremating or repatriating a seafarer's body or ashes shall be borne by the Authority if the seafarer dies on board or ashore in another port than that seafarer's own country and at the time of death was still in the Authority's employment.

**Discipline**

- 39 (1) A seafarer who is absent without leave when required to go on duty or who leaves without permission during the currency of the crew agreement shall forfeit any right to receive pay for the period of such absence, without prejudice to any damages claimable by the Authority. A seafarer shall likewise forfeit any claim to wages from the moment of being deprived of liberty and for the duration of such deprivation of liberty through arrest or otherwise on suspicion of having committed a criminal offence.
- (2) The contract of a seafarer may be terminated without compensation —
- (i) if the seafarer is arrested and charged with an offence;
- (ii) if it is duly established that the seafarer has committed a serious fault and is put ashore as a disciplinary penalty.
- 40 The master shall not inflict disciplinary punishment on any seafarer without giving a hearing to the seafarer and the persons concerned in the presence of witnesses.

**Repatriation**

- 41 (1) A seafarer who is put ashore or left behind when the crew agreement ends abroad shall be entitled to be repatriated at the vessel's expense to the port of disembarkation stipulated in the crew agreement.
- (2) Repatriation shall comprise transport, accommodation and food for the repatriated seafarer.
- (3) Repatriation shall not include the supply of clothing provided that the master shall, in case of need, advance the necessary money to buy essential clothing and the money so advanced may be recovered from the credits standing to the seafarer's account, if the seafarer is put ashore because of an inquiry sustained or illness contracted, except where the seafarer is placed ashore for disciplinary reasons or if—
- (i) the seafarer caused the sickness or injury by wilful act or gross negligence;
- (ii) the sickness or injury is the direct result of the seafarer's drunkenness;
- (iii) the sickness or injury is attributable to a lack of discipline on the seafarer's part, and especially if that seafarer leaves the vessel without permission.
- (4) Repatriation will be at the seafarer's account if that seafarer is guilty of disobedience, neglect of duty or persistent breach of the duties set out in paragraphs (12) to (21).
- 42 When travelling by air, a seafarer's free luggage allowance shall not exceed the maximum for seafarers allowed by the airlines.

**Annual leave**

- 43 A seafarer serving on board a vessel shall be entitled after 12 months continuous service to annual leave with pay at the Authority's expense at the minimum rate of two working days for every months employment on board the vessel.
- 44 (1) Where a seafarer is entitled to annual leave, it shall be granted by agreement as soon as possible having regard to the requirements of the service.
- (2) Such leave shall not be refused by the Authority after the seafarer has been employed on board for 12 months.
- (3) No seafarer may be obliged without consent to take annual leave in a port other than the port where that seafarer signed on or the locality where the seafarer lives.
- 45 The following shall not be reckoned as part of the annual leave with pay —
- (i) paid public holidays;
- (ii) interruptions of duty attributed to sickness or accident.
- 46 Every seafarer taking leave under paragraph (43) shall receive normal basic remuneration for the entire duration of the leave.
- 47 Every seafarer leaving the Authority's service or dismissed before having taken leave to which that seafarer is entitled shall be paid the remuneration specified in paragraph (46) for every day of leave due.
- 48 A seafarer employed on a public holiday shall be entitled at the Authority's expense and in addition to the wages corresponding to the work done, to compensation equal to the leave referred to in paragraph (43).

#### **Dispute Resolution**

- 49 Disputes arising out of crew agreements between the Authority or its agent and seafarers shall be settled by conciliation, or otherwise by an award in accordance with the rules laid down in this Schedule.
- 50 (1) Conciliation proceedings shall be opened on application, whether oral or in writing, by either of the parties to the Authority.
- (2) The master shall allow a seafarer every opportunity of using this procedure.
- (3) Failure to appear at a conciliation meeting shall be held against that party.
- 51 (1) The Authority shall hear the parties and witnesses and give its decision as a matter of urgency, and a report shall be prepared forthwith stating whether or not the parties have been able to agree.
- (2) The report shall indicate the terms of the agreement reached between the parties or the reasons why no agreement could be reached.
- (3) The report shall be signed by the parties or shall indicate that they are unable to do so.
- (4) A certified copy shall be delivered to either party on request.
- (5) The terms of the agreement shall be binding on the parties.

#### **Apprenticeship**

- 52 (1) Every contract of apprenticeship to be performed on any Tokelau ship shall be signed in the presence of the Authority by the apprentice and the owner of the ship or an authorised representative.
- (2) The Authority shall attest the signing of a contract of apprenticeship where it is satisfied that the apprentice —
- (i) understands the contents and provisions of the contract,
- (ii) freely consents to be bound thereby,
- (iii) has attained the age of 16,
- (iv) is in possession of a certificate of a registered medical practitioner to the effect that the apprentice is physically fit for sea service.
- 53 No person under the age of 18 shall —
- (i) be engaged to work on board a Tokelau ship unless that person has obtained parental consent in writing and is certified to be fit for such work by a medical practitioner approved by the Authority;
- (ii) be employed to work in the engine room of a Tokelau ship unless that person is an apprentice working under supervision.