



NAURU

MARITIME ADMINISTRATION

MARITIME LABOUR CONVENTION (MLC 2006) AND AMENDMENTS 2014 (NMA_C23.2018.Rev.0)

PURPOSE:

To provide relevant information and guidance on compliance with the MLC 2006 and the 2014 amendments.

REFERENCE:

- a) Maritime Labour Convention, 2006 (MLC 2006)
- b) Resolution VII adopted by the 94th (Maritime) Session of the International Labour Conference.
- c) Text for the amendments of 2014 to the Maritime Labour Convention, 2006, approved by the International Labour conference at its 103rd session, Geneva, 11 June 2014.
- d) Guidelines for Flag State Inspections under MLC 2006.

APPLICATION:

This shipping circular applies to all Nauru registered vessels and seafarers as defined under Article II of MLC 2006.

INTRODUCTION:

- 1) The International Labour Organization (ILO), on 23 February 2006, adopted the MLC 2006 as a single international instrument defining a minimum set of requirements governing the working and living conditions for seafarers with the intention of updating standards, and where necessary, simplify complex or overlapping provisions and streamline amendment procedures, to allow for universal application and enforcement.
- 2) The MLC 2006 was drafted to complement other international conventions on ship safety, security and quality and often referred to by ILO as the “fourth pillar” of international maritime regulation alongside the SOLAS, MARPOL, and STCW Conventions.
- 3) The MLC 2006 entered into force on 20 August 2013.
- 4) The 2014 amendments to the MLC 2006 were discussed and agreed at the first meeting of the Special Tripartite Committee (STC), held on 7-11th April 2014, and the amendments were subsequently approved by the 103rd session of the International Labour Conference in Geneva on 11th June 2014 and later entered into force on 18 January 2017.
- 5) The amendments relate primarily to the shipowner’s obligations in respect of the abandonment of seafarers (regulation 2.5), and shipowner’s liability for seafarers (regulation 4.2) and compensation for the death or long-term disability of seafarers due to occupational injury, illness or hazard.

- 6) The amendments stipulate new requirements pertaining to a financial security scheme that must be established.

CONTENTS:

1) APPLICATION TO VESSELS

- a) MLC 2006 applies to all ships, whether publicly or privately owned, ordinarily engaged in commercial activities, other than ships engaged in fishing or in similar pursuits, ships of traditional build such as dhows and junks, warships, and naval auxiliaries.
- b) Although Nauru has not yet ratified to MLC 2006, shipowners may apply the provisions of this shipping circular on a voluntary basis due to the “no more favourable treatment” clause on MLC 2006.
- c) Once Nauru ratifies to MLC 2006, the following ships shall be inspected and certified to be in compliance with the requirements of the convention and carry and maintain a Maritime Labour Certificate:
 - i) Ships of 500 gross tons or over, engaged in international voyages;
 - ii) Ships of 500 gross tons or over, operating from a port, or between ports, in another country; and
 - iii) Other ships, as may be voluntarily requested by a shipowner.
- d) Mobile offshore drilling units (MODUs) are not required to be certified as they are not normally engaged in navigation or international voyages.
- e) The MLC 2006 allows for flexibility in implementation by providing for national determinations, substantial equivalencies, and exemptions and variations under certain provisions.
- f) The requirements in the Code implementing Regulation 3.1, Accommodation and recreational facilities, apply only to ships constructed on or after the date when the Convention entered into force. A ship shall be deemed to have been constructed on the date when its keel is laid or when it is at a similar stage of construction. For ships constructed before that date, the requirements relating to ship construction and equipment that are set out in the Accommodation of Crews Convention (Revised), 1949 (No. 92), and the Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133), shall continue to apply to the extent that they were applicable, prior to that date.

2) APPLICATION TO SEAFARERS

- a) MLC 2006 applies to all seafarers on board the ships to which the Convention applies unless expressly provided otherwise.
- b) MLC 2006 recognizes in Article II, paragraph 3, that there may be doubts whether a particular category or categories of persons who may perform work on board a ship covered by the Convention should be regarded as seafarers. Recognizing that there is need for clarification on this subject to help to provide uniformity in the application in the rights and obligations provided by the Convention, the 94th (Maritime) Session of the International Labour Conference adopted Resolution VII to assist administrations in resolving any difficulties that may arise.

- c) The Administration will consider the following issues, as provided for in Resolution VII, in determining whether certain persons or category of persons are considered seafarers:
 - i) the duration of the stay on board of the persons concerned;
 - ii) the frequency of periods of work spent on board;
 - iii) the location of the person's principal place of work;
 - iv) the purpose of the person's work on board; and
 - v) the protection that would normally be available to the persons concerned with regard to their labour and social conditions to ensure they are comparable to that provided for under the Convention.

- d) This Administration, taking into account the criteria provided in Resolution VII, considers that the following persons will not generally be considered as seafarers for the purpose of MLC 2006:
 - i) Professional Pilots;
 - ii) Port Workers;
 - iii) Guest entertainers;
 - iv) Ship Inspectors/Surveyors;
 - v) Ship Superintendents;
 - vi) Repair and maintenance technicians; and
 - vii) Temporary riding crew such as Suez Canal crew.

3) INSPECTIONS

- a) Vessels who wish to comply voluntarily shall be inspected in accordance with MLC 2006 and will be issued with a "Statement of Compliance to Maritime Labour Convention (SMLC)".

- b) All inspections are to be carried out in accordance with the ILO document, Guidelines for Flag State Inspections under the MLC 2006.

- c) When an inspection is conducted or when measures are taken under the MLC 2006, the Recognized Organization (RO), or other authorized inspector, shall make all reasonable efforts to avoid a ship being unreasonably detained or delayed.

- d) Initial Inspections
 - i) Ships shall undergo an initial inspection and receive a valid SMLC or Interim SMLC.

 - ii) To verify that the MLC 2006 requirements are being complied with and that the shipowner's measures have been correctly implemented and are being followed, an inspector shall obtain supporting objective evidence by:
 - (1) inspecting the relevant areas of the ship;
 - (2) examining further documentation such as passports or other official documents, medical certificates, training records, crew lists and payroll records, seafarer employment agreements, safe manning documents and work and rest schedules; and
 - (3) interviewing, in private, a representative number of seafarers, taking account of the need to preserve confidentiality and of the seafarers' work and rest schedules.

e) Intermediate Inspections

Ships shall undergo an intermediate inspection to ensure continuing compliance with the MLC 2006 requirements and shall be conducted between the second and third anniversary dates of the SMLC and, if satisfactory, shall be endorsed by the RO. (Anniversary date means the day and month of each year which corresponds to the date of expiry of the SMLC). The scope and depth of the intermediate inspection shall be equal to that of a Renewal Inspection for renewal of the SMLC.

f) Renewal Inspections

Prior to expiry of the SMLC, ships will need to carry out a renewal inspection that encompasses inspections for all requirements (as per initial inspection) and be renewed as follows:

- i) When the renewal inspection is completed within three (3) months before the expiry of the existing SMLC, the new SMLC shall be valid from the date of completion of the renewal inspection for a period not exceeding five (5) years from the date of expiry of the existing SMLC.
- ii) When the renewal inspection is completed more than three (3) months before the expiry date of the existing SMLC, the new SMLC shall be valid for a period not exceeding five (5) years starting from the date of completion of the renewal inspection.

4) CERTIFICATION

- a) The SMLC, issued by the relevant RO, verifies that the working and living conditions of seafarers on board a ship meet the MLC 2006 requirements.
- b) A RO shall issue or renew a SMLC to a vessel after completion of a satisfactory inspection as detailed in the Declaration of Maritime Labour Compliance (DMLC) Part I.
- c) The DMLC is made up of 2 parts:
 - i) DMLC Part I is the statement drawn up by the Administration that references or describes the national laws, regulations or provisions with respect to the 16 areas of the MLC 2006 that are subject to inspection for certification. It also records any flexibility, substantial equivalencies or exemptions which may have been applied to the ship after consultation with the relevant seafarers' organization and the shipowner. The Administration shall issue DMLC Part I in ELECTRONIC format upon receipt of a duly completed Form DMLC I.
 - ii) DMLC Part II is the statement drawn up by the shipowner / operator identifying the measures adopted to ensure ongoing compliance as detailed in the DMLC Part I and has to be certified compliant by the relevant RO prior to issuance of the SMLC. It should include the following:
 - (1) when ongoing compliance shall be verified;
 - (2) persons responsible for verification;
 - (3) records to be taken;

- (4) procedures to be followed when non-compliance is noted; and
 - (5) general international requirements concerning advances in technology and scientific findings concerning workplace design.
- d) A complete DMLC must consist of Part I and Part II as described above and both Parts must be submitted to the RO so that they can be combined for issuance of the SMLC to which the DMLC must be attached.
- e) An Interim SMLC may be issued:
- i) to new ships on delivery;
 - ii) when a ship changes flag; or
 - iii) when a shipowner assumes responsibility for the operation of a ship which is new to that shipowner.
- f) An Interim SMLC must be endorsed by a relevant RO and may only be issued following verification that:
- i) the ship has been inspected, as far as reasonable and practicable, for items listed in DMLC Part I;
 - ii) the shipowner has demonstrated to the RO that the ship has adequate procedures to comply with the MLC 2006;
 - iii) the master is familiar with the MLC 2006 and the responsibilities for implementation; and
 - iv) relevant information has been submitted to the RO to produce a DMLC.
- g) A DMLC need not be issued for the period of validity of the Interim SMLC.
- h) ROs shall develop templates for the SMLC and Interim SMLC which conform to the model prescribed by MLC 2006.
- i) A copy of these certificates must be posted in a conspicuous place on board the ship to be available to the seafarers on board.
- j) The SMLC and the DMLC must be in English-language or translated in English-language for vessels engaged on international voyages.
- k) The SMLC shall have a validity period of five (5) years, and shall be subject to an intermediate inspection between the second and third anniversary dates of the SMLC.
- l) The Interim SMLC shall have a validity period not exceeding six (6) months. An inspection in accordance with DMLC Part I shall be carried out before the expiry of the Interim SMLC in order to issue of the full term SMLC. No further Interim SMLC may be issued after this initial six (6) months.
- m) A SMLC or Interim SMLC shall cease to be valid in any of the following cases:
- i) the relevant inspections are not completed within the specified time periods;
 - ii) the SMLC is not endorsed by the RO;
 - iii) when a ship changes flag;
 - iv) when a shipowner ceases to assume the responsibility for the operation of a ship; and

- v) when substantial changes have been made to the structure or equipment covered in Title 3 of the MLC2006, "Accommodation, Recreational Facilities, Food and Catering."
- n) SMLCs issued shall be converted to full Maritime Labour Certificates when MLC 2006 is ratified by Nauru.

5) DEFICIENCIES

- a) A RO, or other authorized inspector, shall require the rectification of deficiencies in seafarers' working and living conditions that have been identified as the result of an inspection and shall carry out inspections in this regard at the request of a port State.
- b) Where there are grounds to believe that deficiencies constitute a serious breach of the MLC 2006 or represent a significant danger to seafarers' safety, health or security, an inspector shall, with the authorization of this Administration, prohibit a ship from leaving port until necessary corrective actions are taken.
- c) A SMLC or Interim SMLC shall be withdrawn by the RO or the Administration if there is evidence that a ship does not comply with the requirements of MLC 2006 and that the required corrective action has not been taken. When considering the withdrawal of a SMLC, the seriousness and frequency of the deficiencies shall be considered.
- d) Where there is no clear breach of the requirements that endangers the safety, health or security of the seafarers and where there is no prior history of similar breaches, a RO shall have the discretion to give advice instead of instituting or recommending withdrawal of the SMLC.
- e) If the Administration receives a complaint or sufficient evidence that a Nauru registered vessel does not conform to the requirements of MLC 2006, or identifies that there are serious deficiencies in the implementation of measures set out in the DMLC, then the Administration shall undertake to investigate the matter and ensure that action is taken to remedy the deficiencies identified.

6) RECORD KEEPING

- a) A SMLC shall have its records maintained and made publicly available by ROs.
- b) Inspection reports in English shall be submitted to this Administration by ROs, and, if necessary, a copy to the master of the ship in the working language on board which a copy shall be posted on the ship's notice board.
- c) Inspection records shall be kept by the master who shall record any significant deficiencies found during the inspection and their date of remedy. This record, if not in English, shall be accompanied by an English-language translation and appended to the DMLC so that it is available to seafarers, Flag State inspectors, authorized officers in port States and shipowners' and seafarers' representatives.
- d) An investigation report shall be submitted by the RO, or other authorized inspector, to the Administration as soon as practicable in the event of an investigation concerning a major incident, but in any case not later than one (1) month following the conclusion of the investigation.

- e) If there is a change of flag, the RO shall, upon notification to the Administration, transmit to the competent authority of the gaining flag State existing copies of the SMLC and DMLC carried by the ship and, if applicable, copies of the relevant inspection reports if the competent authority of the gaining flag State requests them within three (3) months after the change of flag has taken place.

7) SEAFARER COMPLAINTS

- a) The shipowner shall provide for on-board procedures for the fair, effective and expeditious handling of seafarer complaints alleging breaches of the requirements of the MLC 2006, including seafarers' rights.
- b) Please refer to shipping circular NMC4.2013 - "On-board Complaint Procedures"

8) CONFIDENTIALITY

RO inspectors, or other authorized inspectors, shall treat the source of any grievance or complaint alleging a danger or deficiency in relation to seafarers' working and living conditions or a violation of laws and regulations as confidential, and give no intimation to the shipowner, the shipowner's representative or the operator of the ship that an inspection was made as a consequence of such a grievance or complaint.

9) AMENDMENTS TO REGULATION 2.5 OF MLC 2006

- a) A new Standard A.2.5.2 establishes the requirements for shipowners to ensure that all seafarers are covered by a financial security provider for repatriation even in the event of abandonment, and the financial security shall cover:
 - i) Outstanding wages and other entitlements due from the shipowner to the seafarer in accordance with their seafarers' employment agreement and any applicable collective agreement, limited to four (4) months of any such outstanding wages and four (4) months of any such outstanding entitlements;
 - ii) All expenses reasonably incurred by the seafarer, including the cost of repatriation which shall cover travel by appropriate and expeditious means; and
 - iii) The essential needs of the seafarer which includes items such as: adequate food, clothing where necessary, accommodation, drinking water supplies, essential fuel for survival on board the ship, necessary medical care, passage and transport of personal effects, and any other reasonable costs or charges from the act or omission constituting the abandonment until the seafarer's arrival home.
- b) A certificate or other documentary evidence of financial security issued by a financial security provider shall be posted in a conspicuous place on board and easily available to the seafarers and shall be in English or accompanied by an English translation. If there is more than one financial security provider providing the cover, then the certificate or other documentary evidence of each provider shall be carried on board.

10) AMENDMENTS TO REGULATION 4.2 OF MLC 2006

- a) The amendments to Standard A.4.2 and introduction of Standard A.4.2.2 establishes the requirements for shipowners to ensure that all seafarers are covered by a financial security provider for contractual claims which refer to any claim relating to death or long-term disability of a seafarer due to an occupational injury, illness or hazard as set out in the seafarers' employment agreement and any applicable collective agreement.
- b) A certificate or other documentary evidence of financial security issued by a financial security provider shall be posted in a conspicuous place on board and easily available to the seafarers and shall be in English or accompanied by an English translation. If there is more than one financial security provider providing the cover, then the certificate or other documentary evidence of each provider shall be carried on board.

11) SHIPOWNERS' RESPONSIBILITY

- a) The amendments specify various requirements for the financial security and place the obligation on shipowners to ensure that they have the financial security that meets the requirements of MLC 2006, as amended; the Regulations do not apply directly to financial security providers, since they are largely located outside the jurisdiction of the Administration.
- b) The new Appendix A2-I and Appendix A4-I require the financial security provider to provide a certificate with an attestation that the financial security meets the requirements of Standard A.2.5.2 and A.4.2.1 – therefore it is envisaged that most of the practical compliance measures will be undertaken by the financial security provider in order that they can provide this attestation to shipowners.

Application Form DMLC I and Form DMLC II can be downloaded at: www.naurumaritime.com

For further assistance, please do not hesitate to contact the Administration at: flag@naurumaritime.com.