



TECHNICAL CIRCULAR No. 127 of 17th May 2013

To:	All Surveyors/Auditors
Applicable to flag:	All Flags
Subject:	MLC 2006, Title 2, C2.1-C2.2 Condition of employment
Reference:	MLC, 2006 – Maritime Labour Convention, 2006

MLC, 2006, Title 2, C2.1-C2.2 C2. Title 2 Conditions of employment

C2.1. Seafarers' employment agreements

C2.1.a. What is a seafarers' employment agreement (SEA)?

The MLC, 2006 defines a seafarers' employment agreement (SEA) in Article II, paragraph 1(g) as including both a contract of employment and articles of agreement. This definition is an inclusive definition that covers various legal systems and practices and formats. It specifically includes both a contract of employment and articles of agreement; but there could be other formats, as required under national law or practice. Regulation 2.1 paragraph 1 simply describes the SEA as "a clear written legally enforceable agreement" that must be "consistent with the standards set out in the Code". To the extent compatible with national law and practice, a SEA is understood to incorporate (by reference) any applicable collective bargaining agreement, as provided in Standard A2.1, paragraph 2. This means that, other than some specific elements such as the name of the seafarer etc., a collective bargaining agreement could form all or part of a SEA. However, irrespective of the precise form of a SEA, a Member is required to adopt national laws and regulations specifying the matters to be included in the SEA. The list of these matters is set out in Standard A2.1, paragraph 4(a) to (j). Even where a seafarer may be working for a concessionaire that is operating on a ship, for example, a seafarer with passenger service duties on a cruise ship, he or she would still need to have a SEA signed by the shipowner

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or representative of the shipowner addressing the matters set out in Standard A2.1 paragraph 4 [see B14. Who is the shipowner under the MLC, 2006?].

C2.1.b. Does the MLC, 2006 require seafarers to have a copy of the original signed seafarers' employment agreement (SEA) on board ship?

Standard A2.1, paragraph 1(c) requires that the shipowner and seafarer concerned each have a signed original of the seafarers' employment agreement, without specifying that this original should be "on board". Since Standard A2.1, paragraphs 1(d) and 2 only require a copy of the agreement and of any applicable collective bargaining agreement to be available on board, one would assume that no originals need be maintained on board unless the national law concerned specifies otherwise.

C2.1.c. How can a seafarers' employment agreement (SEA) incorporate a collective bargaining agreement?

Regulation 2.1, paragraph 3 of the MLC, 2006 states that "To the extent compatible with the Member's national law and practice, seafarers' employment agreements shall be understood to incorporate any applicable collective bargaining agreements". A seafarers' employment agreement (SEA) could in any event incorporate a collective bargaining agreement (CBA) by using wording to show that the parties (shipowner and seafarer) intend that the whole of the CBA should, to the extent relevant to the seafarer, be considered as forming part of the SEA. The SEA concerned could even be a one-page document, containing individual identifying and other employment information specific to the seafarer, followed by a single provision stating that the parties agree that the terms and conditions of work shall be as set out in the identified collective bargaining agreement. A SEA of this kind would probably need to be accompanied by clear information, referred to in Standard A2.1, paragraph 1(d), enabling each seafarer to find out what his or her rights are under the applicable collective bargaining agreement. The effect of Regulation 2.1, paragraph 3, quoted above, is that even if the SEA contains no clear statement incorporating an applicable CBA, it should be understood as incorporating that CBA if a linkage of this kind is compatible with the flag State's law and practice.

C2.1.d. Who must sign a seafarers' employment agreement (SEA)?

In accordance with Standard A2.1, paragraph 1(a) of the MLC, 2006, the seafarers' employment agreement (SEA) must be signed by both the seafarer and the shipowner or a representative of the shipowner. Except in cases where the applicable national law considers that a particular person, such as the ship's master, has apparent authority to act on behalf of the shipowner, any signatory other than a shipowner should produce a signed "power of attorney" or other document showing that he/she is authorized to represent the shipowner [see B14. Who is the shipowner under the MLC, 2006?].

C2.1.e. Can the employer of a seafarer supplying a seafarer to the ship sign the seafarers' employment agreement (SEA) as the shipowner?

The term "shipowner" is defined comprehensively in Article II, paragraph 1(j) of the MLC, 2006 as "the owner of the ship or another organization or person, such as the

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manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with this Convention, regardless of whether any other organizations or persons fulfill certain of the duties or responsibilities on behalf of the shipowner” [see B14. Who is the shipowner under the MLC, 2006?].

The intention of the drafters of the MLC, 2006 was that there could only be one person – namely, “the shipowner” – who assumes, vis-à-vis each seafarer, all the duties and responsibilities imposed by the Convention on the shipowner. While another person supplying a seafarer to the ship may have concluded an employment contract with that seafarer and be responsible for implementing that contract, including payment of wages, for example, the shipowner will still have the overall responsibility vis-à-vis the seafarer. Such an employer could therefore only sign the SEA as a representative of the shipowner (assuming that the employer has a signed power of attorney from the shipowner).

C2.1.f. Do self-employed seafarers have to conclude a seafarers’ employment agreement (SEA)?

Where seafarers are not employees, they do not have to have a seafarers’ employment agreement (SEA), but – in accordance with Standard A2.1, paragraph 1(a) – there would need to be signed evidence of contractual or similar arrangements “providing them with decent working and living conditions on board” as required by the MLC, 2006.

C2.1.g. What is the record of employment for seafarers?

The Standard A2.1, paragraph 1(e) requires seafarers to be given a document containing a record of their employment on board the ship. The MLC, 2006 does not define or have a specific model for this document, but provides the following information: record of employment must not contain any statement as to the quality of the seafarers’ work or as to their wages. The form of the document, the particulars to be recorded and the manner in which such particulars are to be entered, are to be determined by national law (Standard A2.1, paragraph 3) and should contain sufficient information, with a translation in English, to facilitate the acquisition of further work or to satisfy the sea-service requirements for upgrading or promotion. A seafarers’ discharge book might satisfy the requirements of paragraph 1(e) of the Standard (Guideline B2.1.1).

C2.2. Wages

C2.2.a. Does the MLC, 2006 set a minimum wage for seafarers?

Regulation 2.2 of the MLC, 2006 states that seafarers shall be paid in full in accordance with their employment agreements. The Convention does not establish a mandatory minimum wage for seafarers, but leaves this question to be dealt with under the national law of the flag State.

The MLC, 2006 also will take over (from ILO Recommendation No. 187) the international procedure for establishing a minimum monthly basic pay or wage figure for

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able seafarers (see Guideline B2.2.4). This minimum wage is set periodically by the JMC. Although this minimum wage relates only to able seafarers, in practice the amount of the minimum wages for other seafarers is extrapolated from the amount agreed in the JMC.

C2.2.b. How frequently are seafarers to be paid?

Seafarers are to be paid at no greater than monthly intervals and in accordance with any applicable collective agreement (Standard A2.2, paragraph 1).

C2.2.c. Can seafarers be charged for the cost of sending wages to family members (allotments)?

This is a matter for flag State implementation. Standard A2.2, paragraphs 3, 4 and 5, provides that seafarers must have a means to transmit all or part of their earnings to their families or dependants or legal beneficiaries; that allotments should be remitted in due time and directly to the person or persons nominated by the seafarers; and that any charge for this service must be reasonable in amount.

REFERENCES:

- **MLC, 2006 – Maritime Labour Convention, 2006**

ATTACHMENTS: No.

Kindest Regards,
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