

No. 28 2012/2013 - Maritime Labour Convention 2006

February 2013

Translations: Chinese  Vietnamese 

Dear Sirs

Maritime Labour Convention 2006

Members are reminded that the Maritime Labour Convention 2006 (MLC 2006) will enter into force on 20 August 2013 when, together with SOLAS, MARPOL and STCW, it will become the “fourth pillar” of the international maritime industry’s regulatory framework.

Background

MLC 2006 is intended to provide all seafarers with decent working and living conditions regardless of nationality or flag. It is also designed to address any concerns that may arise if such conditions fail to meet flag Administration requirements regarding compliance with the Convention. In broad terms MLC 2006 covers the payment of wages, safe and secure working and living conditions, fair contractual employment terms and a right to medical care.

Ratification

In August 2012 the Philippines became the thirtieth country to ratify MLC 2006, thereby achieving the required number of ratifications by member states representing at least 33% of the world’s gross tonnage. Consequently the Convention will enter into force on 20 August 2013. An estimated 40,000 ships will need to obtain MLC 2006 certification by this date.

Applicability

The requirements apply to:

- ships of 500 gross tonnes or over, engaged in international voyages; and
- ships of 500 gross tonnes or over, flying the flag of a member state and operating from a port, or between ports, in another country

The requirements do not apply to vessels navigating entirely within internal waters, sheltered waters or areas where port regulations apply or other waters closely adjacent to these areas. Similarly fishing vessels, naval vessels and their auxiliaries and traditional craft such as dhows and junks are not required to comply with the provisions.

MLC 2006 also expands the definition of a seafarer. This term now applies to anyone employed to work on board a vessel covered by the Convention. Consequently personnel without operational or navigational responsibilities who may not have been classified as seafarers in the past, for example hotel staff on passenger ships, now fall within the ambit of this definition. However, flag Administrations in conjunction with the social partners (i.e. representative organisations of

seafarers and shipowners) may agree exceptions.

Convention Requirements

The full text of MLC 2006 may be downloaded from the ILO website. Copies are available in English, French, Spanish, Arabic, German, Portuguese, Russian and Chinese.

The Convention is split into three sections; articles, regulations and the code. The articles and regulations set out the core rights, principles and basic obligations of the ratifying flag Administrations. The code itself, which is incorporated into the regulations, deals with the implementation of the Convention and consists of two parts; Part A which is mandatory and Part B which provides guidelines on the implementation of Part A. The regulations and Parts A and B of the code are arranged under five main headings as follows:

Minimum Requirements for Seafarers to Work on a Ship

- Minimum age
- Medical certificate
- Training and qualifications
- Recruitment and placement

Conditions of Employment

- Seafarers' employment agreements
- Wages
- Hours of work and hours of rest
- Entitlement to leave
- Repatriation
- Seafarer compensation for the ship's loss or foundering
- Manning levels
- Career and skill development and opportunities for seafarers' employment

Accommodation, Recreational Facilities, Food and Catering

- Accommodation and recreational facilities
- Food and catering

Health protection, Medical Care, Welfare and Social Security Protection

- Medical care on board ship and ashore
- Shipowners' liability
- Health and safety protection and accident prevention
- Access to shore-based welfare facilities
- Social security

Compliance and Enforcement

- Flag State responsibilities
- Port State responsibilities
- Labour-supplying responsibilities

Inspection and Certification

The operators of vessels falling within the scope of the Convention are required to develop plans to ensure that they comply with MLC 2006 in accordance with flag Administration requirements. Once completed, the flag Administration or a Recognised Organisation (RO) approved or appointed by the flag Administration, will review, survey and approve the plans to ensure that they are satisfactory.

For certification to be issued, the flag Administration or RO will inspect the vessel to verify that the working and living conditions on board comply with flag Administration requirements, focussing on fourteen key areas:

1. Minimum age
2. Medical certification
3. Qualifications of seafarers
4. Seafarers' employment agreements
5. Use of any licensed, certified or regulated private recruitment and placement service
6. Hours of work or rest
7. Manning levels for the ship
8. Accommodation
9. On-board recreational facilities
10. Food and catering
11. Health and safety, and accident prevention
12. On-board medical care
13. On-board complaint procedures
14. Payment of wages

If compliance with the above is confirmed, the vessel will be issued with a Maritime Labour Certificate. The vessel will also be provided with a Declaration of Maritime Labour Compliance (DMLC) summarising the implementation requirements of the flag Administration together with details of how compliance has been achieved.

A Maritime Labour Certificate is valid for a maximum period of five years and is subject to a renewal inspection by the flag Administration or RO within three months of the date of expiry. In addition, an intermediate inspection will be held between the second and third anniversary dates. Renewal inspections and intermediate inspections are no different in terms of their scope and depth.

If substantial alterations are made to the accommodation after certification has been issued, an additional inspection will be necessary.

An interim Maritime Labour Certificate, valid for a maximum period of six months, may be issued to a new ship upon delivery, to a ship which changes flag or if another company assumes responsibility for the operation of the vessel. Although a separate DMLC is not required, an interim certificate will only be issued once the following conditions have been satisfied:

- The fourteen key areas listed above have been inspected and, as far as reasonable and practicable, have been found to be acceptable
- The company has demonstrated that the vessel has adequate procedures to comply with the Convention requirements of the flag Administration
- The Master is familiar with flag Administration requirements regarding MLC 2006 and the responsibilities for its implementation, and
- The relevant information for producing a DMLC has been submitted to the flag Administration or RO

Only one interim certificate may be issued, and a detailed inspection must be completed prior to the date of expiry in order to obtain a full term Maritime Labour Certificate.

The DMLC is split into two sections and is to be attached to the Maritime Labour Certificate. Part I, issued on behalf of the flag Administration, lists the fourteen key areas and confirms that they reflect national requirements. Part II, signed by the flag Administration or RO, summarises the measures taken by vessel's operator to ensure compliance between inspections.

The vessel is also required to maintain a record of all subsequent inspections or verifications carried out, along with details of any significant deficiencies found and the dates when they were rectified. Such details are to be added to the DMLC or appended to it, and are to be made available to seafarers, flag Administration inspectors, port state control (PSC) officers, shipowners and seafarers' representatives as may be required.

Copies of the Maritime Labour Certificate and the DMLC are to be posted in a conspicuous place on board, accessible by all seafarers.

Although vessels of less than 500 GT, or not engaged in international voyages, or not operating from or between foreign ports do not need to obtain MLC 2006 certification, the flag Administration is still required to visit such vessels at intervals not exceeding three years to inspect the fourteen key areas.

If a vessel is not required to obtain MLC 2006 certification due to its size or trading pattern, the operator may ask the flag Administration or RO to certify the vessel on a voluntary basis if they wish to demonstrate compliance to interested parties such as PSC inspectors or seafarers' organisations.

Port State Control

Recognising that flag Administrations may not have time to inspect or certificate all of their registered vessels before 20 August 2013, ILO Resolution XVII requests flag Administrations and port states to give due consideration to allowing ships to continue to operate without MLC 2006 certification for one year after the Convention enters into force provided that their inspectors have no evidence that such ships are not complying with the requirements. However, it should be borne in mind that the first thirty countries to ratify the Convention are not legally bound by ILO Resolution XVII.

It is important to note that MLC 2006 includes a "no more favourable treatment clause" to ensure that vessels do not benefit from being registered with a non-ratifying flag Administration. Indeed, vessels flying the flag of non-ratifying countries may face increased scrutiny by PSC officers if they do not possess MLC 2006 certificates or have not been assessed against the general provisions of the Convention by a reputable organisation.

A vessel's Maritime Labour Certificate and DMLC may be checked during routine PSC inspections. However, a detailed inspection of one or more of the fourteen key areas may be carried out if the PSC officer has "clear grounds" for believing that the vessel may not be complying with flag Administration requirements regarding MLC 2006. The term "clear grounds" includes:

- Concerns regarding the validity of the vessel's MLC 2006 certification or documentation

- Indications that the vessel may have changed flag to avoid compliance with MLC 2006
- Working or living conditions which do not appear to meet the requirements
- A complaint alleging that the living or working conditions on board do not fulfil the requirements

In the event of a complaint about working or living conditions, the inspection will generally be limited to issues falling within the scope of the complaint. However, any concerns arising from the findings may provide the PSC officer with clear grounds for carrying out a detailed inspection thereafter.

If a detailed inspection determines that the working or living conditions on board fail to meet MLC 2006 requirements, the deficiencies will be brought to the master's attention together with deadlines for their rectification. Deficiencies which are considered to be significant or relate to a complaint will be reported to the seafarers' and shipowners' organisations in the country where the inspection took place, and the vessel's flag Administration and the relevant authorities at the vessel's next port of call may be informed, possibly resulting in another PSC inspection. A copy of the report may also be sent to ILO's Director-General together any comments received from the vessel's flag Administration.

If the findings of a PSC inspection conclude that the conditions on board are clearly hazardous to the safety, health or security of the crew, or that there has been a serious or repeated breach of Convention requirements or that seafarers' rights have been violated, the ship may be detained until such issues have been rectified or an action plan has been agreed with the PSC officer.

Examples of circumstances that may lead to a ship being detained include:

- The presence of any seafarer on board under the age of 16
- The employment of any seafarer under the age of 18 in work likely to jeopardise their health or safety, or in night work
- Insufficient manning, including situations caused by the removal under-age seafarers
- Deficiencies constituting a violation of fundamental rights, or a breach of employment or social rights
- Repeated cases of seafarers lacking valid medical fitness certificates
- Repeated cases of seafarers not in possession of valid seafarer's employment agreements (SEAs), or with SEAs containing clauses constituting a denial of seafarers' rights
- Seafarers repeatedly working beyond the maximum hours of work, or having less than the minimum hours of rest
- Heating, air-conditioning or ventilation systems that are not working adequately
- Food and drinking water where the quantity and quality is not suitable for the intended voyage
- Accommodation, including catering and sanitary facilities, that is unhygienic or with missing or malfunctioning equipment
- Repeated cases of non-payment of wages, or the non-payment of wages over a significant period, or the falsification of wage records or the existence of more than one set of wage accounts
- Deficiencies regarding the vessel's medical guide, medicines or medical equipment

Preparing for Compliance

Since MLC 2006 incorporates a number of older Conventions, operators may find that their vessels are currently complying with many of the requirements specified by their flag Administrations. Similarly, the overlap between MLC 2006 and existing IMO Conventions such as STCW may mean that some requirements are already addressed in the Safety Management System.

However, with less than seven months to go before MLC 2006 becomes mandatory, Members who have not yet started to

prepare for compliance are urged to do so without delay.

Reference Material

The International Shipping Federation recently launched a second edition of its “Guidelines on the Application of the ILO Maritime Labour Convention” which includes a CD containing essential reference material and a checklist to aid compliance. Members may obtain a complimentary copy of this useful publication from the Loss Prevention department on request.

For further information on MLC 2006, please see:

- ILO Maritime Labour Convention Webpage
- Maritime Labour Convention 2006 - Frequently Asked Questions
- ILO Guidelines for Flag State Inspections under the Maritime Labour Convention 2006
- Guidelines for Port State Control Officers carrying out inspections under the Maritime Labour Convention 2006

Yours faithfully

For: **West of England Insurance Services (Luxembourg) S.A.**
(As Managers)

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