



## TECHNICAL CIRCULAR No. 121 of 20<sup>th</sup> April 2013

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To:	All Surveyors/Auditors
Applicable to flag:	All Flags
Subject:	<b>MLC, 2006- General Questions A9 – A17</b>
Reference:	<b>MLC, 2006 – Maritime Labour Convention, 2006</b>

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### **MLC, 2006, General Questions A9-A17**

#### **A9. What is the Code of the MLC, 2006?**

The MLC, 2006 is organized into three main parts: the Articles, coming first, set out the broad principles and obligations. The Articles are followed by the Regulations and the Code, which relate to the areas of seafarers' working and living conditions covered by the Convention and to inspection and compliance. The Regulations, which are written in very general terms, are complemented by the more detailed Code. The Code has two parts: Part A contains Standards and Part B Guidelines. The provisions in the Regulations and the Standards (Part A) and Guidelines (Part B) in the Code have been vertically integrated in the Convention: in other words, they have been arranged and linked together according to their subject matter: thus each of the Titles in the MLC, 2006 [see A6. What are the subjects of the "Titles"?] consists of various Regulations covering a particular aspect of the subject, each Regulation being followed first by the Part A Standards and then by the Part B Guidelines that relate to the same aspect.

#### **A10. What is the difference between Articles, Regulations, Standards and Guidelines?**

All the provisions of the MLC, 2006, whatever their name, must be complied with by ratifying countries or, in the case of its Guidelines, taken into consideration by them [see A12. What is the status of the Guidelines in Part B of the Code?]. The main difference between these provisions is that the Articles contain more general statements of principles, obligations and rights with the specific details set out in the Regulations and the Code. The Articles also contain provisions relating to the legal aspects of the operation and application of the Convention such as definitions, amendments and entry into force and the establishment of the Special Tripartite Committee under Article XIII. The difference between the Regulations and the Standards and Guidelines is that the Regulations are normally worded in very general terms, with the details of implementation being set out in the Code (i.e., the Standards and the

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Guidelines).

### **A11. What is a “substantially equivalent” provision?**

The MLC, 2006 provides in Article VI, paragraphs 3 and 4, that in some circumstances a national provision implementing the rights and principles of the Convention in a manner different from that set out in Part A of the Code will be considered as “substantially equivalent” if the Member concerned “satisfies itself” that the relevant legislation or other implementing measure “is conducive to the full achievement of the general object and purpose of the provision or provisions of Part A of the Code concerned” and “gives effect to the provision or provisions of Part A of the Code concerned”. The Member's obligation is principally to “satisfy itself”, which nevertheless does not imply total autonomy, since it is incumbent on the authorities responsible for monitoring implementation at the national and international levels to determine not only whether the necessary procedure of “satisfying themselves” has been carried out, but also whether it has been carried out in good faith in such a way as to ensure that the objective of implementing the principles and rights set out in the Regulations is adequately achieved in some way other than that indicated in Part A of the Code. It is in this context that ratifying members should assess their national provisions from the point of view of substantial equivalence, identifying the general object and purpose of the MLC, 2006 Code, Part A provision concerned (in accordance with paragraph 4(a)) and determining whether or not the proposed national provision could, in good faith, be considered as giving effect to the Part A provision (as required by paragraph 4(b)). Any substantial equivalents that have been adopted must be stated in Part I of the declaration of maritime labour compliance that is carried on board ships that have been certified [see C5.1.k. How detailed should Part I of the Declaration of Maritime Labour Compliance (DMLC) be?].

### **A12. What is the status of the Guidelines in Part B of the Code?**

Countries that ratify the MLC, 2006 must adopt national laws or take other measures to ensure that the principles and rights set out in the Regulations are implemented in the manner set out by the Standards set out in Part A of the Code (or in a substantially equivalent manner [see A11. What is a “substantially equivalent” provision?]) When deciding on the details of their laws or other implementing measures [see A.8 What measures must a country take to ensure that the MLC, 2006 is properly applied?], the ratifying countries must give due consideration to following the Guidelines set out in Part B of the Code. Provided that they have given this due consideration, ratifying countries may implement the mandatory provisions in a different way, more suited to the irrational circumstances. In this case, the government concerned may be asked to explain to the ILO supervisory bodies why it has decided not to follow the guidance in Part B of the Code (see [Report Form 10](#)). A country's implementation of Part B will not be verified by Port State inspectors.

### **A13. What was the reason for having the Part B Guidelines?**

The special status given to Part B of the Code [see A12. What is the status of the Guidelines in Part B of the Code?] is based on the idea of firmness on principles and rights combined with flexibility in the way those principles and rights are implemented. Without this innovation, the MLC, 2006 could never aspire to wide-scale ratification: many of the provisions of existing Maritime Labour Conventions, which relate to the method of implementing basic seafarers' rights (rather than to the content of those rights), have been transferred to the non-mandatory Part B Guidelines of the Code as their placement in the mandatory Regulations and Part A (Standards) could have resulted in clear obstacles to

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ratification.

**A14. What is the status of the 2008 ILO Guidelines, for flag State inspections and port State control officers?**

The two sets of Guidelines, adopted in 2008, the [Guidelines for flag State inspections under the Maritime Labour Convention, 2006](#) 11 and the [Guidelines for port State control officers carrying out inspections under the Maritime Labour Convention, 2006](#) 12, provide authoritative guidance since they were prepared by tripartite meetings of experts to assist countries to implement Title 5 of the MLC, 2006. But they do not have any special legal status. They should not be confused with the Guidelines found in Part B of the Code of the MLC, 2006, which must be given due consideration by ratifying countries [see A12. What is the status of the Guidelines in Part B of the Code?].

International guidelines, as well as the related national Flag State inspection and certification systems and national guidelines for Flag State inspectors, are important aspects of implementation of the MLC, 2006 and essential to ensuring widespread harmonized implementation of the MLC, 2006.

**A15. Does the MLC, 2006 require countries to comply with the ILO's "Fundamental Conventions"?**

The ILO's Governing Body has identified eight International Labour Conventions as "fundamental", covering subjects that are considered as fundamental principles and rights at work: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. These Conventions are listed in the Preamble to the MLC, 2006. Countries that ratify the MLC, 2006 are required, under Article III, to satisfy themselves that the provisions of their national legislation respect those fundamental rights, in the context of the MLC, 2006. They are not however required by the MLC, 2006 to observe the provisions of the fundamental Conventions themselves or to report to the ILO on the measures they have taken to give effect to those Conventions. Countries that have ratified the fundamental Conventions are, of course, in any event obliged to report to the ILO on the measures that they have taken to give effect to their obligations under those Conventions in all the sectors of work, including the maritime sector.

**A16. How does the MLC, 2006 make it easier for countries to ratify it and to implement its requirements?**

Both the Constitution of the ILO ([ILO Constitution](#) 13) and many ILO Conventions seek to take account of national circumstances and provide for some flexibility in the application of Conventions, with a view to gradually improving protection of workers, by taking into account the specific situation in some sectors and the diversity of national circumstances. Flexibility is usually based on principles of tripartism, transparency and accountability. When flexibility with respect to a Convention is exercised by a government it usually involves consultation with the workers' and employers' organizations concerned, with any determinations that are made reported to the ILO by the government concerned. This is seen as a necessary and important approach to ensuring that all countries, irrespective of national circumstances, can engage with the international legal system and that international obligations are respected and implemented, to the extent possible, while also making efforts to improve conditions. This is particularly important for an international industry such as shipping. The

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MLC, 2006 generally follows this approach as well as also providing for additional flexibility, relevant to the sector, at a national level.

The Convention seeks to be “firm on rights and flexible on implementation”. A major obstacle to the ratification of existing maritime Labour Conventions is the excessive detail in many of them. The MLC, 2006 sets out the basic rights of seafarers to decent work in firm statements, but leaves a large measure of flexibility to ratifying countries as to how they will implement these standards for decent work in their national laws.

The areas of flexibility in the MLC, 2006 include the following:

- unless specified otherwise in the Convention, national implementation may be achieved in a variety of different ways, and not necessarily through legislation [see A.8 What measures must a country take to ensure that the MLC, 2006 is properly applied?];
- many of the details in existing Conventions which had created difficulties for some governments interested in ratifying the Convention have been placed in Part B of the Code [see A12. What is the status of the Guidelines in Part B of the Code?];
- in certain circumstances, implementation of the mandatory standards in Part A of the Code (other than Title 5) may also be achieved through measures which are “substantially equivalent” [see A11. What is a “substantially equivalent” provision?];
- in certain circumstances, the application of details in the Code may be relaxed for some smaller ships – less than 200 gross tonnage (GT) that do not go on international voyages [see B7. Can a ratifying country make exemptions from certain provisions of the MLC, 2006?];
- while all ships covered by the Convention must be inspected for compliance with its requirements [see C5.1.g. Must all ships be inspected?], Flag State administrations are not required to certify ships less than 500 GT unless the shipowner concerned requests certification [see C5.1.j. Must all ships be certified under Regulation 5.1.3?];
- the MLC, 2006 expressly recognizes that some Flag States may make use of **recognized organizations** such as **classification societies** to carry out aspects of the ship inspection and certification system on their behalf [see C5.1.b. Can a flag State delegate its responsibilities?];
- provisions affecting ship construction and equipment (Title 3) will not apply to ships constructed before the Convention comes into force for the country concerned [see C3.1.a. Do the accommodation requirements of Title 3 apply to existing ships?].  
Smaller ships (less than 200 GT) may be exempted from specific accommodation requirements [see C3.1.j. Is there any flexibility provided with respect to the requirements for accommodation and recreational facilities?];
- provision is made (Article VII) for the situation of countries that may not have national organizations of shipowners or seafarers to consult;
- in connection with social security coverage under Regulation 4.5, provision is made for national circumstances and for bilateral, multilateral and other arrangements [see C4.5.b. What does the MLC, 2006 require for social security?].

#### **A17. Is the MLC, 2006 already applicable?**

The MLC, 2006 is A applicable starting with August 2013.

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**REFERENCES:**

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