

UK P&I CLUB 

Legal Briefing

NOVEMBER 2010

MARITIME LABOUR CONVENTION

Comprehensive rights and protection at work



UK P&I CLUB
IS MANAGED
BY **THOMAS
MILLER**

About us

This briefing is one of a continuing series which aims to share the legal expertise within the Club with our Members.

A significant proportion of the expertise in the Managers' offices around the world consists of lawyers who can advise Members on general P&I related legal, contractual and documentary issues.

These lawyers participate in a virtual team, writing on topical and relevant legal issues under the leadership of our Legal Director Chao Wu.

As part of Thomas Miller that virtual team can also call on executives who support the UK Defence Club and the experience and expertise that serves the largest defence mutual in the world, with over 3,500 owned and time chartered ships entered.

If you have any enquiries regarding the issues covered in this briefing please contact the team via Chao Wu and we will be pleased to respond to your query. The team also welcomes suggestions from Members for P&I related legal topics and problems which would benefit from explanation by one of these briefings.

Chao Wu

Legal Director



Chao has a doctorate in law and is based in London as Legal Director, where she is responsible for giving general legal advice, including guidance on the legal aspects of P&I Club documentation, and on the legal aspects of cover for Members' contractual arrangements. She represents the Club on various subcommittees and working groups of the International Group of P&I Clubs. Chao speaks Mandarin, French and Shanghainese.

Direct line: +44 207 204 2157

Email: chao.wu@thomasmiller.com

THE AUTHOR

John Turner

Syndicate Manager



John worked for a ship agent, a shipowner and as Club correspondent in Ireland before joining Thomas Miller in 1987. He is also a Senior Claims

Director and specialises in personal injury and people related claims.

Direct line: +44 20 7204 2507

Email: john.turner@thomasmiller.com

Comprehensive rights and protection at work

The Maritime Labour Convention (MLC) was adopted by the International Labour Organisation (ILO) in February, 2006. The MLC is a single, consolidated convention that provides comprehensive rights and protection at work for more than 1.2 million seafarers worldwide.

It consolidates and updates more than 65 international labour standards relating to seafarers adopted over the last 80 years and, importantly, for the first time, it creates a system of certification and inspection to enforce those standards.

What are 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, sex, 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.

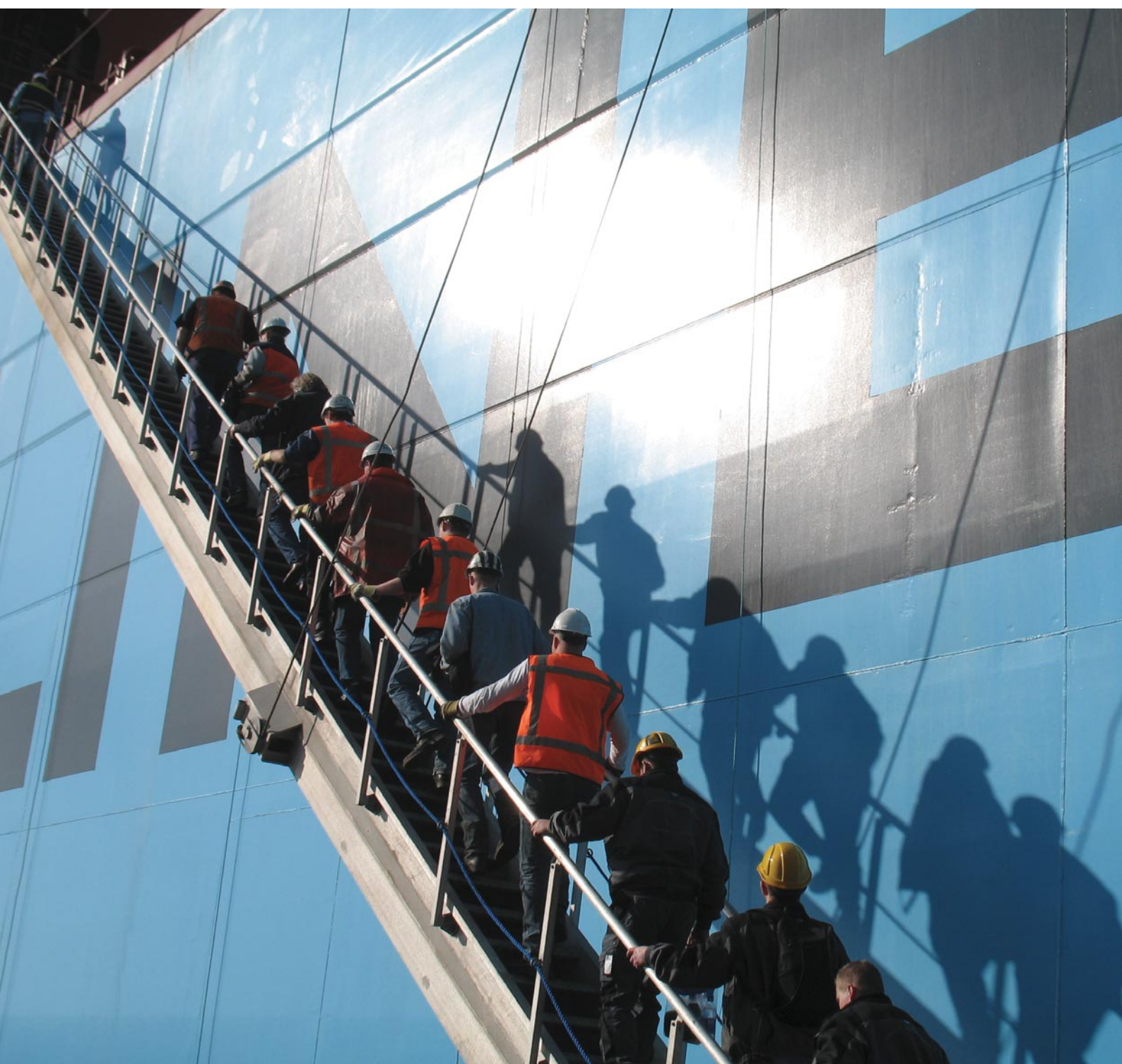
In addition, Article IV provides that every seafarer has the right to:

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 Regulations and the Code

The 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 itself is divided into five “titles” which make up the Code:

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 shipowners 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 shipowner or a representative of the shipowner
- 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:

- (a) repatriation - including repatriation in cases of

a shipowner's insolvency (effectively abandonment); and

- (b) compensation for illness, injury and death of a crew member.

These claims are generally covered under a Member's 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 bio chemical 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.

Financial security for abandonment

The IMO and ILO established a Joint IMO/ILO Ad Hoc Expert Working Group (WG) in 1999 to look into the issue of financial security for abandonment of seafarers and contractual compensation for illness, injury and death to seafarers, prior to the MLC being finalised. The ninth and final session of the WG took place in March 2009. At that session mandatory principles in the form of detailed text were formulated by the WG in relation to financial security for both abandonment and contractual compensation and a recommendation made to the IMO and ILO that the principles contained in the texts be embodied in the MLC. The IMO and ILO have now approved the recommendation.

The 'principles' relating to abandonment, state that the financial security system should provide for:

- (1) a right of direct action against the financial security provider
- (2) the cost of repatriation and reasonable expenses incurred by the seafarer from the

time of abandonment until the time of repatriation

- (3) outstanding wages and other contractual entitlements, limited to a period of four months.

The task of incorporating the principles into the MLC will be conducted by a Special Tripartite Committee (STC) comprised of those States that have ratified the MLC, shipowners and seafarers, the establishment of which is provided for under the MLC. However, the STC cannot be established prior to the MLC coming into force and accordingly the ILO has constituted a 'preparatory' tripartite committee which met for the first time between 20th-22nd September 2010 to consider issues relating to the MLC and its implementation by States.

It is no longer, therefore, a matter of whether shipowners will be required to provide financial security for crew compensation and abandonment claims under the MLC, but rather when such requirements will be introduced.

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. Shipowners 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.

Shipowners 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. Shipowners 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, shipowners 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 shipowner 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 shipowner 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 shipowner 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 shipowner 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 shipowners' 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 shipowner assumes responsibility for the operation of a ship which is new to that shipowner.

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 shipowner 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 shipowners' organisations and may, if considered necessary, notify the flag State and the competent authorities of the next port of call with the relevant information.



Why think about MLC now?

Entry into force

The Convention shall come into force 12 months after the date on which there have been registered ratifications by at least thirty member States with a total share in the world gross tonnage of ships of 33 per cent. To date, ten States have ratified the MLC and these States between them satisfy the tonnage requirements. It is unlikely that the MLC will come into force before 2012.

Maritime Labour Convention States

Country	Ratified
Bahamas	11 Feb 2008
Bosnia and Herzegovina	18 Jan 2010
Bulgaria	12 Apr 2010
Canada	15 Jun 2010
Croatia	12 Feb 2010
Liberia	07 Jun 2006
Marshall Islands	25 Sep 2007
Norway	10 Feb 2009
Panama	06 Feb 2009
Spain	04 Feb 2010

(Source: ILOLEX 12 Nov 2010)

How does the MLC affect Club cover?

P&I Club cover will respond to the majority of the requirements but has significant gaps and will not cover, for instance, repatriation after insolvency and claims for unpaid wages, nor will it respond directly to seafarers' claims for compensation as opposed to indemnifying the owner.

As far as the Managers are aware, no single product has as yet been developed which can fully satisfy the strict requirements of this section. The requirements will be clarified further when the principles which were developed by the Joint IMO/ILO Ad Hoc Expert Working Group (the forerunner of the Preparatory Tripartite MLC, 2006, Committee) and agreed by the ILO and IMO are adopted formally. These principles deal with the specifics of what is required for abandonment and contractual compensation to seamen.

The International Group of P&I Clubs is trying to establish with key States what evidence of financial responsibility they will find acceptable. The clubs are pressing for acceptance of a copy of the certificate of entry in a P&I club, but, as yet, there is again no clear answer here (and it may vary as well, as flag States take their own positions on the regulation). The Managers will continue to monitor the situation closely and will work to try to develop a means of compliance which is as painless for Members as possible but at the moment there is not a compliance solution in the form of a single ready made piece of paper.

In the meantime we believe the best course is for Members to tender a copy of the ship's certificate of entry in the Club as some evidence of compliance, even though the cover provided does not strictly marry up to the requirement. In addition, some Members' terms of entry may include a significant deductible which may diminish the value of the insurance in the eyes of the relevant authority. However, it is clear that there is no other insurance currently available that does meet all the requirements and the only alternative now would seem to be some form of self-insurance.

Next steps

The MLC represents a significant change to the regulation of employment terms and working conditions for seafarers and Members should start taking steps now (assuming they have not already done so) to ensure that they are not taken by surprise once the Convention has been ratified and becomes effective.

Members, in close consultation with their legal advisors, should consider the following action steps:

- amend charterparties to ensure compliance by owners and redress in the event of failure
- draft new on board complaint and other procedures as required under the Convention
- draft new compliant employment contracts and crew management agreements.

Masters and senior officers will need to be trained in ensuring that the ship is compliant with the MLC including dealing with crew complaints and monitoring working time limits.

UK P&I CLUB 

UKDC
UK DEFENCE CLUB

Thomas Miller P&I Ltd – London

Tel: +44 20 7283 4646 Fax: +44 20 7283 5614

Thomas Miller (Hellas) Ltd – Piraeus

Tel: +30 210 42 91 200 Fax: +30 210 42 91 207/8

Thomas Miller (Americas) Inc – New Jersey

Tel: +1 201 557 7300 Fax: +1 201 946 0167

Thomas Miller (Hong Kong) Ltd – Hong Kong

Tel: + 852 2832 9301 Fax: + 852 2574 9954

www.ukpandi.com / www.ukdefence.com