

# FAQS

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## MARITIME LABOUR CONVENTION 2006 AS AMENDED (MLC) FINANCIAL SECURITY REQUIREMENTS

### International Group FAQs for Members

#### IMPORTANT NOTE

The entry into force of the amendments to MLC raises a number of complex and novel questions. These FAQs are intended to provide guidance to assist Members and Clubs in the run up to entry into force of the amendments on 18 January 2017. While efforts have been made to provide clarity, uncertainty remains on some aspects of the financial security requirements. There may also be differences in the way some states implement and enforce the amendments. Further updates will be given as and when necessary. These FAQs should not be regarded as providing definitive legal advice and Members should also consult their flag state authorities.

#### CERTIFICATION

##### 1. What Certification is required?

From 18 January 2017, all ships which are subject to MLC will be required to carry and display on board two Certificates, confirming that financial security is in place for

- (a) shipowners' liabilities for repatriation of crew, essential needs such as food, accommodation and medical care and up to four months' outstanding contractual wages and entitlements in the event of abandonment (Regulation 2.5, Standard A2.5.2 Paragraph 9), and
- (b) contractual payments for death or long-term disability due to an occupational injury, illness or hazard set out in the employment agreement or collective agreement (Regulation 4.2, Standard A4.2 paragraph 1(b)).

##### 2. Which ships need Certificates?

Ships will require MLC Certificates if they are

- registered in a state where MLC is in force, or
- calling at a port in a jurisdiction where MLC is in force

Details of States which are party to MLC can be found in the MLC Database maintained by the International Labour Organisation (ILO).

MLC Certificates are not required by ships registered in States which are not party to MLC and which will not call at States which are party to MLC.

##### 3. Will all states apply the financial security requirements?

The Amendments will apply in all States which are party to MLC. However, it is understood (although not confirmed) that some of these States will not be ready to implement the Amendments.

Members should proceed on the basis that the financial security requirements apply unless they have clear confirmation from their Flag State and the authorities of any MLC Port State that financial security Certificates are not required.

#### **4. Which categories of ship does MLC apply to?**

The MLC definition of a ship is very wide: “a ship other than one which navigates exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply”<sup>1</sup>.

MLC applies to ships “ordinarily engaged in commercial activities, other than ships engaged in fishing or in similar pursuits and ships of traditional build such as dhows and junks”<sup>2</sup>.

MLC States Parties are able to determine that MLC does not apply to certain categories of ship, including ships of less than 200gt not engaged in international voyages. States Parties are obliged to notify the ILO of such determinations which are recorded in the ILO database against the individual state as “National determinations”<sup>3</sup>.

#### **5. Will the first Certificates be valid until 20 February 2017 or 2018?**

Clubs may be able to issue MLC Certificates which are valid until 20 February 2018. However, Members who intend to change Clubs at the 20 February 2017 renewal should only obtain Certificates which are valid up to 20 February 2017, particularly if they intend to move to an insurer outside of the International Group.

Clubs supplying Certificates which are valid to 20 February 2018 will require an undertaking from their Members to renew with them or another IG Club at the February 2017 renewal.

#### **6. What form do the Certificates take?**

MLC sets out relevant information which must be provided on the Certificates but does not provide a prescribed form. The wording of the Certificates has been developed by the International Group (IG) and shared with an informal Correspondence Group (CG) of States which has had the opportunity to comment. The wording is similar to the “blue cards” issued by Clubs under International Maritime Organisation (IMO) Conventions.

#### **7. Who are the Certificates issued to?**

The Certificates are sent to Members in PDF format and will be capable of verification on the ship search facility of Club websites. Members are responsible for printing the Certificates and ensuring that they are displayed in a conspicuous place on board where they will be available to the seafarers<sup>4</sup>.

Certificates are not issued by Flag States (in contrast to the blue card and certification procedure under IMO Conventions). However, some Flag States may require owners on their register to supply the competent authority with copies of Certificates for their records.

#### **8. Will States accept Certificates issued by an IG Club without carrying out financial controls?**

It is anticipated that States will follow the practice for blue cards issued under IMO Conventions and recorded in the IMO Guidelines<sup>5</sup>. MLC Certificates issued by IG Clubs will then be accepted without the need for additional financial checks.

#### **9. Will ships which are flagged in a State which is not party to MLC need Certificates if calling at ports where MLC is in force?**

States Party to MLC are required to implement it in a way which ensures that ships flying the flag of a State which has not ratified MLC do not receive more favourable treatment<sup>6</sup>. States are also obliged to have effective port state control to ensure that ships entering its ports meet the requirements of the Convention<sup>7</sup>. The IG Clubs have concluded that the best way of ensuring compliance is to provide the same form of financial security to ships registered in MLC States and to ships registered in non-MLC States, providing they call at ports in MLC States.

#### **10. Can the Club rely on any insurance exclusions?**

It has been accepted that certain limited exclusions can be relied upon. These are referred to in the MLC Extension Clause and relate to war, nuclear, bio-chem and cyber risks and sanctions.

<sup>1</sup> MLC Article II.1(i) <sup>2</sup> Article II.1.4 <sup>3</sup> Article II.5, 6 & 7 <sup>4</sup> Standards A2.5.2.6 & A4.2.11

<sup>5</sup> See IMO Circular Letter 3464 2 July 2014 with Guidelines for accepting insurance companies, financial security providers and IG P & I Clubs

<sup>6</sup> Art V.7 <sup>7</sup> Regulation 5.2.1

## **INSURANCE**

### **11. Is the risk covered by the Rules?**

Liability for disability due to occupational injury will normally fall within the scope of standard crew cover under the Rules. Repatriation and unpaid wages will be covered under the Rules in some cases, including when due to a shipwreck. However, repatriation and overdue wages fall outside the scope of P&I cover when arising from abandonment due to a shipowner's financial default.

### **12. How are wages and repatriation costs under Standard 2.5.2 covered, if outside the scope of Club cover provided under the rules?**

The MLC Extension Clause provides that Clubs will discharge and pay claims made by seafarers pursuant to the Certificates. The Clause imposes an obligation on Members to reimburse their Club if the claims which the Club has paid to seafarers fall outside the scope of cover provided by the rules. This is on the basis that Clubs will want to take measures to minimise the risk of bearing the financial consequence of shipowners abandoning their crew.

### **13. Will Clubs pool liabilities outside the scope of standard Club cover and the Pooling Agreement?**

No. The boards of IG Clubs have decided against pooling these risks. They are therefore not poolable and not covered by the IG reinsurance programme.

### **14. Have Clubs protected their position through reinsurance?**

Yes. Reinsurance is being arranged through the IG's brokers. Binding commitments have been given by reinsurers for USD 150m and the IG expects to achieve USD 190m per fleet in excess of USD 10 million per fleet. The combined total of USD 200 million per fleet will be sufficient for all Members, with the possible exception of a small number of fleets with exceptionally high crew numbers.

### **15. Why is the cover limit "per fleet"?**

It is likely that abandonment will be caused by insolvency and will affect a fleet rather than just a single ship in a fleet. Reinsurers require the cover limit to apply on a per fleet basis regardless of how the fleet is split between Clubs.

### **16. What is the excess under the reinsurance?**

The excess is USD 10 million per fleet. If a fleet is entered with a single Club, that Club will bear the first USD 10 million. If a fleet is split between clubs, then each Club will bear a proportion of USD 10 million calculated on a pro rata basis. Clubs will need to cooperate if an event gives rise to claims which may exceed USD 10 million on a fleet basis.

### **17. Can Certificates be provided when the P&I policy excludes crew risks?**

The starting point should be that the insurers who provide owners with P&I cover for crew risks should also provide owners with MLC Certificates. If those insurers are unwilling or unable to provide MLC Certificates, Members may approach their Club to provide them. In assessing such requests, the Club will need to take account of the fact that if it issues Certificates it is accepting responsibility for liabilities which are covered by another insurer.

### **18. Are payments made to crew under MLC Certificates subject to deductibles?**

No. Payments made to seafarers under certificates are not subject to deductibles. However, the cover provided by the Club to the owner remains subject to any deductibles, so after payment is made to seafarers the amount of any deductible is recoverable from the insured owner.

## CREW MANAGERS

### 19. What is the position for a shipowner whose crew managers fail to pay wages?

Some shipowners outsource crew management to a crew manager. If a crew manager becomes insolvent and does not pay the seafarers' wages, the shipowner remains responsible for paying the crew. If the Club is required to meet claims by seafarers it will be entitled to seek reimbursement from the Member. If the shipowner is also insolvent the loss will remain with the Club.

## STATE SCHEMES

### 20. Can MLC cover be provided by a Club when crew risks are partly covered by a State scheme?

Yes. MLC acknowledges that financial security can be provided in the form of social security or a national fund or similar arrangement<sup>8</sup>. The Club financial security will respond to the extent that liabilities arise under the Certificates which are not included in the State scheme.

## WAGES

### 21. What is the liability for wages?

The security required under Regulation 2.5.2 is for up to four months' owed contractual wages and entitlements. A claim may arise where the shipowner "has unilaterally severed their ties with the seafarer including failure to pay contractual wages for a period of at least two months", as described in Standard 2.5.2.2(c).

### 22. What is meant by "wages"

Security is required for "outstanding wages and other entitlements due from the shipowner to the seafarer under their employment agreement, the relevant collective bargaining agreement or the national law of the Flag State, limited to four months of any such outstanding wages and four months of any such outstanding entitlements."

MLC contains definitions of "basic pay or wages" and "consolidated wage" in Guideline B.2.2 but neither of these terms is used in the context of financial security. The term "entitlement" indicates that the seafarer must have a legally enforceable right to recover the amounts claimed. Financial security would respond for wages and other items such as overtime where these are legally due but not otherwise.

## SEAFARERS

### 23. Do seafarers have to be serving on board to claim under MLC Certificates?

Unpaid wages fall under "Regulation 2.5 - Repatriation" and Standard A.2.5.2 refers to financial security in the case of abandonment. A claim for wages under the financial security is therefore only available to seafarers serving on board.

Regulation 4.2 applies to contractual claims which relate to death or long-term disability of seafarers due to an occupational injury, illness or hazard occurring in the course of employment and until the date on which they are repatriated. The security responds to claims arising out of events occurring while the crew member is serving on board the vessel or being repatriated.

### 24. What category of seafarers can claim under the security?

The MLC definition is very simple: "any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies." In general terms MLC is intended to provide protection to persons whose principal place of work is on the ship. It will normally include hotel staff on a passenger ship and cadets. In cases of doubt, MLC States Parties can determine whether particular categories of persons are to be regarded as seafarers for MLC purposes. States are obliged to notify the ILO of such determinations which are recorded in the ILO database against the individual state as "National determinations"<sup>9</sup>.

<sup>8</sup> Standards A2.5.2.3 & A4.2.2.2 <sup>9</sup> Art II.3 & 7

## **TERMINATION**

### **25 Can liability under MLC Certificates be terminated?**

Yes. MLC permits the termination of the financial security on at least 30 days' notice by the issuer to the competent authority of the Flag State<sup>10</sup>.

## **INFORMATION**

### **26. What information is to be provided in MLC Certificates?**

*Name, full address and website of the provider of insurance or other financial security*

Details will be inserted of Clubs' or Managers' head offices.

*Contact details of the persons or entity responsible for handling seafarers' request for relief*

Clubs will provide a telephone number and e-mail address, which will provide seafarers with immediate access.

*Name of the shipowner*

The Club will insert the name of the registered owner of the ship.

*Period of validity of the financial security*

The period stated in the Certificates will commence on 18 January 2017 and end at noon GMT on either 20 February 2017 or 20 February 2018.

### **27. What information is to be provided on Club websites?**

Clubs will ensure that when MLC Certificates have been issued, they will be referred to on the ship search facilities on Club websites. These websites are listed here on the International Group website.

Certificates will be listed as soon as they have been issued and withdrawn as soon as notice of termination has been given.

<sup>10</sup> Standards A2.5.211 & A4.2.12