



TECHNICAL CIRCULAR No. 135 of 4th June 2013

To:	All Surveyors/Auditors
Applicable to flag:	All Flags
Subject:	MLC 2006, Title 5, Compliance and enforcement, C5.2 & 5.3 Port State responsibilities
Reference:	MLC, 2006 – Maritime Labour Convention, 2006

MLC 2006, Title 5 Compliance and enforcement, C5.2 & 5.3 Port State responsibilities

C5.2. Port State responsibilities

C5.2.a. What is a port State?

This is the term used to describe the authority under international law for a country to exercise regulatory control with respect to foreign ships that come into its port. Mainly this takes the form of inspecting (often called “Port State control”) the ship and conditions on board the ship. It can be regarded as a form of international cooperation under Article I, paragraph 2 of the MLC, 2006 whereby the port State role supports the efforts of flag States by inspecting ships to ensure that they remain compliant between inspections by the flag State. This important role is also referred to in Article V, paragraphs 4 and 7 of the MLC, 2006. A country can be and often is, simultaneously a flag State, for purposes of regulating the ships that fly its flag, and a port State with respect to ships of other countries.

C5.2.b. What is the purpose of a port State inspection?

The purpose of the inspection by an authorized officer (a PSCO) of a foreign ship coming into port is to check whether it is in compliance with the requirements of the Convention (including seafarers’ rights).

Customer Service Center

5201 Blue Lagoon Drive, 9TH. Floor,
Miami, Fl., 33126
Tel: 1 (305) 716 4116,
Fax: 1 (305) 716 4117,
E-Mail:

joel@conarinagroup.com

Technical Head Office

7111 Dekadine Ct.
Spring, Tx., 77379
Tel: 1 (281) 370 9363,
1 (713) 204 6380

E-Mail: tho@conarinagroup.com,

houston@conarinagroup.com

C5.2.c. What is port State control?

The term “port State control” arises from arrangements among countries in a region to work together and cooperate with respect to carrying out port State control (inspections) to ensure that ships coming into their ports meet international standards. As noted on the website of the first of these regional arrangements:

... the Paris MOU, is an administrative agreement between the maritime authorities of twenty-four European countries and Canada. In 1978 the ‘Hague Memorandum’ between a number of maritime authorities in Western Europe was developed. It dealt mainly with enforcement of shipboard living and working conditions, as required by ILO Convention No. 147. However, just as the Memorandum was about to come into effect, in March 1978, a massive oil spill occurred off the coast of Brittany (France), as a result of the grounding of the supertanker ‘Amoco Cadiz’. This incident caused a strong political and public outcry in Europe for far more stringent regulations with regard to the safety of shipping. This pressure resulted in a more comprehensive memorandum which covered:

- safety of life at sea,
- prevention of pollution by ships,
- living and working conditions on board ships.

Subsequently, a new, effective instrument known as the Paris Memorandum of Understanding on Port State Control was adopted in January 1982 and was, initially, signed by fourteen European countries. It entered into operation on 1 July 1982. Since then, the Paris MOU has expanded to 27 maritime Administrations.” As noted by the IMO “these inspections were originally intended to be a backup to flag State implementation, but experience has shown that they can be extremely effective, especially if organized on a regional basis. A ship going to a port in one country will normally visit other countries in the region before embarking on its return voyage and it is to everybody's advantage if inspections can be closely coordinated. This ensures that as many ships as possible are inspected but at the same time prevents ships being delayed by unnecessary inspections. The primary responsibility for ships' standards rests with the flag State - but port State control provides a “safety net” to catch substandard ships. IMO has encouraged the establishment of regional port State control organizations and agreements on port State control – Memoranda of Understanding or MOUs

– have been signed covering all of the world's oceans: Europe and the north Atlantic (Paris MOU); Asia and the Pacific (Tokyo MOU); Latin America (Acuerdo de Viña del Mar); Caribbean (Caribbean MOU); West and Central Africa (Abuja MOU); the Black Sea region (Black Sea MOU); the Mediterranean (Mediterranean MOU); the Indian Ocean (Indian Ocean MOU); and the Arab States of the Gulf (GCC MoU (Riyadh MoU)).

C5.2.d. Is a port State required to inspect all foreign ships?

Regulation 5.2.1, paragraph 1 provides that every foreign ship calling, in the normal course of its business or for operational reasons, in the port of an ILO Member *may* be the subject of inspection in accordance with paragraph 4 of Article V of the MLC, 2006 for the

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5201 Blue Lagoon Drive, 9TH. Floor,
Miami, Fl., 33126
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Fax: 1 (305) 716 4117,
E-Mail:

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7111 Dekadine Ct.
Spring, Tx., 77379
Tel: 1 (281) 370 9363,
1 (713) 204 6380

E-Mail: tho@conarinagroup.com,

houston@conarinagroup.com

purpose of reviewing compliance with the requirements of the Convention (including seafarers' rights) relating to the working and living conditions of seafarers on the ship. As indicated by the word "may", the inspection of foreign ships is permissive rather than mandatory under the MLC, 2006.

C5.d.e. Who is an "authorized officer" for port State control?

The MLC, 2006 does not define the term authorized officers; so this would be a matter for national implementation.

The tripartite experts' meeting in September 2008 adopted the [Guidelines for port State control officers carrying out inspections under the Maritime Labour Convention, 2006](#) to assist port State control officers to carry out inspections of foreign ships coming into their ports [see A14. What is the status of the 2008 ILO Guidelines, for flag State inspections and port State control officers?]. They provide the following tripartite guidance:

2.2. Port State control officers

30. Port State control inspection under the MLC, 2006, is to be carried out by "authorized" officers (Regulation 5.2.1, paragraph 3). As mentioned earlier, the term "port State control officer (PSCO)" is adopted in these guidelines. This means that persons must be authorized, by the competent authority in the port State to carry out these inspections and should carry official identification that can be shown to ships' masters and to seafarers.

31. PSCOs should also be given sufficient power under relevant national laws or regulations to carry out their responsibilities under the MLC, 2006, in the event that a port State authority decides to inspect a foreign ship.

32. The MLC, 2006, does not set out specific requirements with respect to PSCOs, but port State control is to be carried out in accordance with the MLC, 2006, and "... other applicable international arrangements governing port State control inspections" (Regulation 5.2.1, paragraph 3). This means that existing requirements and international guidance with respect to qualifications and training required for persons functioning as a PSCO would be generally relevant.

C5.2.f. Is there guidance or a model for a port State inspection and monitoring system and to provide guidance to authorized officers?

The tripartite experts' meeting in September 2008 adopted the [Guidelines for port State control officers carrying out inspections under the Maritime Labour Convention, 2006](#) to assist port State control officers to carry out inspections of foreign ships coming into their ports [see A14. What is the status of the 2008 ILO Guidelines, for flag State inspections and port State control officers?]. The need to develop international guidelines and related national guidance for port State control officers had, in fact, been foreseen in the MLC, 2006 itself. The MLC, 2006 begins, in Article I, by requiring that: "Members shall cooperate with each other for the purpose of ensuring the effective

Customer Service Center

5201 Blue Lagoon Drive, 9TH. Floor,
Miami, Fl., 33126
Tel: 1 (305) 716 4116,
Fax: 1 (305) 716 4117,
E-Mail:

joel@conarinagroup.com

Technical Head Office

7111 Dekadine Ct.
Spring, Tx., 77379
Tel: 1 (281) 370 9363,
1 (713) 204 6380

E-Mail: tho@conarinagroup.com,

houston@conarinagroup.com

implementation and enforcement of the Convention.” More specifically Regulation 5.2.1, paragraph 3 provides that “Inspections in a port shall be carried out by authorized officers in accordance with the provisions of the Code and other applicable international arrangements governing port State control inspections in the Member”. Standard A5.2.1, paragraph 7 provides that “Each Member shall ensure that its authorized officers are given guidance, of the kind indicated in Part B of the Code, as to the kinds of circumstances justifying detention of a ship under paragraph 6 of this Standard”. Finally, Guideline B.5.2.1, paragraph 3 provides that “Members should cooperate with each other to the maximum extent possible in the adoption of internationally agreed guidelines on inspection policies, especially those relating to the circumstances warranting the detention of a ship”. Developing guidelines for port State control officers was an important response to the call for “internationally agreed guidelines”, in so far as the implementation of the MLC, 2006 is concerned. However, a harmonized approach to port State control is an ongoing process that includes cooperation among countries and coordination of maritime inspection under several maritime Conventions, not just the MLC, 2006 but also, particularly, the relevant IMO Conventions.

C5.2.g. What is to be inspected during port State control?

The purpose of the inspection by PSCOs is to determine whether a ship is in compliance with the requirements of the Convention (including seafarers’ rights) (Article IV, paragraph 5). These requirements are laid down in the Articles and Regulations and in Part A (Standards) of the Code of the MLC, 2006, relating to the working and living conditions of seafarers on the ship (Regulation 5.2.1, paragraphs 1 and 3). Part B (guidelines) of the MLC, 2006, Code is not subject to inspection by port State control. Port State control inspections are, in principle, concerned with the 14 areas of working and living conditions on the ship (Standard A5.2.1, paragraph 2) that are listed in Title 5, Appendix A5-III of the MLC, 2006, and are to be certified by flag States as being in compliance with the related requirements of the Convention. However, the PSCO may also take action in the case of non-compliance with any other requirement of the Convention relating to working and living conditions (Regulation 5.2.1, paragraph 1). The details for the implementation of the MLC, 2006 requirements are to be prescribed, in accordance with the Convention, in the national laws or regulations, collective agreements or other measures in the flag State concerned. On ships carrying a maritime labour certificate, a summary of the relevant national standards adopted to implement the MLC, 2006, in the 14 areas referred to will be set out in Part I of the DMLC attached to the certificate. These 14 areas of flag State certification (listed in Appendix A5-I to the MLC, 2006) are the same as the 14 areas that are in principle to be covered by a port State control inspection (listed in Appendix A5-III). As indicated below, the certificate and DMLC should be the starting point in the inspection process as they constitute prima facie evidence that the ship is in compliance with the requirements of the

Customer Service Center

5201 Blue Lagoon Drive, 9TH. Floor,
Miami, Fl., 33126
Tel: 1 (305) 716 4116,
Fax: 1 (305) 716 4117,
E-Mail:

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7111 Dekadine Ct.
Spring, Tx., 77379
Tel: 1 (281) 370 9363,
1 (713) 204 6380

E-Mail: tho@conarinagroup.com,

houston@conarinagroup.com

MLC, 2006 (including seafarers' rights).

PSCOs may also be entrusted with handling and investigating complaints made by seafarers on ships visiting their ports. If complaint handling is not part of their functions, they should be able to direct seafarers to the competent official for handling complaints or to receive complaints for transmittal to the competent official.

C5.2.h. If a ship's maritime labour certificate and declaration of maritime labour compliance appear to be in order can there be any further inspection?

In accordance with Regulation 5.2.1, paragraph 2 and Standard A5.2.1, paragraph 1 of the MLC, 2006, the maritime labour certificate and the declaration of maritime labour compliance must be accepted as prima facie evidence of compliance with the requirements of the Convention. Accordingly, the inspection in ports must be limited to a review of the certificate and declaration except in the following four cases:

(a) the required documents are not produced or maintained or are falsely maintained or the documents produced do not contain the information required by the Convention or are otherwise invalid; or

(b) there are clear grounds for believing that the working and living conditions on the ship do not conform to the requirements of the Convention; or

(c) there are reasonable grounds to believe that the ship has changed flag for the purpose of avoiding compliance with the Convention; or

(d) there is a complaint alleging that specific working and living conditions on the ship do not conform to the requirements of this Convention.

In any of those cases a more detailed inspection may be carried out to ascertain the working and living conditions on board the ship. Such inspection must in any case be carried out where the working and living conditions believed or alleged to be defective could constitute a clear hazard to the safety, health or security of seafarers or where the authorized officer has grounds to believe that any deficiencies constitute a serious breach of the requirements of this Convention (including seafarers' rights).

C5.2.i. When may the foreign ships of non-ratifying countries be inspected in a port State?

Since countries that have not ratified the MLC, 2006 cannot, by definition, produce a maritime labour certificate and declaration of maritime labour compliance issued under the Convention, they can always be the subject of a port State control inspection, especially in the light of the obligation on ratifying countries to ensure no more favourable treatment to ships of non-ratifying countries [see A4. What is meant by the "no more favorable treatment" clause?].

C5.2.j. What if there is a complaint about a matter that is not on the list of 14 areas to be

Customer Service Center

5201 Blue Lagoon Drive, 9TH. Floor,
Miami, Fl., 33126
Tel: 1 (305) 716 4116,
Fax: 1 (305) 716 4117,
E-Mail:

joel@conarinagroup.com

Technical Head Office

7111 Dekadine Ct.
Spring, Tx., 77379
Tel: 1 (281) 370 9363,
1 (713) 204 6380

E-Mail: tho@conarinagroup.com,

houston@conarinagroup.com

certified?

Standard 5.2.1, paragraph 1 authorizes a more detailed inspection to be carried out if there is a complaint alleging that specific working and living conditions on the ship “do not conform to the requirements of this Convention”. An inspection may therefore be carried out where the alleged non-conformity relates to any requirement of the MLC, 2006, and thus not necessarily a requirement coming within the 14 areas of certification and port State control.

C5.2.k. Who can make a complaint under Standard A5.2.1?

Standard A5.2.1, paragraph 3 provides that a “complaint” means information submitted by a seafarer, a professional body, an association, a trade union or, generally, any person with an interest in the safety of the ship, including an interest in safety or health hazards to seafarers on board.

C5.2.l. When can a ship be detained by an authorized port State officer?

Standard A5.2.1, paragraphs 6 and 8 provides that “the authorized officer shall take steps to ensure that the ship shall not proceed to sea” where a ship is found not to conform to the requirements of this Convention and:

(a) the conditions on board are clearly hazardous to the safety, health or security of seafarers; or

(b) the non-conformity constitutes a serious or repeated breach of the requirements of this Convention (including seafarers’ rights).

This detention in port must continue until the above non-conformities have been rectified, or until the authorized officer has accepted a plan of action to rectify them and is satisfied that the plan will be implemented in an expeditious manner.

However, when implementing their responsibilities under Standard A5.2.1, all possible efforts must be made to avoid a ship being unduly detained or delayed (see Standard A5.2.1, paragraph 8).

C5.2.m. What are the onshore complaint handling procedures?

Under Regulation 5.2.2 of the MLC, 2006, a complaint by a seafarer alleging a breach of the requirements of the MLC, 2006 (including seafarers’ rights) may be made to an authorized officer in the port at which the seafarer’s ship has called in accordance with Standard A5.2.2. Appropriate steps must be taken to safeguard the confidentiality of these complaints (Standard A5.2.2, paragraph 7) and the receipt of the complaint should be recorded by the authorized officer.

C5.2.n. Who has to develop these procedures?

Regulation 5.2.2, paragraph 1 provides that each Member must ensure that seafarers on ships calling at a port in the Member’s territory who allege a breach of the requirements of the Convention (including seafarers’ rights) have the right to report such a complaint in

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5201 Blue Lagoon Drive, 9TH. Floor,
Miami, Fl., 33126
Tel: 1 (305) 716 4116,
Fax: 1 (305) 716 4117,
E-Mail:

joel@conarinagroup.com

Technical Head Office

7111 Dekadine Ct.
Spring, Tx., 77379
Tel: 1 (281) 370 9363,
1 (713) 204 6380

E-Mail: tho@conarinagroup.com,

houston@conarinagroup.com

order to facilitate a prompt and practical means of redress. The Member in this context would be the port State.

C5.2.o. Who can make an onshore complaint?

Standard A5.2.2, paragraph 1 allows an onshore complaint to be made “by a seafarer alleging a breach of the requirements of this Convention (including seafarers’ rights)”. Presumably, such a complaint could be made by the seafarer through a representative.

C5.2.p. Who is an authorized officer for purposes of onshore complaint handling?

The MLC, 2006 does not address this question. It could be a port State control officer (PSCO) or another authorized officer.

C5.2.q. Are complaints confidential?

Standard A5.2.2, paragraph 7 requires appropriate steps to be taken to safeguard the confidentiality of complaints made by seafarers.

C5.3. Labour-supplying responsibilities

C5.3.a. What are labour-supplying responsibilities?

Regulation 5.3 establishes obligations with respect to the enforcement of what are called the “labour-supplying responsibilities” of States as set out in Titles 1 to 4 of the MLC, 2006. It also implements Article V, paragraph 1 and 5. These responsibilities include the regulation of seafarer recruitment and placement services and the provision of social security. The provisions under Regulation 5.3 and the Code do not specify the form of legal implementation, and to a large extent effective implementation of the obligation in relevant provisions in Titles 1 to 4 would constitute implementation of this obligation, at least with respect to Regulation 4.5. The main requirements are that:

- the country must establish an effective inspection and monitoring system for enforcing its labour-supplying responsibilities, particularly those regarding the recruitment and placement of seafarers;
- the country must also implement social responsibilities for seafarers that are its nationals or residents or are otherwise domiciled in its territory;
- the country must report on its system for enforcing these obligations in its Article 22 report under the ILO Constitution.

REFERENCES:

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

ATTACHMENTS: No.

Kindest Regards,
Cosmin Bozenovici
Naval Architect – Conarina Technical Head Office

Customer Service Center

5201 Blue Lagoon Drive, 9TH. Floor,
Miami, Fl., 33126
Tel: 1 (305) 716 4116,
Fax: 1 (305) 716 4117,
E-Mail:

joel@conarinagroup.com

Technical Head Office

7111 Dekadine Ct.
Spring, Tx., 77379
Tel: 1 (281) 370 9363,
1 (713) 204 6380

E-Mail: tho@conarinagroup.com,

houston@conarinagroup.com