



TECHNICAL CIRCULAR No. 134 of 4th June 2013

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

MLC 2006, Title 5 Compliance and enforcement, C5.1 Flag responsibilities, C5.1.I to C5.1.d.d

C5. Title 5 Compliance and enforcement

C5.1.I. What should be contained in Part II of the declaration of maritime labour compliance (DMLC)?

In accordance with paragraph 10(b) of Standard A5.1.3, Part II of the DMLC, which is to be drawn up by the shipowner and certified by the competent authority or a duly authorized RO, must identify the measures adopted to ensure ongoing compliance, between inspections, with the national requirements, stated in Part I of the DMLC, and the measures proposed to ensure that there is continuous improvement. Detailed guidance on the details that should be provided in Part II of the DMLC, are provided in Guideline B5.1.3, paragraph 2 and 3. It may also 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 in addition be helpful.

C5.1.m. Can a recognized organization (RO) be authorized to issue a declaration of maritime labour compliance (DMLC)?

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A DMLC Part I is to be “drawn up by the competent authority” (Standard A5.1.3 paragraph 10 (a)); this means that the person signing it must have been directly empowered to do so by the competent authority. It will then be “issued under the authority of” the competent authority (see MLC, 2006, Appendix A5-II, model form). Under Standard A5.1.3, paragraph 1 an RO may, if authorized, issue a Maritime Labour Certificate (MLC), which would include with the attached DMLC, consisting of Part I signed on behalf of the competent authority, and Part II, which can be certified by an RO (Standard A5.1.3 paragraph 10).

What the competent authority is to “draw up” and sign is essentially the main content of the DMLC Part I, identifying the relevant national laws or regulations or other measures implementing the requirements of the MLC, 2006 in the country concerned. A standard form for Part I containing the competent authority's signature could be prepared in advance with the ship-specific elements at the top left blank (i.e., the name of ship, IMO number, gross tonnage).

If an RO has been duly authorized by the flag State competent authority to complete and issue the Maritime Labour Certificate, an RO could also be authorized to issue the DMLC Part I to be attached to the Certificate.

C5.1.n. Must the original maritime labour certificate and the declaration of maritime labour compliance (DMLC) be carried on board a ship?

Standard A5.1.3, paragraph 12 of the MLC, 2006 provides that “A current valid maritime labour certificate and declaration of maritime labour compliance ... shall be carried on the ship and a copy shall be posted in a conspicuous place on board where it is available to the seafarers. A copy shall be made available in accordance with national laws and regulations, upon request, to seafarers ...”. The reference to both a “current valid maritime labour certificate and declaration of maritime labour compliance”, which must be kept on board (with an English translation), and the copy which must be posted in a conspicuous place, indicates that both the original and a copy of the Certificate and DMLC are required on board ship.

C5.1.o. What is the period of validity of maritime labour certificate?

Standard A5.1.3 sets out, in paragraph 1, a maximum period of validity of ***five years*** (subject to paragraph 3) for the maritime labour certificate. Since this is a maximum, the flag State's law could provide a shorter period of validity or give the competent authority or duly authorized RO to issue a certificate for a shorter period. This might be a useful thing to do, especially in the early days of the Convention, in order to prevent a large number of certificates from expiring during the same period or to align the period of validity under the MLC, 2006 with that of certificates issued under IMO Conventions.

C5.1.p. When can an Interim maritime labour certificate be issued?

A flag State need not issue interim certificates, but if it chooses to do so, Standard

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A5.1.3, paragraphs 5 to 7 set out the situations when this would be allowed, namely:

- (a) to new ships on delivery;
- (b) when a ship changes flag; or
- (c) when a shipowner assumes responsibility for the operation of a ship which is new to that shipowner.

An interim maritime labour certificate may be issued for a period not exceeding **six months** by the competent authority or a recognized organization duly authorized for this purpose. An interim maritime labour certificate may only be issued following verification that:

- (a) the ship has been inspected, as far as reasonable and practicable, in the 14 areas [see C5.1.h. What is the list of 14 areas to be certified?];
- (b) the shipowner has demonstrated to the competent authority or RO that the ship has adequate procedures to comply with the Convention;
- (c) the master is familiar with the requirements of the Convention and the responsibilities for implementation; and
- (d) relevant information has been submitted to the competent authority or RO to produce a declaration of maritime labour compliance.

C5.1.q. Must an interim maritime labour certificate have a declaration of maritime labour compliance attached to it?

Under paragraph 8, of Standard A5.1.3, a declaration of maritime labour compliance need not be issued for the period of validity of the interim certificate.

C5.1.r. Can an interim maritime labour certificate be renewed?

Under paragraphs 6 and 8 of Standard A5.1.3, an interim maritime labour certificate may be issued for a period not exceeding six months. No further interim certificate may be issued following the initial six months..

C5.1.s. When would a maritime labour certificate cease to be valid?

Standard A51.3, paragraph 14 sets out the situations when a maritime labour certificate would cease to be valid, namely:

- (a) if the relevant inspections are not completed within the periods prescribed by the MLC, 2006;
- (b) if the certificate is not endorsed following an intermediate inspection;
- (c) when a ship changes flag;
- (d) when a shipowner ceases to assume the responsibility for the operation of a ship; and
- (e) when substantial changes have been made to the structure or equipment covered in Title 3 of the MLC, 2006.

C5.1.t. Can a maritime labour certificate be withdrawn?

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Under Standard A5.1.3, paragraphs 16 and 17 a maritime labour certificate must be withdrawn if there is evidence that the ship concerned does not comply with the requirements of this Convention and any required corrective action has not been taken [see C5.1.s. When would a maritime labour certificate cease to be valid?].

C5.1.u. Does a change of the RO affect the validity of already issued certificates?

Regulation 5.1.1 paragraph 3, provides that:

3. In establishing an effective system for the inspection and certification of maritime labour conditions, a Member may, where appropriate, authorize public institutions or other organizations (including those of another Member, if the latter agrees) which it recognizes as competent and independent to carry out inspections or to issue certificates or to do both. In all cases, the Member shall remain fully responsible for the inspection and certification of the working and living conditions of the seafarers concerned on ships that fly its flag.

Since the flag State remains fully responsible for the inspection and certification irrespective of the delegation [see C5.1.b. Can a flag State delegate its responsibilities?], a change of RO would not affect the validity of already issued certificates.

C5.1.v. Are there any model guidelines for flag State inspectors?

Standard A5.1.4, paragraph 7 of the MLC, 2006 requires inspectors to be issued with clear guidelines as to the tasks to be performed and be provided with proper credentials. In 2008 tripartite meetings of experts adopted the [Guidelines for flag State inspections under the Maritime Labour Convention, 2006](#) to assist countries to implement Title 5 of the MLC, 2006. This was in response to a resolution adopted by the International Labour Conference at the same time as the MLC, 2006. The resolution explained that the success of the Convention will depend, among others, upon the uniform and harmonized implementation of flag State responsibilities in accordance with its relevant provisions, and that given the global nature of the shipping industry, it is important for flag State inspectors to receive proper guidelines for the performance of their duties. Each country may have its own practices relating to flag State inspection. The international guidelines are designed to be of practical assistance to governments in drafting their own national guidelines.

C5.1.w. Can a flag State inspector prevent a ship from sailing?

Standard A5.1.4, paragraph 7 provides that inspectors, issued with clear guidelines as to the tasks to be performed and provided with proper credentials, shall be empowered:

- (a) to board a ship that flies the flag of the country concerned;
- b) to carry out any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the standards are being strictly observed; and
- (c) to require that any deficiency is remedied and, where they have grounds to believe that deficiencies constitute a serious breach of the requirements of the Convention (including

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seafarers' rights), or represent a significant danger to seafarers' safety, health or security, to prohibit a ship from leaving port until necessary actions are taken.

C5.1.x. What is an on-board complaints procedure?

Ships are required, by Regulation 5.1.5 paragraph 1, to have on-board procedures for the fair, effective and expeditious handling of seafarer complaints alleging breaches of the requirements of this Convention (including seafarers' rights). The requirement relating to these procedures is one of the matters in the 14 areas that must be inspected and certified.

C5.1.y. Who is responsible for developing the on-board complaint procedures?

The obligation (under Standard A5.1.5, paragraph 2 of the MLC, 2006) is on countries to adopt laws or regulations to ensure that appropriate on-board complaint procedures are in place. Guideline B5.1.5, paragraph 1 recommends [see A12. What is the status of the Guidelines in Part B of the Code?], subject to any relevant provisions of an applicable collective agreement, that a model for those procedures should be developed by the competent authority [see A25. Who is the competent authority?] in close consultation with shipowners' and seafarers' organizations.

C5.1.z. Are there any models for on-board complaint procedures?

The MLC, 2006 does not contain a model, but sets out some basic principles in Regulation 5.1.5 and Standard A5.1.5. These principles include the aim to resolve complaints at the lowest possible level, but to allow a right to appeal directly to the master or appropriate external authorities, as well as the right for the seafarer to be accompanied or represented, and to receive impartial advice, and safeguards against victimization for filing complaints. Guideline B5.1.5 [see A12. What is the status of the Guidelines in Part B of the Code?] suggests some principles detailed rules as a basis for discussion in the development of the on-board procedures.

C5.1.a.a. Where would seafarers get a copy of a ship's on-board complaints procedure?

Seafarers must be provided with a copy of the on-board complaint procedures applicable on their ship in addition to a copy of their seafarers' employment agreement (Standard A5.1.5, paragraph 4).

C5.1.b.b. Must seafarers always use the ship's on-board complaint procedure?

Although on-board complaint procedures must seek to resolve complaints at the lowest level possible, seafarers have a right to complain directly to the master and, where they consider it necessary, to appropriate external authorities (Standard A5.1.5, paragraph 2).

C5.1.c.c. Can seafarers complain directly to the flag state competent authority or an

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inspector instead of using the on-board complaint procedure?

[See C5.1.b.b. Must seafarers always use the ship's on-board complaint procedure?].

C5.1.d.d. In the case of a marine casualty, must an official inquiry be held?

Regulation 5.1.6, paragraph 1 of the MLC, 2006 provides that each Member must hold an official inquiry into any serious marine casualty, leading to injury or loss of life, that involves a ship that flies its flag.

REFERENCES:

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

ATTACHMENTS: No.

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