

KPI MLC Information Notice MLCIN October-2012

(Reiteration of Legal Requirements)

The MLC requirements will enter into force on 20.August.2013. This Information notice has been extracted from the reliable international sources & expertise in order to reiterate the various aspects of the regulations.

It may be a high time the administrations & companies focused on the highlights.

➤ **The aims of the MLC:**

The Convention sets out seafarers' rights to decent working conditions on a wide range of subjects and aims to be globally applicable, easily understandable, readily adaptable and uniformly enforced. It has been designed to become a global instrument known as the "fourth pillar" of the international regulatory regime for quality shipping, complementing the key Conventions of the International Maritime Organisation (IMO), namely, SOLAS, STCW and MARPOL.

The MLC will ensure that seafarers are guaranteed equal and acceptable conditions no matter which flag they sail under. It aims to create a level playing field and contains a number of principles such as non discrimination on the basis of a seafarer's race, colour, gender, religion, political opinion, national extraction, or social origin. It also seeks to provide new rights to seafarers with respect to employment benefits, health and safety and accommodation.

Member States are given a great deal of flexibility as to how the Convention is applied, implemented and enforced. One aspect of this is the way in which the Convention is structured. The first part of the MLC comprises a number of articles setting out its purpose and how it is to be ratified, enforced, applied, amended etc. Articles III and IV, for example, set out the fundamental rights and principles and seafarers' employment and social rights. At its core is the requirement that each Member State shall satisfy itself that the provisions of its law and regulations respect, in the context of the Convention, the fundamental rights to:

- (a) Freedom of association and the effective recognition of the right to collective bargaining;
- (b) The elimination of all forms of forced or compulsory labour;
- (c) The effective abolition of child labour; and
- (d) The elimination of discrimination in respect of employment and occupation.

In addition, Article IV provides that every seafarer has the right to:

1. A safe and secure workplace that complies with safety standards.
2. A right to fair terms of employment.
3. A right to decent working and living conditions on board ship.
4. A right to health protection, medical care, welfare measures and other forms of social protection.

Article IV also provides that each Member State shall ensure, within the limits of its jurisdiction, that the seafarers' employment and social rights are fully implemented in accordance with the requirements of the Convention.

Unless specified otherwise, such implementation may be achieved through national laws or regulations, through applicable collective bargaining agreements or through other measures or in practice.

Article V sets out the responsibilities for implementation and enforcement. Each Member State shall implement and enforce laws or regulations or other measures that it has adopted to fulfil its commitments under the Convention with respect to ships and seafarers under its jurisdiction. Each Member State shall effectively exercise its jurisdiction and control over ships that fly its flag by establishing a system for ensuring compliance with the requirements of the Convention, including regular inspections, reporting, monitoring and legal proceedings under applicable laws. Article V also contains a "no more favourable treatment" clause which effectively means that, once the MLC is in force, no advantage will be gained by registering with a non-ratifying State.

The MLC Convention comprises three different but related parts: the Articles, the Regulations and the Code. The Code contains the details for the implementation of the Regulations. The MLC is divided into five "titles" which make up the Code.

➤ **The MLC Titles:**

- Title 1: Minimum requirements for seafarers to work on a ship;
- Title 2: Conditions of employment;
- Title 3: Accommodation, recreational facilities, food and catering;
- Title 4: Health protection, medical care, welfare and social security protection and;
- Title 5: Compliance and enforcement.

Each title is divided into two sections. The first section sets out articles containing broad principles and obligations, compliance with which is mandatory. The second section is then divided into two parts: A and B. Part A sets out mandatory regulations and standards each signatory State must implement; and Part B sets out non mandatory guidelines on how Part A should be interpreted and implemented.

Although the guidelines in Part B are not mandatory, they cannot be disregarded because failure to follow the guidelines will result in the signatory State being required to justify itself to the ILO's monitoring committee.

❖ ***TITLE (1) Minimum requirements for seafarers to work on a ship:***

Title 1 sets out the regulations, standards and guidelines regarding the minimum age for persons employed on board a ship, medical certification, training and qualifications and recruitment and placement. In broad terms, the requirements are as follows:

- ✓ Any employment, engagement or work on board a ship of any person under the age of 16 is prohibited, as is night work for those under 18
- ✓ The employment, engagement or work of seafarers under the age of 18 is prohibited where the work is likely to jeopardise their health or safety

- ✓ All seafarers must be certified medically fit for sea service; certification shall be in English by a duly qualified medical practitioner
- ✓ All seafarers must be trained or certified as competent or otherwise qualified to perform their duties on board the ship. All training and certification must be in accordance with the mandatory instruments adopted by the IMO
- ✓ All seafarers shall have access to an efficient, adequate and accountable system for finding employment on board ship without charge to the seafarer
- ✓ Seafarer recruitment and placement services operating in a member's territory shall conform to the standards set out in the Code
- ✓ Each Member State shall require, in respect of seafarers who work on ships that fly its flag, that ship-owners who use seafarer recruitment and placement services that are based in countries or territories in which the Convention does not apply, that those services conform to the requirements set out in the Code.

❖ *TITLE (2) Conditions of employment:*

Title 2 sets out the regulations, standards and guidelines regarding seafarers' employment agreements, wages, hours of work and hours of rest, entitlements to leave, repatriation, compensation for the ship's loss or foundering, manning levels and career and skill development and opportunities for seafarers' employment.

Of the estimated 1.2 million people who work on ships around the world, many have, until now, not been clearly classified as "seafarers". Those who work on board ships, but who are not involved with navigation or operation of the ship, such as personnel on board passenger ships, have generally been excluded from the definition of "seafarers". This will change under the MLC. Under the MLC, seafarers are defined as any persons who are employed or engaged or work in any capacity on board ships covered by the MLC. These ships include all ships ordinarily engaged in commercial activities (including yachts), other than ships which navigate exclusively in inland waters or waters within, or closely adjacent to sheltered waters or areas where port regulations apply, and ships engaged in fishing or similar pursuits or ships of traditional build such as dhows and junks. The Convention does not apply to warships or naval auxiliaries.

In terms of the actual protections afforded to seafarers, the MLC contains a number of key provisions relating to working conditions and pay:

*** Regulation 2.1 – Seafarers' employment agreements:**

- ✓ Seafarers shall be provided with a fair employment agreement, a clearly written, legally enforceable agreement consistent with the standards set out in the Code
- ✓ Letters of employment shall incorporate any applicable collective bargaining agreement and shall be signed by both the seafarer and the ship-owner or a representative of the ship-owner
- ✓ Seafarers shall be given an opportunity to examine and seek advice on the agreement before signing
- ✓ The employment conditions, including any collective bargaining agreement, shall be available on board to seafarers, including the ship's master and shall be available for review by the relevant

inspecting authorities. Contract terms shall generally be available in the English language.

***Regulation 2.2 – Wages:**

- ✓ Seafarers shall be paid for their work regularly and in full in accordance with their employment agreements. Payment of wages shall be made at no greater than monthly intervals
- ✓ Seafarers shall be given a monthly account of payments due and the amounts paid, including wages, additional payments and the rate of exchange used where a payment has been made in a currency or at a rate different from the one agreed to
- ✓ Seafarers shall be provided with means to transmit all or part of their earnings to their families, dependants or legal beneficiaries.

***Regulation 2.3 – Hours of work and hours of rest:**

- ✓ Member States shall ensure that the hours of work or hours of rest for seafarers are regulated. In determining the national standards, each Member State shall take account of the danger posed by fatigue of seafarers, especially those whose duties involve navigational safety and secure operation of the ship
- ✓ A normal working day is eight hours with one day of rest per week and rest on public holidays
- ✓ The maximum hours of work shall not exceed 14 hours in any 24 hour period and 72 hours in any seven day period
- ✓ The minimum hours of rest shall not be less than ten hours in any 24 hour period and 77 hours in any seven day period
- ✓ Hours of rest may be divided into no more than two periods, one of which shall be at least six hours in length, and the intervals between consecutive periods of rest shall not exceed 14 hours
- ✓ The master of a ship may require a seafarer to perform any hours of work necessary for the immediate safety of the ship, persons on board or cargo, or for the purpose of giving assistance to other ships or persons in distress at sea.

***Regulation 2.4 – Entitlement to leave:**

- ✓ All seafarers shall be given annual leave with pay entitlement calculated on the basis of a minimum of 2.5 calendar days per month of employment. Justified absences from work shall not be considered as annual leave
- ✓ Seafarers shall be granted shore leave to benefit their health and well-being and with the operational requirements of their positions.

***Regulation 2.5 – Repatriation:**

- ✓ Seafarers have a right to be repatriated at no cost to themselves in the circumstances and under the conditions specified in the Code
- ✓ Each Member State shall require ships that fly its flag to provide financial security to ensure that seafarers are duly repatriated in accordance with the Code.

The MLC incorporates limited requirements for financial security in respect of certain crew claims namely:

- Repatriation - including repatriation in cases of a ship-owner's insolvency (effective abandonment); and
- Compensation for illness, injury and death of a crew member.

These claims are generally covered under a P & I Club entry. However, under the MLC an owner has no defences in respect of such claims, other than the wilful misconduct of the seafarer, and therefore remains liable even if they arise from war, terrorism, insolvency or biochemical attack, for which Club cover is either limited or not available.

The conditions of employment under Title 2 also provide that seafarers shall be compensated for loss of employment if caused by loss or foundering of the ship. The total indemnity payable to any one seafarer may be limited to two months' wages.

Finally, in order to provide the maritime sector with a stable and competent workforce, each Member State shall have national policies that encourage career and skill developments and employment opportunities for seafarers.

❖ *TITLE (3) Accommodation, recreational facilities, food and catering:*

Title 3 sets out the regulations, standards and guidelines regarding accommodation, recreational facilities, and food and catering.

Regulation 3.1 provides that each Member State shall ensure that ships that fly its flag provide and maintain decent accommodation and recreational facilities for seafarers working or living on board, or both, consistent with promoting the seafarers' health and well-being. Particular attention is given to the size of rooms and other accommodation spaces, heating and ventilation, noise and vibration and other ambient factors, sanitary facilities, lighting and hospital accommodation.

The requirements in the Code implementing this regulation which relate to ship construction and equipment apply only to ships constructed on or after the date when the Convention comes into force for the Member State concerned. 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. Regulation 3.2 provides that each Member State shall ensure that ships that fly its flag carry on board and serve food and drinking water of appropriate quality, nutritional value and quantity that adequately covers the requirements of the ship and takes into account the differing cultural and religious backgrounds and must be prepared by trained and qualified cooks. Seafarers shall be provided with food free of charge during their period of engagement. No seafarer under the age of eighteen shall be employed or engaged or work as a ship's cook.

❖ *TITLE (4) Health protection, medical care, welfare and social security protection:*

Title 4 sets out the regulations, standards and guidelines regarding health protection, medical care, welfare and social security protection.

The MLC seeks to protect the health of seafarers and ensure prompt access to medical care on board ship and ashore.

Under Regulation 4.1, Member States are required to ensure that all seafarers on ships that fly its flag are covered by adequate measures for the protection of their health, including essential dental care, at no cost to them and that they have access to prompt and adequate medical care

whilst working on board. Member States are also required to ensure that seafarers on board ships in its territory who are in need of immediate medical care are given access to medical facilities on shore. Seafarers are to be afforded health protection and medical care as comparable as possible to that which is generally available to workers ashore, including prompt access to the necessary medicines, medical equipment and facilities for diagnosis and treatments and to medical information and expertise.

Seafarers must be given the right to visit a qualified medical doctor or dentist without delay in ports of call, where practicable.

All ships are required to carry a medicine chest, medical equipment and a medical guide. Ships carrying 100 or more persons and ordinarily engaged on international voyages of more than three days duration shall carry a qualified medical doctor who is responsible for providing medical care. Ships which do not carry a medical doctor are required to have either at least one seafarer on board who is in charge of medical care and administering medicine as part of their regular duties or at least one seafarer on board competent to provide first aid. Any seafarer designated to provide first aid shall have training that meets the requirements of the STCW. Ships are also required to have access to 24/7 medical support, including specialist advice by radio or satellite communication.

Regulation 4.2 aims to protect seafarers and their dependants from the financial consequences of sickness, injury or death occurring in connection with their employment. Ship-owners shall be liable for the costs of seafarers working on their ships in respect of sickness and injury occurring between the date of commencing duty and the date upon which they are duly repatriated, or arising from their employment between those dates.

Ship-owners are required to provide financial security to assure compensation in the event of death or long term disability of seafarers due to an occupational injury, illness or hazard, as set out in national law, the seafarers' employment agreement or collective agreement. Ship-owners shall also be liable to defray the expense of medical care, including medical treatment and the supply of the necessary medicines and therapeutic appliances, and board and lodging away from home until the sick or injured seafarer has recovered, or until the illness or incapacity has been declared of a permanent character.

In addition, ship-owners shall be liable to pay the cost of burial expenses in the case of death occurring on board or ashore during the period of engagement. National laws or regulations may limit the liability for the ship-owner to defray the expense of medical care and board and lodging to a period which shall not be less than 16 weeks from the day of the injury or the commencement of the illness.

Where the illness or injury results in incapacity for work, the ship-owner shall be liable to pay full wages as long as the sick or injured seafarer remains on board or until the seafarer is repatriated. Thereafter, the ship-owner shall also pay wages in whole or in part as prescribed by national laws or regulations or provided for in collective agreements from the time when the seafarer is repatriated or landed until their recovery or, if earlier, until they are entitled to cash benefits under the legislation of the Member State.

National laws or regulations may exclude the ship-owner from liability in cases where the injury occurred otherwise than in the service of the ship or where the injury or illness was due to the wilful misconduct of the sick, injured or deceased seafarer or where the illness or infirmity was

intentionally concealed when the engagement was entered into.

Regulation 4.3 seeks to ensure that seafarers' work environment on board ships promotes occupational safety and health. Member States are required to develop and promulgate national guidelines for the management of occupational safety and health on board ships that fly its flag, after consultation with representative ship-owners' and seafarers' organisations and taking into account applicable codes, guidelines and standards recommended by international organisations, national administrations and maritime industry organisations.

There is also a requirement that each Member State shall adopt laws and regulations and set standards for occupational safety and health protection and accident prevention on ships that fly its flag.

In particular, Regulation 4.3 requires, inter alia, the adoption and effective implementation and promotion of occupational safety and health policies and programmes, including risk evaluation as well as training and instruction of seafarers. Reasonable precautions to prevent occupational accidents, injuries and diseases on board ship, including measures to reduce and prevent the risk of exposure to harmful levels of ambient factors and chemicals as well as the risk of injury or disease that may arise from the use of equipment and machinery on board ships must be taken and implemented. In addition, there are requirements for inspecting, reporting and correcting unsafe conditions and investigating and reporting on board accidents.

The competent authority should undertake investigations into the causes and circumstances of all occupational accidents and occupational injuries and diseases resulting in loss of life or serious personal injury, and such other cases as may be specified in national laws or regulations.

In accordance with Regulation 4.4, member States shall ensure that seafarers working on board a ship have access to shore based facilities and services to secure their health and well being.

Under Regulation 4.5, member States must ensure that measures are taken with a view to providing seafarers with access to social security protection.

Seafarers and (to the extent provided for in the national law of the flag State) their dependants are entitled to benefit from social security protection on terms no less favourable than that enjoyed by shore workers. The protection shall include medical care, sickness benefit, unemployment benefit, old age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivors' benefit. The signatory state shall establish fair and effective procedures for the settlement of disputes.

❖ TITLE (5) Compliance and enforcement:

Signatory States are responsible for ensuring enforcement of the Convention on ships that fly its flag. They shall establish an effective system for the inspection and certification of maritime labour conditions and have in place authorised public institutions or other organisations, which they recognise as competent and independent, carrying out inspections or issuing certificates, or both.

In all cases the Member State 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.

A Maritime Labour Certificate, complemented by a declaration of maritime labour compliance, shall constitute prima facie evidence that the ship has been duly inspected by the member State whose flag it flies and that the

requirements of the Convention relating to working and living conditions of the seafarers have been met to the extent so certified.

The validity of the certificate shall not exceed five years, and it is further subject to intermediate inspections. Renewal inspections shall be completed three months before expiry. The Maritime Labour Certificate may be issued on an interim basis for new ships on delivery, when a ship changes flag, or when a ship-owner assumes responsibility for the operation of a ship which is new to that ship-owner.

On board procedures for the fair, effective and expeditious handling of seafarer complaints alleging breaches of the requirements of the Convention (including seafarers' rights) must be documented and implemented. Signatory States shall prohibit and penalise any kind of victimisation of a seafarer for filing a complaint. Complaints should be addressed to the head of the department of the seafarer in the first instance or to the seafarer's superior officer. If the head of the department or superior officer cannot resolve the complaint to the satisfaction of the seafarer, the latter may refer it to the master, who should handle the matter personally.

In all cases, seafarers should have the right to file their complaints directly with the master and the ship-owner and competent authorities. In addition to a copy of the employment agreement, all seafarers shall be provided with a copy of the on board complaints procedures.

Under Regulation 5.2 of the MLC, any foreign ship calling at a port of the signatory State may be subject to inspection by the port authorities.

Inspections shall be carried out by authorised officers in accordance with the provisions of the Code. Inspections that may be carried out in accordance with this Regulation shall be based on an effective port state inspection and monitoring system to help ensure that work and living conditions for seafarers on ships entering a port of the flag State concerned meet the requirements of the Convention (including seafarers' rights).

However, each Member State shall accept the Maritime Labour Certificate and the declaration of maritime labour compliance as prima facie evidence of compliance with the requirements of the Convention.

If a ship is found not to conform to the requirements, the authorised inspection officer shall take steps to ensure that the ship shall not proceed to sea until the non-conformities have been rectified or until the authorised officer has accepted a plan of action to rectify the non-conformities and is satisfied that the plan will be implemented in an expeditious manner.

The inspector shall bring the deficiencies to the attention of the appropriate seafarers' and Ship-owners' organisations and may, if considered necessary, notify the flag State and the competent authorities of the next port of call with the relevant information.