

	<p style="text-align: center;"><b>The Merchant Shipping (Stowaways) Directive</b></p> <p style="text-align: center;"><b>To All Ship owners, Ship Managers, Ship Operators, Filing Agents and Ships' Crewing Agents</b></p>	Directive	05-2002
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The Director of the Department of Marine Services and Merchant Shipping, in exercise of the powers conferred by Section 7, subsection (5) of the Merchant Shipping Act, 1998, and of all other powers enabling him in that behalf, hereby makes the following Directive:

### **Citation and commencement**

1. (1) This directive may be cited as the Merchant Shipping (Stowaways) Directive 2002 and shall come into force on 1st November 2002.

### **Interpretation**

2. (1) In this Directive- the meanings shall be those given in the International Maritime Organization Resolution A.871 (20)

### **Application**

3. (1) This Directive applies to :
  - (a) all Antigua and Barbuda ships registered in Antigua and Barbuda wherever they may be; and
  - (b) other ships whilst in Antigua and Barbuda waters.

### **Responsibilities**

4. To assist owners, operators and Masters of ships, the International Maritime Organization has produced Resolution A.871 (20), "Guidelines on the Allocation of Responsibilities to seek the Successful Resolution of Stowaway Cases".
5. Resolution A.871 (20) is attached to this Directive as Annex 1 and as such forms part of the Directive. Owners, Operators and Masters of ships shall ensure that this Resolution is referred to in all cases of stowaways being found on board any ship registered under the flag of Antigua and Barbuda.

Signed by authority of the Director

## Annex

### Resolution A.871 (20)

#### **Guidelines on the Allocation of Responsibilities to seek the Successful Resolution of Stowaway Cases**

- 1 Masters, shipowners,\* port authorities, national Administrations, and other bodies including security operators all have a responsibility to co-operate to prevent illegal access to a vessel while it is in port. However, no matter how effective routine port and ship security is, there will still be occasions when stowaways gain access to vessels, either secreted in the cargo or by surreptitious boarding.
- 2 For the purposes of the Guidelines a stowaway is defined as a person who is secreted on a ship, or in cargo which is subsequently loaded on the ship, without the consent of the shipowner or the master or any other responsible person, and who is detected on board after the ship has departed from a port and reported as a stowaway by the master to the appropriate authorities.
- 3 The resolution of stowaway cases is difficult because of different national legislation in each of the potentially several countries involved: the country of embarkation, the country of disembarkation, the flag State of the vessel, the country of apparent, claimed or actual nationality/citizenship of the stowaway, and all countries of transit during repatriation.
- 4 There are, however, some basic principles which can be applied generally. These are as follows:
  - .1 A recognition that stowaways arriving at or entering a country without the required documents are, in general, illegal entrants. Decisions on dealing with such situations are the prerogative of the countries where such arrival or entry occurs.
  - .2 Stowaway asylum-seekers should be treated in compliance with international protection principles as set out in international instruments<sup>1\*</sup> and relevant national legislation.
  - .3 The shipowner and his representative on the spot, the master, as well as port authorities and national Administrations, should co-operate as far as possible in

dealing with stowaway cases.

- .4 Shipowners and their representatives on the spot, masters, port authorities and national Administrations should have security arrangements in place which, as far as practicable, will prevent intending stowaways from getting aboard a ship or, if this fails, will detect them before a ship arrives at port. Where national legislation permits, national authorities should consider prosecution of stowaways for trespassing upon or damaging the property of the shipping company, or the cargo.
  - .5 All parties should be aware that an adequate search may minimize the risk of having to deal with a stowaway case and may also save the life of a stowaway who may, for example, be hiding in a place which is subsequently sealed and/or chemically treated.
  - .6 Countries should admit returned stowaways with full nationality/citizenship status of that country or a right of residence.
  - .7 The country of the original port of embarkation of a stowaway should normally accept the return of such a stowaway for examination pending final case disposition.
  - .8 Every effort should be made to avoid situations where a stowaway has to be detained on board a ship indefinitely. In this regard countries should co-operate with the shipowner in arranging the return of a stowaway to an appropriate country.
  - .9 Stowaway incidents should be dealt with humanely by all parties involved. Due consideration must always be given to the operational safety of the ship and to the well-being of the stowaway.
5. As a first step in addressing the issue, a framework of the various responsibilities, rights and liabilities of the parties involved needs to be identified and agreed. The following allocation of responsibility is suggested:
- .1 The master
    - .1.1 to make every effort to determine immediately the port of embarkation of the stowaway;
    - .1.2 to make every effort to establish the identity, including the nationality/citizenship, of the stowaway;
    - .1.3 to prepare a statement containing all information relevant to the stowaway, in: accordance with information specified in the standard document annexed to these Guidelines, for presentation to the appropriate authorities;
    - .1.4 to notify the existence of a stowaway and any relevant details to his shipowner and appropriate authorities at the port of embarkation, the next port of call and the flag State;
    - .1.5 not to depart from his planned voyage to seek the disembarkation of a

stowaway to any country unless repatriation has been arranged with documentation and permission given for disembarkation, or unless there are extenuating security or compassionate reasons;

.1.6 to ensure that the stowaway is presented to the appropriate authorities at the next port of call in accordance with their requirements;

.1.7 to take appropriate measures to ensure the security, general health, welfare and safety of the stowaway until disembarkation;

## **.2 The shipowner or operator**

.2.1 to ensure that the existence of, and any relevant information on, the stowaway has been notified to the appropriate authorities at the port of embarkation, the next port of call and the flag State;

.2.2 to comply with any removal directions made by the competent national authorities at the port of disembarkation;

## **.3 Country of first scheduled port of call after discovery of the stowaway (port of disembarkation)**

.3.1 to accept the stowaway for examination in accordance with the national laws of that country and, where the competent national authority considers that it would facilitate matters, to allow the shipowner and his named representative and the competent or appointed P&I Club correspondent to have access to the stowaway;

.3.2 to consider allowing disembarkation and provide, as necessary and in accordance with national law, secure accommodation which may be at the expense of the shipowner or agents, where:

.3.2.1 a case under .3.1 is unresolved at the time of sailing, or

.3.2.2 national authorities are satisfied that arrangements have been made and will be effected for the early return or repatriation of the stowaway by other means (which may be at the expense of the shipowner or agents), or

.3.2.3 a stowaway's presence on board would endanger the safe operation of the vessel;

.3.3 to assist, as necessary, in the identification of the stowaway and the establishment of his or her nationality/citizenship;

.3.4 to assist, as necessary, in establishing the validity and authenticity of a stowaway's documents;

.3.5 to give directions for the removal of the stowaway to the port of embarkation, country of nationality/citizenship or to some other country to which lawful directions may be made, in

co-operation with the shipowner and his nominated representative;

- .3.6 in co-operation with the shipowner and his nominated representatives to discuss repatriation or removal arrangements or directions with the master/shipowner or their appointed representatives, keeping them informed, as far as practicable, of the level of detention cost, while keeping these to a minimum;
  - .3.7 to consider mitigation of charges that might otherwise be applicable when shipowners have co-operated with the control authorities to the satisfaction of those authorities in measures designed to prevent the transportation of stowaways;
  - .3.8 to issue, if necessary, in the event that the stowaway has no identification and/or travel documents, a document attesting to the circumstances of embarkation and arrival to enable the return of the stowaway either to his country of origin, to the country of the port of embarkation, or to any other country to which lawful directions can be made, by any means of transport;
  - .3.9 to hand over the document to the transport operator effecting the removal of the stowaway
  - .3.10 to take proper account of the interests of, and implications for, the shipowner or agent when directing detention and setting removal directions, so far as is consistent with the maintenance of control, their duties or obligations to the stowaway under the law, and the cost to public funds;
- .4** The country of the original port of embarkation of the stowaway (i.e. the country where the stowaway first boarded the ship)
- .4.1 to accept any returned stowaway having nationality/citizenship or right of residence;
  - .4.2 to accept, in normal circumstances, a stowaway back for examination where the port of embarkation is identified to the satisfaction of the authorities of the receiving country;
  - .4.3 to apprehend and detain the stowaway, where permitted by national legislation, if the stowaway is discovered before sailing either on the vessel or in cargo due to be loaded; to refer the intended stowaway to local authorities for prosecution, and/or, where applicable, to the immigration authorities for examination and possible removal: no charge to be imposed on the shipowner in respect of detention or removal costs, and no penalty to be imposed;
  - .4.4 to apprehend and detain the stowaway, where permitted by national legislation, if the stowaway is discovered while the vessel is still in the territorial waters of the country of the port of his embarkation, or in another port in the same country (not having called at a port in another country in the meantime) no charge to be imposed on the shipowner in respect of detention or removal costs, and no penalty to be imposed;

**.5** The apparent or claimed country of nationality/citizenship of the stowaway

.5.1 to make every effort to assist in determining the identity and nationality/citizenship of the stowaway and to document the stowaway accordingly, once satisfied that he or she holds the nationality/citizenship claimed;

.5.2 to accept the stowaway where nationality/citizenship is established;

**.6** The flag State of the vessel

.6.1 to be willing, if practicable, to assist the master/shipowner or the appropriate authority at the port of disembarkation in identifying the stowaway and determining his or her nationality/citizenship;

.6.2 to be prepared to make representations to the relevant authority to assist in the removal of the stowaway from the vessel at the first available opportunity;

.6.3 to be prepared to assist the master/shipowner or the authority at the port of disembarkation in making arrangements for the removal or repatriation of the stowaway;

**.7** Any countries of transit during repatriation

to allow, subject to normal visa requirements, the transit through their ports and airports of stowaways traveling under the removal instructions or directions of the country of the port of disembarkation.

## Appendix

### Stowaway details

#### SHIP DETAILS

Name of ship:  
IMO Number:  
Flag:  
Company:Company address:  
Agent in next port:  
Agent address:  
RCS:  
Inmarsat number:  
Port of registry:  
Name of Master:

Photograph of stowaway

#### STOWAWAY DETAILS

Date/time found on board:  
Place of boarding:  
Country of boarding:  
Time spent in country of boarding:  
Date/Time of boarding:  
Intended port of destination:  
Intended final destination (if different):  
Stated reasons for boarding the ship:  
Surname:  
Given name:  
Name by which known:  
Religion:  
Gender:  
Date of birth:  
Place of birth:  
Claimed nationality:  
ID document type:

Emergency passport No:  
When issued:  
Where issued:  
Date of expiry:  
Issued by:

Home address:  
Home town:  
Country of domicile:  
Profession(s):  
Employer(s): (name and addresses)

Address in country of boarding:

Height (cm):  
Weight (kg):  
Complexion:  
Colour of eyes:  
Colour of hair:  
Form of head/face:  
Marks/characteristics e.g. scars,  
tattoos, etc:

Passport No:  
When issued:  
Where issued:

Date of expiry:  
Issued by:

First language:  
Spoken            Read            Written  
Other languages:  
Spoken            Read            Written

ID Card No:  
When issued:  
Where issued:  
Date of expiry:  
Issued by:

Marital status:  
Name of spouse:

Seaman's Book No:  
When issued:  
Where issued:  
Date of expiry:  
Issued by:

Nationality of spouse:  
Address of spouse:

Names of parents:  
Nationality of parents:  
Address of parents:

## **OTHER DETAILS**

Method of boarding, including other persons involved (e.g. crew, port workers etc) and whether they were secreted in cargo/container or hidden in the vessel:

Inventory of stowaway's possessions:

Was the stowaway assisted in boarding the vessel, or assisted by any member of crew? If so, was any payment made for this assistance?

Other information (e.g. names and addresses of colleagues, community leader, e.g. mayor, tribal chief, contacts in other parts of the world:

Statement made by stowaway:

Statement made by master (including any observations on the credibility of the information provided by the stowaway:

Date(s) of interview(s):

Stowaway's signature

Master's signature

Date:

Date: