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To:	All Surveyors/Auditors
Applicable to flag:	All Flags
Subject:	MLC 2006, Title 5, Compliance and enforcement, C5.1 Flag responsibilities, C5.1a to C5.1.k
Reference:	MLC, 2006 – Maritime Labour Convention, 2006

MLC 2006, Title 5, Compliance and enforcement, C5.1 Flag responsibilities, C5.1.a to C5.1.k

C5. Title 5 Compliance and enforcement

— *What is the relationship between Title 5 and the other provisions in the MLC, 2006?*

As stated in paragraph 1 in the introductory provisions to Title 5:

The Regulations in this Title specify each Member's responsibility to fully implement and enforce the principles and rights set out in the Articles of this Convention as well as the particular obligations provided for under its Titles 1, 2, 3 and 4.

— *Does the concept of substantial equivalence apply to Title 5?*

As indicated in introductory paragraphs 2 and 3 of Title 5, the requirements of this Title cannot be implemented through substantially equivalent provisions [see A11. What is a "substantially equivalent" provision?].

C5.1. Flag State responsibilities

C5.1.a. What is a flag State?

The term "flag State" refers to the country where a ship is registered and/or the country whose flag the ship is flying. Ships can, and often do, move from one country /registry/flag to another during the course of their operating lives. Under international law

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the flag State is the government that has authority and responsibility for regulating ships, and the conditions on board ships, that fly its flag no matter where they travel in the world. This is indicated in the Preamble to the MLC, 2006, which states:

Recalling that Article 94 of the United Nations Convention on the Law of the Sea, 1982, establishes the duties and obligations of a flag State with regard to, inter alia, labour conditions, crewing and social matters on ships that fly its flag.

Article 94 of the United Nations Convention the Law of the Sea, 1982, provides in paragraph1 that “Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.” The specific responsibilities of flag States regarding inspection and, also in some cases, certification, that a ship and its operations including conditions for workers on ships (seafarers) meets agreed upon international standards are set out in the many international maritime Conventions adopted by the International Maritime Organization (IMO) and the ILO.

C5.1.b. Can a flag State delegate its responsibilities?

In accordance with Regulation 5.1.1, paragraph 3, of the MLC, 2006, a country may, where appropriate, authorize public institutions or other organizations (including those of another country) which it recognizes as competent and independent to carry out inspections or to issue certificates or to do both. In all cases, the delegating country remains fully responsible for the inspection and certification of the working and living conditions of the seafarers concerned on ships that fly its flag. In the MLC, 2006 the organizations to which flag State tasks can be delegated are called “Recognized Organizations” (ROs).

C5.1.c. Is there a model for a flag State inspection and certification system?

Regulation 5.1.1, paragraph 2 requires flag States to establish an effective system for the inspection and certification of maritime labour conditions ensuring that the working and living conditions for seafarers on ships that fly its flag meet, and continue to meet, the standards in this Convention. No model is prescribed for such a system, which, under Standard A5.1.1, must have clear objectives and standards covering the administration of the inspection and certification systems, as well as adequate overall procedures for the country’s assessment of the extent to which those objectives and standards are being attained. In accordance with Regulation 5.1.1, paragraph 5, information about the inspection and certification system, including the method used for assessing its effectiveness, must be included in the ILO Member’s reports to the ILO under Article 22 of the Constitution.

C5.1.d. What is a Recognized Organization (RO)?

In the MLC, 2006 the organizations to which flag State tasks can be delegated are called “Recognized Organizations” (ROs) [see C5.1.b. Can a flag State delegate its

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responsibilities?] Regulation 5.1.2 and the Code establishes the requirements regarding the process for delegation/authorization of ROs. In many countries the organizations that are authorized as ROs are ship classification societies that are also responsible for ship surveys including statutory certification of ships under IMO Conventions.

C5.1.e. How is a Recognized Organization (RO) for a flag State authorized?

Standard A5.1.2 paragraphs 1 and 2 of the MLC, 2006 sets out requirements for flag States that may wish to appoint public institutions or other organizations to carry out inspections required by the MLC, 2006, in accordance with normal practice. An up to date list of any authorizations (and the scope of the authorization) for ROs must be provided to the International Labour Office for publication (Standard A5.1.2, paragraph 4).

C5.1.f. What tasks can a Recognized Organization (RO) carry out?

The tasks of each RO depend upon the tasks which the flag State concerned has delegated to it within the scope of those that an RO is permitted by the MLC, 2006 to carry out. Under Regulation 5.1.2, paragraph 1 of the MLC, 2006 and RO may only be authorized by a flag State to carry out tasks that are expressly mentioned in the Code of Title 5 [see A9. What is the Code of the MLC, 2006?] as tasks that can be carried out by an RO. In this respect, the Code uses wording such as “by the competent authority, or by a recognized organization duly authorized for this purpose”.

Most of the tasks related to flag State inspection and certification under the MLC, 2006 can be undertaken by an RO. When an RO is appointed, the flag State (or its competent authority) needs to specify the scope of the RO’s role with respect to verification of national requirements. Although the attention of an RO carrying out a flag State inspection might be drawn to a possible deficiency on a ship by seafarers and reported to the flag State, the investigation of complaints that are made to the flag State regarding its ships (Standard A5.1.4, paragraph 5) or the enforcement of the national requirements implementing the MLC, 2006 should be dealt with by the competent authority in each flag State. Information as to the role of ROs and the scope of their authority should also be made available to seafarers in the event that they have a complaint.

C5.1.g. Must all ships be inspected?

All ships covered by the MLC, 2006 [see B4. What ships does the MLC, 2006 apply to?], are subject to inspection for all the requirements of the Convention (Regulation 5.1.4, paragraph 1). For ships that will be certified the provisions of Regulation 5.1.3 and Standard A5.1.3 will also apply. The inspection standards are the national requirements implementing the MLC, 2006.

C5.1.h. What is the list of 14 areas to be certified?

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Standard A5.1.3, paragraph 1 provides that:

A list of 14 areas in the working and living conditions of seafarers that must be inspected and certified as complying with the national laws and regulations or other measures implementing the requirements of the MLC, 2006 is contained in Appendix A5-I to the Convention. These areas are:

Minimum age

Medical certification

Qualifications of seafarers

Seafarers' employment agreements

Use of any licensed or certified or regulated private recruitment and placement service

Hours of work or rest

Manning levels for the ship

Accommodation

On-board recreational facilities

Food and catering

Health and safety and accident prevention

On-board medical care

On-board complaint procedures

Payment of wages

C5.1.i. Do the requirements in the MLC 2006) that are not in the list of 14 areas in Appendix A5-I have to be inspected?

All ships covered by the MLC, 2006, are subject to inspection for all the requirements of the Convention (Regulation 5.1.4, paragraph 1). For ships that will be certified, the provisions of Regulation 5.1.3 and Standard A5.1.3 will also apply. The inspection standards are the national requirements implementing the MLC, 2006. The relevant national provisions implementing the requirements of the MLC, 2006, in the 14 areas that must be certified for some ships will be referenced in Part I of the DMLC that is to be prepared by the competent authority [see A25. Who is the competent authority?].

C5.1.j. Must all ships be certified under Regulation 5.1.3?

Under Regulation 5.1.3, certification is mandatory for ships of:

— 500 gross tonnage or over, engaged in international voyages; and

— 500 gross tonnage or over, flying the flag of a Member and operating from a port, or between ports, in another country.

For the purpose of this Regulation, “international voyage” means a voyage from a country to a port outside such a country.

Certification would not therefore be mandatory for a ship under 500 gross tonnage, even if engaged in international voyages or for a ship of 500 gross tonnage or more if it flies the flag of the flag State concerned and is not engaged in international voyages.

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Regulation 5.1.3, paragraph 2 allows a shipowner whose ship does not fall under the mandatory certification provisions to request that the ship be certified after the inspection.

C5.1.k. How detailed should Part I of the declaration of maritime labour compliance (DMLC) be?

The main requirements for Part I of the DMLC are set out in Standard A5.1.3, paragraphs 9 and 10 of the MLC, 2006:

It must be drawn up by the competent authority [see A25. Who is the competent authority?] in the form corresponding to the model in Appendix A5-II. It must:

- (i) identify the list of matters to be inspected in accordance with the MLC, 2006 (i.e., the 14 areas listed in Appendix A5-I);
- (ii) identify, in each of those areas, the national requirements embodying the relevant provisions of the Convention by providing a reference to the relevant national legal provisions as well as, to the extent necessary, concise information on the main content of the national requirements;
- (iii) refer to ship-type specific requirements under national legislation;
- (iv) record any substantially equivalent provisions [see A11. What is a “substantially equivalent” provision?]; and
- (v) clearly indicate any exemption granted by the competent authority as provided in Title 3.

Questions have been asked as to how detailed should be the statement on the national requirements which is to be provided under item (ii) above “to the extent necessary”. Guidance is provided in Guideline B5.1.3 as follows: “Where national legislation precisely follows the requirements stated in this Convention, a reference may be all that is necessary. Where a provision of the Convention is implemented through substantial equivalence as provided under Article VI, paragraph 3, this provision should be identified and a concise explanation should be provided.”

In the preparation of Part I of the DMLC, it may be useful to take account of the purpose of the DMLC as conceived in Guideline B5.1.3, paragraph 4, namely “to help all persons concerned, such as flag State inspectors, authorized officers in port States and seafarers, to check that the requirements are being properly implemented”. The example of a DMLC given in Appendix B5-I to the MLC, 2006 may also be helpful.

REFERENCES:

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

ATTACHMENTS: No.

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