

# **Revised form for Articles of Agreement and procedure for signing on, off etc**

**DGS Order No. 7 of 2002**

**NO:43(7)CR/2001**

**Dated: December 3, 2002**

## **Sub: Revised Form for Articles of Agreement and procedure for signing on, off etc**

The printed form of the agreement with the crew envisaged in Section 100 of the Merchant Shipping Act, 1958 contains in detail many provisions, which are redundant. The Eng-2 form used for changes made in the crew contains even Section 33(1) of Indian Merchant Shipping Act 1923 (XXI of 1923) though that Act had been repealed by the Parliament as far back as 1958! Extensive consultations have been held with shipping and seafaring industry. A group of shipowners and their representatives was set up under the chairmanship of Capt. M. M. Saggi, Principal Officer, Mercantile Marine Department of Mumbai to study how best to modernize the form. After a report was prepared by them, a few meetings were held with the recognized unions of seafarers and others on the need for devising a modern form of agreement and to adopt modern practices for engagement of seafarers.

2. The need to remove repealed, repeated or unnecessary and un-read printed provisions from the forms used, led to the designing of a new form for engagement of seafarers in consonance with modern international practice, considering that shipping has been and always will be global business. The revised form and procedure should also save time for everyone, and contribute to productivity in shipping. In the present age and times, the focus of efficiency and innovation in shipping and port management is on turnaround time of ships in ports - twenty-four hours of the day, seven days of the week, all through the year. Any improvement in practice that leads to shorter turnaround of ships without sacrificing greater values is welcome to industry and seafarer alike.

3. The form for articles of agreement used by us in India now run into 31 printed pages. These are brought before the Shipping Master for each seafarer for each period of agreement and are signed by each of the seafarer in front of the Shipping Master in his office, who issues clearance for the ship. On the basis of this the Customs Officer issues the port clearance to the ship under Section 106(4) and Section 84(4) for inward and outward clearance respectively. In the entire country, Shipping Masters proper are available only in Mumbai and Kolkata. A Seamen's Welfare Officer functioning under Section 11(3) of the M S Act in Chennai carries out the business of the Shipping Master in his office. In a few other places, the Surveyor-in-Charge who is a technical person - a Nautical or Engineering Surveyor etc - or Harbour Master doubles up as Shipping Master for this purpose. There are other ports where even this type of Shipping Master is not available.

4. Once upon a time when the industry grew in England, it was possible that atrocities were committed against the seafarers by the shipowners and agents on the one hand. Also, malpractices such as going on more than one ship at the same time for advance money by the seafarers on the other hand were prevalent. Wages were not paid, proper food and clothing were not given, and duties were not carried out as demanded. Generally seafarers employed then were not educated or even literate persons. It was therefore necessary for laws to be made, and practices ensured that the engagement of seafarers was done in the presence of the Shipping Master as the Government representative. This safeguard in UK was naturally passed on to her colonies including India in the relevant Acts. This was done to prevent the recurrence of such atrocities and malpractices in the colonies. Considering the general level of literacy in India among seafarers in those early stages of late 19th century and early 20th century, there was a need for such laws and practices.

5. Then, the uneducated and sometimes illiterate seafarers elsewhere and in India did not know what was contained in the articles of agreement, and hence it was expected that the Government official namely the Shipping Master would explain to them their rights and duties so that the owners and agents did not exploit them on wages or other provisions. But now all the seafarers in India are educated and literate. They are members of powerful and effective unions of seafarers who ensure that the rights of the seafarers are protected zealously. Collective bargaining agreements are entered into by the representatives of seafarers and their employers, sector-wise, in the shipping industry. Odd exceptions when brought to their notice are dealt

with by these unions, shipowners, and the Maritime administration, - despite, of course, the seafarer having gone before the Shipping Master to sign the articles of agreement.

6. In UK, the practice has now changed and the method of allowing seafarers to join directly has been adopted. The requirement for appearing before the Shipping Master has been done away with.

7. Ships are highly capital-intensive assets, and worldwide, shipping companies and ports pride themselves in reducing the turnaround time in the ports. All equipment on board and on the quay, containers and all practices of packing and stowage plans, training of officers and ratings, legal provisions and administrative practices are getting geared to subserve the purpose of quick loading and unloading so that the ships are under way as soon as possible. Any outdated practice that holds the ship back in the port deserves to be changed to increase productivity, and to make our national shipping competitive with the rest of the world.

8. When the practice of articles of agreement being signed in front of the Shipping Master started in the 19th century, there were no conventions of International Maritime Organization or International Labour Organization relating to work and conditions of service on board the ship, safety and competency of persons working on board, no International Safety Management Code (ISM), and no Standards of Training, Certification and Watchkeeping (STCW). There was no flag state inspection nor port state control inspector boarding Indian ships in foreign ports and possible detention if deficiencies were detected. Now all these mandatory provisions exist, and are implemented. In view of these developments, the shipowner and the seafarer are already under obligation to fulfill requirements, on threat of the ship being detained, and of huge loss by way of penalty and loss of business. On account of these far-reaching developments in shipping and seafaring, there is now no need to insist on seafarers coming before the Shipping Master for signing the articles of agreement, or for signing off. Moreover, insistence on seafarers appearing before Shipping Master hinders the shipping business as Shipping Master's office remains closed on Saturdays, Sundays and other Government holidays, whereas voyages take place on all days of the week.

9. As mentioned earlier, the form today contains large number of pages. In every other industry, it is universally acknowledged that there is no need to reproduce the detailed provisions of the relevant Act or Rules in the appointment letter, or ticket or licence. Everywhere one is satisfied when the appointment or the ticket or licence is subject to the relevant Act and Rules and provisions made thereunder from time to time, there is no need to reproduce all the provisions of the Act and Rules again in the appointment letter or ticket or licence. We would like to adopt the same practice about appointment of seafarers on articles too. Accordingly, only minimum necessary conditions may be printed in the revised form for articles of agreement. Likewise, once the collective bargaining sector-wise agreement between the shipowners and the recognized Unions of seafarers are referred to in the articles of agreement, there is no need to actually reproduce any of its provisions in the articles of agreement.

10. The power of the Shipping Master to require the parties to the dispute to produce log books etc and to require the attendance of and examine any of those parties etc, as contained in Section 133 of the Merchant Shipping Act should be, and are, kept undisturbed. This new form and procedure would lead to improvement in efficiency and remove unnecessary and redundant provisions from the form of articles of agreement. The Merchant Shipping Act lays down that the enforcement of any award arising out of dispute relating to the articles of agreement and made by the Shipping Master can be enforced only by a Judicial Magistrate of the First Class or Metropolitan Magistrate as can be seen from Section 132(3) of the Merchant Shipping Act, meaning that in any case the Shipping Master himself does not have the power of enforcing the awards passed by him.

11. Once upon a time, the Shipping Master verified the qualifications and technical competence of the crew signing the articles of agreement. Things have changed and the certification and training requirements for crew specified under ISM code and STCW-95 Convention of IMO and ratified by India are now highly complex and require close examination by Surveyors of Mercantile Marine Department and DG Shipping i.e. by those who have served in very senior capacity on board merchant ships. Hence, there is no need for Shipping Master to do scrutiny of certificates or competence.

12. Earlier, when ships engaged crew for specific voyages, there had to be special provisions in the Act for running Agreements, but the current market practice is to engage crew for a specific period and therefore a procedure for engaging crew for specific period is being promulgated in lieu of the provisions in Sections 103 and 104 of the Merchant Shipping Act, 1958.

13. It is necessary and helpful for the seafarer to have with him one original copy of the articles of agreement. Likewise the Seamen's Provident Fund Commissioner and the Seafarers' Welfare Fund Society should get information as early as possible. This can be achieved by casting the responsibility on the employer/employer's agent to send the information directly to these two authorities.

14. Having taken into careful consideration the course of evolution in shipping and seafaring practices, and keeping in mind the increase in literacy of seafarers, the strength and presence of the seafarers' unions, the need to reduce the unproductive time spent by ships in the ports, to have a compact and modern form of articles of agreement, to retain an original copy of the articles of agreement on board the ship and also with the individual seafarer, and to enable Indian shipping and seafaring to become internationally competitive and up to date, the Director-General of Shipping and Secretary to the Government of India, Ministry of Shipping, exercising the powers conferred by Clause (1) of Section 456 of the Merchant Shipping Act, 1958 on the Central Government read with notification issued by Government of India vide S.O. No. 3144 dated 17th December, 1960 delegating the said power to him, is hereby pleased to exempt seafarers from the requirement to sign on or off the articles of agreement in the presence of Shipping Master or Indian Consular Officer. He is pleased to exempt them from the provisions of Sections 84, 103, 104, 106, 116, 118, 128 and 130 of the Merchant Shipping Act, 1958 and other relevant sections and provisions relating to the articles of agreement, and also to prescribe the revised form appended to this order, and to promulgate the following revised procedure for signing on/off articles of agreement:

- a. Five original copies (on the analogy of bills of lading) of the articles of agreement may be signed between the employer/employer's agent and the seafarer ashore in the beginning in the form enclosed with this Order. This signing on will be done in the office of the employer/employer's agent, and not in the presence of the Shipping Master. The seafarer shall report on board ship with the first three signed original copies which shall be signed by the Master and the seafarer on board the ship. After this, the 1st and 3rd original copies would remain in the custody of Master whereas the 2nd original copy would be in possession of the seafarer.
- b. After the first three original copies have been taken on board the ship, there will be two original copies left with employer/employer's agent. The 4th & 5th original copies would not have signatures made by Master or by seafarer on board the ship. The 4th original copy will be retained by the employer/employer's agent. The last, namely the 5th original, copy will be forwarded by the employer/employer's agent to the concerned Shipping Master for record at the earliest and in any case not later than 48 hours of seafarer signing off the agreement ashore in India in the office of employer/employer's agent, excluding Saturday, Sunday and holidays. This enables the Shipping Master to have the details regarding the crew, as at present. The concerned Shipping Master will be the one in or nearest to the place of engagement or of the Head Office of the company.
- c. On completion of employment on board the ship, all the three original copies of the articles of agreement on board shall be signed by the Master of the Ship and the seafarer. Thereupon, the 1st original copy will be retained on board the ship as record. The 2nd and 3rd original copies of articles of agreement will be carried ashore by the seafarer. The 2nd original copy of the articles of agreement will be retained by seafarer. One original copy in the hands of the seafarer would be a great advance on previous situation when he did not have it. The 3rd original copy will be handed over by the seafarer to the shore office of employer/employer's agent where all dues of seafarers would be settled, if not already done, and the articles of agreement will be concluded. The 3rd original copy will be forwarded by the employer/agent to the concerned Shipping Master for record. It shall be ensured that in the case of each seafarer, the 5th original, and the concluded 3rd original, copies shall be sent to the same Shipping Master.
- d. Three photocopies of the concluded articles of agreement (3rd original copy) will be taken: one, to be forwarded to Seamen's Provident Fund Organization (SPFO), Mumbai, and second to the Seafarers' Welfare Fund Society (SWFS), Mumbai. These two photocopies shall be directly sent by the employer / employer's agent. By employer sending this information directly to the SPFO, the advantage would be to ensure the timely submission of information and deposit of provident fund monies, leading to avoidance of delay and penalty. The third photocopy may be retained in the office of the employer / employer's agent.
- e. Fees prescribed by DG Shipping from time to time for opening articles of agreement may be remitted each time to the concerned Shipping Master immediately while forwarding the 5th copy of the articles of agreement in the beginning, i.e. at the time of signing on.

- f. The concerned Shipping Master will thus receive and sign, in token of having received, both the 5th copy on commencement of employment and the 3rd copy on conclusion, and keep them for record and for reference in case of disputes.
- g. As mentioned in Section 216 of the M S Act, 1958, the official log book of the ship for the relevant period may be delivered to the Shipping Master of the Port of Registry within 30 days after the completion of the relevant period.
- h. On receipt of the 3rd copy of articles of agreement, the Shipping Master will record the details in a register i.e. name of the seafarer, name of the company engaging the seafarers, name of the ship, date of opening articles of agreement, date of closing articles of agreement, and CDC number of the seafarer.
- i. All terms and conditions of the articles of agreement would be in accordance with Section 101 of the M S Act, 1958 in respect of all Indian flag vessels. Further, any other provisions which may be inserted in the articles of agreement shall be in accordance with Article 4 of the Right to Organize and Collective Bargaining Convention, 1949 (ILO Convention 98).
- j. Ship Owner/Authorized agent will ensure full compliance with the requirements of Certificate of Competency, CDC, STCW Convention, Indian National Database of Seafarers (INDoS), Safe Manning, and such other legal requirements, not exempted by the DG Shipping through this order.
- k. Articles will be for the period as agreed to in the relevant collective bargaining agreement. On expiry of the period, Master will sign off the crew, issue account of wages and settle the payment of wages in respect of crew members. However, in cases where this is not possible, the seafarer will carry the account of wages and 3rd original copy of the articles of agreement to the shore office of employer/employer's agent to settle the payment of wages. The Master, owner or agent of every ship shall strictly comply with the provisions of Section 129 of the M S Act in this regard.
- l. There will be no further requirement for an Eng-2 form, since separate articles of agreement will be signed by each seafarer, the period of which will commence at the office of employer/employer's agent ashore in India and terminate on signing off by the seafarer and final settlement in India.
- m. There will be no need for the Shipping Masters to endorse the entries made by the Masters in the CDCs henceforth, because now the record of service is already entered by the employer/employer's agent on the articles of agreement in possession of the seafarer.

15. The number of the original copy/photocopy may be indicated clearly in each copy. The terms and conditions printed along with the form of articles of agreement will strictly apply.

16. Master should keep on board a copy of applicable collective bargaining agreement/the provisions of ILO Conventions ratified by India, Merchant Shipping Act 1958, the rules/notices/circulars/orders. These documents should be made available to seafarers working on the vessel, their lawful representatives and other legitimate authorities for their perusal at any reasonable time.

17. This order will apply to every Indian ship, except a home-trade ship of less than two hundred tonnes gross.

18. The Customs authorities are required to note these new provisions since they have a bearing on the port clearance. In exercise of the powers mentioned in paragraph 14 above, the DG Shipping also exempts every Indian flag ship, Master, or seafarer from the requirements relating to producing the certificate to the customs collector whose duty it is to grant a port clearance, as prescribed in Sections 106 (2) & (3) and 84 (3) & (4) of the Merchant Shipping Act, 1958.

19. All employers/agents concerned are free, and are requested, to obtain and print the [revised form](#) appended to this order in A4 size paper in accordance with the approved format for the sake of uniformity of size, font and setting.

20. This order may be reviewed by the D.G. Shipping whenever there is a need for it.

21. This order shall come into force with immediate effect.

[Revised form of Articles of Agreement](#)

**Sd/-**

**(D.T. Joseph)**

**Director General of Shipping**

**ex. officio Additional Secretary**

**Ministry of Shipping,**

**Government of India**