



Merchant Shipping Directorate



GUIDELINES FOR THE IMPLEMENTATION OF THE MARITIME LABOUR CONVENTION, 2006

Merchant Shipping Notice 105

*Notice to Shipowners, Ship Operators, Managers, Masters,
Owners' Representatives and Recognised Organisations*

The Merchant Shipping Directorate would like to inform all concerned that Malta ratified the Maritime Labour Convention, 2006 (MLC) on 18 January 2013. The Convention shall enter into force for Malta on 20 August 2013. The MLC will be transposed in the Laws of Malta through the Merchant Shipping (Maritime Labour Convention) Rules, 2013.

The drafting of the Merchant Shipping (Maritime Labour Convention) Rules, 2013 has been completed and is at the final stage of the legislative process. The Directorate does not envisage any substantive changes to the text. A copy of the Rules may be downloaded from [www.transport.gov.mt/admin/uploads/media-library/files/Merchant%20Shipping%20\(Maritime%20Labour%20Convention\)%20Rules,%202013%20-%20DRAFT.pdf_20130220162231.pdf](http://www.transport.gov.mt/admin/uploads/media-library/files/Merchant%20Shipping%20(Maritime%20Labour%20Convention)%20Rules,%202013%20-%20DRAFT.pdf_20130220162231.pdf).

The MLC aims to achieve both favorable working conditions for seafarers and secure economic interests in fair competition for quality shipowners. The new Convention consolidates and updates more than 68 international labour standards related to the maritime sector adopted over the last 80 years. The MLC sets out seafarers' rights to favorable conditions of work on a wide range of subjects and aims to be globally applicable, easily understandable, readily updatable 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 Organization (IMO).

Definitions

Competent Authority

means the Merchant Shipping Directorate, through the Registrar-General of Shipping and Seaman as defined in the Merchant Shipping Act.

Seafarer

means any person who is employed or engaged or works in any capacity on board a ship, but excluding persons providing non-scheduled or ancillary services to a ship to assist it in its maritime voyage such as, inter alia, shore based engineers, bunker crew, pilots, members of the Armed Forces of Malta, or a member of the Civil Protection Department of Malta.

The Directorate will make use of the guidance contained in Resolution VII to the MLC in order to determine if a person engaged or employed onboard a ship to which the Convention applies is a seafarer for the purpose of compliance with the MLC.

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Transport Malta is the Authority for Transport in Malta set up by Act XV of 2009



The Directorate considers that the following persons are not seafarers for the purpose of application of the MLC:

1. Port workers, including travelling stevedores;
2. Pilots and port officials;
3. Ship surveyors and auditors;
4. Equipment repair/service technicians and riding crew whose principal place of employment is onshore;
5. Guest entertainers who work occasionally and short term onboard with their principal place of employment being onshore.

If the shipowner deems that there is any other category of persons who should not be considered as seafarers for the purposes of the MLC, an application containing the following information should be submitted to the Directorate on mlc.tm@transport.gov.mt :

- The category or capacity of the persons;
- The duration of the stay on board of the persons concerned;
- The frequency of periods of work spent on board;
- The location of the person's principal place of business;
- The purpose of the person's work on board;
- The company who is responsible for the labour and social conditions for the person;
- Whether an agreement is in place for the persons and if the shipowner has assessed it to ascertain if it is comparable with the MLC.

Shipowner

means the owner of the ship or another organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners.

Application

The Rules shall apply to all Maltese flagged ships, ordinarily engaged in commercial activities wherever they are and to all other ships ordinarily engaged in commercial activities while they are in Maltese waters and to all seafarers serving onboard such ships. The Rules shall not apply to fishing vessels, ships of traditional build, small ships as defined in the Small Ships Rules and that exclusively navigate in Maltese waters, and warships or naval auxiliaries.



The Directorate has determined that the MLC shall not apply to the following ships:

1. Ships that are trading and/or operating exclusively between ports and facilities within Malta;
2. Offshore units whose primary service is drilling operations for the exploration, exploitation or production of resources beneath the sea bed and are not ordinarily engaged in navigation or international voyages;
3. Fishing Vessels;
4. Yachts in non commercial use of any size.

Recognised Organizations

Malta has delegated the inspection functions and certification services under the MLC to the authorized Recognised Organizations (RO), that are listed in Merchant Shipping Notice No. 96, which can be downloaded from <http://www.transport.gov.mt/admin/uploads/media-library/files/NOTICE96%20-%20Authorised%20Classification%20Societies.pdf>.

To this effect, upon the issue of the DMLC Part I, the DMLC Part II shall be prepared by the shipowner (in consultation with the RO). The RO shall certify the DMLC Part II and carry out the required inspection for the issue of the Maritime Labour Certificate.

Declaration of Maritime Labour Compliance (DMLC)

The Declaration summarises the national legislation implementing an agreed upon list of 14 areas of the maritime standard. The Directorate will draw up a ship specific DMLC Part I. Subsequently, the shipowner shall develop and implement measures to ensure compliance with the national legislation in the ship specific DMLC Part II.

The DMLC shall be carried onboard at all times together with the Maritime Labour Certificate .

The DMLC Part I completed by the Directorate will contain the following:

1. List of matters to be inspected (Appendix A5-I of the Convention).
2. Reference to the national legislation provisions as well as concise information on the content of the national requirements in each of the matters listed in Appendix A5-I of the Convention.
3. Reference to ship type specific requirements under national legislation.
4. Record of substantially equivalent provisions under paragraph 3 & 4 of Article VI of the Convention as applicable.
5. Record of exemptions if granted under Title 3 of the Convention.



The DMLC Part II shall be completed by the shipowner and must identify the measures adopted to ensure ongoing compliance with the national legislation between inspections and the measures proposed to ensure that there is continuous improvement. The RO of the ship shall verify compliance with the national legislation and the requirements of the MLC, by examination of the DMLC Part II.

The examination of the DMLC Part II is a two step process. The first step is verification that the proposed measures satisfy the national and MLC requirements. It shall include examination amongst other documents of the Seafarers Employment Agreements, Collective Bargaining Agreements, if any, and shipowner's management systems manual.

The second step is successful completion of an initial onboard inspection to verify that the shipowner has implemented the proposed measures documented in the DMLC Part II. If the RO is satisfied that all the requirements are met the DMLC Part II will be issued.

A copy of the DMLC must be posted in a conspicuous place on board which is accessible to the seafarers. A copy of the DMLC must be made available upon request to seafarers, flag State inspectors, port State control officers, shipowners' and seafarers' representatives.

A new DMLC Part I shall be issued when there is a change in the ship's particulars as recorded on the DMLC Part I or when there are changes to the exemption or equivalent arrangements. A revised DMLC Part II needs to be issued when there is a change of shipowner or in the measures to ensure compliance with the provisions of the DMLC Part I.

The shipowner shall request from the Directorate on mlc.tm@transport.gov.mt a ship specific DMLC Part I prior to developing and submitting the DMLC Part II for the issue of a Maritime Labour Certificate or a draft DMLC Part II for the issue of an interim Maritime Labour Certificate.

A copy of the application form may be downloaded from <http://www.transport.gov.mt/admin/uploads/media-library/files/Application%20for%20the%20Issuance%20of%20DMLC%20Part%20I.doc>.

The appropriate fee for the issue of a DMLC Part I shall be of €50.

Applications for the acceptance of an equivalence or exemption from the requirements of the MLC shall be submitted at the time of requesting the DMLC Part I. If, subsequent to the issuance of the DMLC Part I, the shipowner requires consideration of an equivalency or exemption, a new application for DMLC Part I shall be submitted and subject to the approval of the application, an amended DMLC Part I, DMLC Part II and inspection for the issuance of the Maritime Labour Certificate will be required.

A copy of the DMLC may be downloaded from [http://www.transport.gov.mt/admin/uploads/media-library/files/MLC%20Part%20I%20and%20Part%20II%20Declarations%20\(Draft\).pdf](http://www.transport.gov.mt/admin/uploads/media-library/files/MLC%20Part%20I%20and%20Part%20II%20Declarations%20(Draft).pdf).



Initial Inspection and Issuance of the Maritime Labour Certificate

A Maritime Labour Certificate as well as a DMLC shall be issued to ships of 500 GT or more, to which the Convention applies, following a successful initial onboard inspection. The Maritime Labour Certificate confirms that the working and living conditions have been inspected and verified to meet national legislation implementing the MLC.

Ships below 500 GT are subject to an inspection at intervals not exceeding three years, with no certificate to be issued. One has to note however that shipowners may request a certificate on a voluntary basis. It is strongly recommended that ships below 500 GT are issued with a certificate in order to simplify matters involving port State control inspections and to avoid undue delays in ports.

A Maritime Labour Certificate shall be issued by the RO upon completion of a satisfactory initial inspection. The Certificate shall be issued for a period not exceeding five years.

All applicable ships should be MLC compliant and certified by the date of entry into force of the Convention. Shipowners are strongly encouraged to undertake voluntary certification of their ships prior to 20 August 2013. Ships meeting the requirements of the MLC prior to the entry into force of the Convention shall be issued with a Statement of Compliance with the MLC following satisfactory inspection. On entry into force of the Convention, Statements of Compliance issued during the voluntary period shall be replaced with a Maritime Labour Certificate, without survey, with the expiry date being no later than that on the existing Statement of Compliance.

Intermediate Inspection and Endorsement of the MLC

The validity of the Maritime Labour Certificate shall be subject to an intermediate inspection. The scope and extent of the intermediate inspection shall be equal to an inspection for renewal of the Certificate. The intermediate inspection shall be carried out between the second and third anniversary dates of the Maritime Labour Certificate. The Certificate shall be endorsed by the RO, following satisfactory intermediate inspection. If the intermediate inspection is not carried out as required, the Maritime Labour Certificate shall cease to be valid.

Renewal Inspection and Renewal of the Maritime Labour Certificate

The Maritime Labour Certificate shall be renewed after verification that all national requirements implementing the MLC are being met. When the renewal inspection is completed within three months before the expiry date of the existing Certificate, the new certificate shall be valid for a period of five years from the date of expiry of the existing one. When a renewal inspection is completed more than three months before the expiry date of the existing Maritime Labour Certificate, the new Certificate shall be valid for a period not exceeding five years, starting from the date of completion of the renewal inspection.



Interim Inspection and Issuance of an Interim Maritime Labour Certificate

Interim inspections shall be carried out (on new and existing ships) if any one of the following conditions exists:

1. New ship on delivery;
2. New ship to the Company;
3. Ship changes flag to Malta;
4. Reactivation of a laid up ship.

Existing vessels, not falling under any of the above cases, shall not be required to undergo an interim inspection. At the time of the interim inspection, the DMLC I & II is not required to be on board.

An Interim Certificate shall only be issued when the RO, on behalf of the Administration has verified that:

1. The ship complies as far as is reasonable and practicable, with the matters listed in Appendix A5-I of the Convention;
2. The ship has adequate procedures in place to comply with the Convention;
3. The master is familiar with the requirements of the Convention and the responsibilities for implementation;
4. A draft DMLC II has been submitted to the RO of the ship for review.

An interim certificate valid for a period not exceeding six months shall be issued following satisfactory completion of the interim inspection.

Cessation of Certificates

The Maritime Labour Certificate and the DMLC shall cease to be valid if any one of the following situations arises:

1. Required inspections are not carried out;
2. The Maritime Labour Certificate is not endorsed at the intermediate inspection;
3. The shipowner has changed;
4. A ship changes flag;
5. Substantial modifications have been made to the structure or equipment of the ship.

Change of Flag

When a ship registered in Malta changes flag and the gaining State has ratified the Convention, the Directorate will transmit as soon as practicable to the competent authority of that State, a



copy of the Maritime Labour Certificate and the DMLC carried by the ship before the change of flag. If applicable, a copy of the relevant inspection reports will also be submitted upon specific request by the competent authority of the State as long as request is submitted within three months following the change of flag.

Maritime Labour Certificate and DMLC

The RO of the ship shall withdraw the Certificate and the DMLC if there exists evidence of serious, frequent or recurring deficiencies and where the required corrective action has not been taken. The Directorate reserves the right to instruct the RO to withdraw the certificate if the circumstances so dictate.

On-board complaint procedure

All ships shall have on-board procedures for the fair, effective and expeditious handling of seafarer complaints alleging breaches of the rules. Such procedures shall seek to resolve complaints at the lowest level possible. The seafarer shall have the right to lodge the complaint directly with the master and where deemed necessary also with the appropriate external authorities.

The on-board complaint procedures shall include the right of the seafarer to be accompanied or represented during the complaint procedure, as well as safeguards against the possibility of victimization of seafarers for filing complaints which are neither manifestly vexatious nor maliciously made.

In addition to the copy of their seafarers' employment agreement, all seafarers shall be provided with a copy of the on-board complaint procedures applicable on the ship. The procedures shall include contact information of the Competent Authority and the name of the person or persons on board the ship who can, on a confidential basis, provide seafarers with impartial advice on their complaint or otherwise assist them in following the complaint procedures available to them on board the ship. Furthermore, the seafarer shall have the right to seek redress through whatever legal means he considers appropriate.

The onboard complaint procedures shall contain at least the following:

1. Contact information for the company's Maritime Labour Convention, 2006 designated person or any other person appointed by the Company;
2. Contact information of the Merchant Shipping Directorate;
3. Contact information of the competent Authority in the seafarers country of residence;
4. Name of a person or persons onboard the ship who can, on a confidential basis, advise and assist the seafarer to follow the complaint procedures.



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The contact details for lodging a complaint with the Directorate are as follows:

Registrar General of Shipping and Seamen
Merchant Shipping Directorate
Authority for Transport in Malta
Transport Centre
Marsa
Email: mlc.tm@transport.gov.mt

The complainant seafarer shall submit his complaint to his superior officer in writing. Where a solution cannot be found at this level, the superior officer shall refer the complaint to the head of department. The latter shall interview the seafarer with a view to solving the complaint. If the seafarer is not satisfied with the way his complaint has been handled, he may request an interview with the master. If no satisfactory resolution is obtained, the seafarer may appeal to the management of the company. If no satisfactory resolution is achieved the seafarer may resort to forwarding the appeal to the Directorate, on mlc.tm@transport.gov.mt or to a consular officer of Malta abroad.

In the event of a complaint being received by a RO from a third party, such complaint should be brought to the attention of the Directorate.

Conduct of Inspectors

All inspectors shall treat as confidential 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. The inspector shall not disclose the reason or give indication to the shipowner, the shipowner's representative or the operator of the ship that an inspection was made as a consequence of a grievance or complaint.

Inspectors that have any direct or indirect interest with the shipowner, seafarers or other interested parties shall not be called upon to carry out the maritime labour inspection.

Inspectors shall not disclose, even after leaving service, any commercial secrets or confidential working processes or information of a personal nature which may come to their knowledge in the course of their duties.

Seafarer Employment Agreement

The shipowner of every Maltese ship shall enter into a seafarer's employment agreement, with every seafarer in accordance with the Merchant Shipping (Maritime Labour Convention) Rules, 2013. The agreement shall stipulate the terms and conditions of the seafarer's employment.

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Recruitment and Placement Services

Shipowners operating ships under the Malta flag and who use manning agents based in a State which has ratified the MLC, for the employment of seafarers, shall only use licensed or certified or regulated manning agents in accordance with the Convention Standard A1.4 requirements. The license or certificate issued by the State where the manning agent providing seafarers to the ship, is established must be available on board for inspection.

If manning agents based in a State which has not ratified the MLC are used, these shall conform to Standard A1.4.5 and Standard A1.4.9. For these manning agents, any one of the following documents/certificates must be available on board for inspection:

1. Company's own audit report for manning agent (stating that they have verified compliance with Standard A.1.4);
2. Copy of the manning agency quality management certificate;
3. Copy of the RO's certificate attesting compliance with Standard A.1.4.

Health and Safety Protection

The Directorate recognizes that it is the duty of every shipowner to ensure, so far as is reasonable and practicable, the health and safety of employees and other persons onboard ship who may be affected by his acts and omissions. Similarly it is the duty of every employee onboard ship to take all reasonable care of his health and safety and that of other persons onboard ship who may be affected by his acts or omissions.

The matters to which that duty extends shall include in particular:

1. The provision and maintenance of plant, machinery and equipment and systems of work that are, so far as is reasonably practicable, safe and without risk to health;
2. Arrangements for ensuring, so far as is reasonably practicable, safety and absence of risk to health in connection with the use, handling, stowage and transport of articles and substances;
3. The provision to his employees of such information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the health and safety of persons onboard ship;
4. So far as is reasonably practicable, the maintenance of all places of work in the ship in a condition that is safe and without risk to health;
5. The provision and maintenance of an environment for persons onboard ship that is, so far as is reasonably practicable, safe and without risk to health;
6. So far as is reasonably practicable, collaboration with others who employ persons who are at any time in the course of their employment onboard a ship or are engaged in loading or unloading activities in relation to a ship, to protect the health and safety of all persons onboard that ship.



It shall also be the duty of every shipowner to carry out an assessment of all the occupational health and safety hazards that may be present onboard the ship and the resultant risks involved concerning all aspects of the work activity. The shipowner shall ensure that written or retrievable electronic copies of such assessments, are available onboard the ship, and that they are updated regularly.

ISM Code

The Directorate considers that elements of the MLC are an extension of the International Safety Management Code (ISM Code) and an essential part of meeting the Code's objectives of maintaining compliance with international conventions.

Failure of a Malta flagged ship to comply with the MLC may be considered as a non-conformity as defined in the ISM Code, and could possibly result in the withdrawal of the vessel's Safety Management Certificate.

In the event of certification withdrawal, reinstatement of the certification shall only be possible once the ship's RO and, if the situation so warrants, the competent Authority of the Member State under whose jurisdiction the vessel is located notify the Directorate that they are satisfied with the vessel's compliance with the Convention.

Additional Information

All enquiries related to MLC matters, including implementation issues, should be addressed to this Directorate on mlc.tm@transport.gov.mt

Merchant Shipping Directorate

20 February 2013