MLC 2006 – Club Q&A

These FAQs refer to the wording of the MLC2006 and extensive FAQs issued by the International Labour Organisation (ILO). The following link to the full text of MLC 2006 in all available languages taken from the ILO's website: http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_090250/lang--en/index.htm

The ILO's FAQ document can be found at the following link:
http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_177371/lang--fr/index.htm

1. What is the Maritime Labour Convention, 2006 (MLC 2006)?

It is a comprehensive international labour convention that was adopted by the International Labour Conference of the International Labour Organization (ILO), under article 19 of its Constitution, at a maritime session in February 2006 in Geneva, Switzerland. It sets out seafarers' rights to decent conditions of work and helps to create conditions of fair competition for shipowners. It is intended to be globally applicable, easily understandable, readily updatable and uniformly enforced.

The Maritime Labour Convention, 2006 (MLC 2006) has been designed to become a global legal instrument that will be the "fourth pillar" of the international regulatory regime for quality shipping, complementing the key conventions of the International Maritime Organization (IMO) such as the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS), the International Convention on Standards of Training, Certification and Watchkeeping, 1978, as amended (STCW) and the International Convention for the Prevention of Pollution from Ships, 73/78 (MARPOL).

The MLC 2006 contains a comprehensive set of global standards, based on those that are already found in the maritime labour instruments (Conventions and Recommendations), adopted by the ILO between 1920 and 1996. It brings all, except four (see para 3 below), of the existing maritime labour instruments (International Labour Standards (ILS)) together in a single convention that uses a new format, with some updating, where necessary, to reflect modern conditions and language. The Convention "consolidates" and revises the existing international law on all these matters.

2. Does the MLC, 2006 directly apply to shipowners, ships and seafarers?

The MLC 2006 is an international legal instrument and does not, therefore, apply directly to shipowners, ships or seafarers. Instead like all international law, it relies on implementation by countries through their national laws or other measures (see ILO FAQ, A.8 "What measures must a country take to ensure that the MLC, 2006 is properly applied"). The national law or other measures would then apply to shipowners, seafarers and ships. The MLC 2006 sets out the minimum standards that must be implemented by all countries that ratify it.

3. What will happen to the maritime labour conventions adopted before 2006?

According to ILO FAQ – A19, the existing ILO maritime labour conventions will be gradually phased out as countries that have ratified those conventions ratify the MLC 2006, but there will be a transitional period when some conventions will be in force in parallel with the MLC 2006. Countries that ratify the MLC 2006 will no longer be bound by the existing conventions when the MLC, 2006 comes into force for them. Countries that do not ratify the MLC 2006 will remain bound by the existing conventions they have ratified, but those conventions will be closed to further ratification. Entry into force of the MLC 2006 will not affect the four maritime conventions that are not consolidated in the MLC, 2006. Those are the convention addressing seafarers' identity documents of 2003 and the 1958 Convention that it revises, the Seafarers' Pension Convention, 1946 and the Minimum Age (Trimmers and Stokers) Convention, 1921. They will remain binding on States that have ratified them irrespective of the MLC, 2006.

4. When will MLC 2006 come into force?

The Convention will come into force on 20th August 2013. From this date, ships will need to obtain a Maritime Labour Certificate issued by the Flag State which is a party to the MLC Convention and need also to carry and maintain on board a Declaration of Maritime Labour Compliance (DMLC). To date 43 countries are parties to the MLC (for a list of the States party to the MLC, see this link: http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO::P11300_INSTRUMENT_ID:312331)

5. Maritime Labour Certificate and DMLC, Flag States vs. Port States

MLC 2006 mandates that commercial vessels that are 500 gross tons and above must demonstrate compliance with the requirements of MLC 2006 by maintaining a Maritime Labour Certificate, to which is annexed a Declaration of Maritime Labour Compliance ("DMLC") issued by its flag administration. A copy of this certification must be maintained on-board the vessel at all times. Failure to maintain this certification will expose those vessels to potential Port State Control actions.

Vessels operating under a flag of a country that is not a party to MLC 2006 are also exposed to potential Port State Control actions where that vessel calls at a port of a country party to MLC 2006. This is because, in addition to establishing minimum requirements for seafarer working conditions and inspection, MLC 2006 also provides for enforcement by countries that are a party to MLC 2006 under the principle of "no more favorable treatment" for ships of a non-party country. This means that a party to MLC 2006 may take Port State action, including potential detention of the vessel, to ensure that a shipowner and operator of a vessel operating under a flag of a non-party is not treated more favourably than a vessel that operates under the flag of a country that is a party to MLC 2006.

To date, it is understood that India and US have indicated that they will provide a voluntary inspection programme for vessels flying their flags and will issue a "Statement of Voluntary Compliance with MLC" to assist their flag vessels in avoiding port State control actions in foreign ports of countries that have become party to MLC 2006. However, it is not clear how MLC Members States will react to non-Member States' voluntary compliance program.

It is anticipated that Port State Control authorities are unlikely to fully implement MLC inspection requirements before 20th August 2014.

6. Who is protected by the MLC, 2006?

Seafarers. Seafarers are defined as "all persons who are employed or are engaged or work in any capacity on board a ship to which the Convention applies".

Individual Flag States are providing guidance as to how they will interpret the scope of the definition. The following list provides examples of persons that individual States have deemed should **not** be treated as seafarers for the purpose of MLC: port workers, stevedores, pilots, port officials, surveyors, auditors, riding crew, other persons whose principal place of employment is on shore such as equipment repair technicians or guest entertainers, cadets, armed guards.

Since the guidance varies from State to State, these cannot be regarded as automatic exclusions and some of these categories of persons will be regarded as seafarers by some Flag States.

Shipboard employees of other third party companies, especially on cruise ships, such as those working as bar and catering staff or for concessionaires, seem also to fall within the definition of "seafarers" under the MLC. However, responsibility between such companies and the shipowner is often the subject of a knock for knock contract. Where this is so, costs and liabilities for which the shipowner may be liable under MLC in the first instance will ultimately fall back on such companies, as is currently the case.

7. What ships does the MLC 2006 apply to?

The Convention will apply to all ships, whether publicly or privately owned, 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. This Convention does not apply to warships or naval auxiliaries. A "ship" is defined as a ship other than one which navigates exclusively in inland waters or waters within, or closely adjacent to, sheltered waters [see ILO FAQ, B6] or areas where port regulations apply [see also ILO FAQ, B4 to B13]

8. What are the key liabilities and responsibilities of shipowners vis-à-vis seafarers under the Convention?

The MLC provides, amongst other things that Member States shall ensure that seafarers on vessels flying their flag are entitled to:

(a) repatriation, including repatriation in cases of a shipowner's insolvency (effectively abandonment) etc (Regulation 2.5. Standard A2.5.1 (b) and Guideline B2.5.1 (b) (iii) of the MLC) and for which financial security must be in place;
(b) unemployment compensation resulting from a ship's loss or foundering, limited to two months wages for each day the seafarer remains unemployed (Regulation 2.6, Standard A2.6 and B 2.6.1); and
(c) compensation in the event of death or long term disability due to an occupational injury, illness or hazard as set out in national law, the seafarer's employment agreement or collective agreement (Regulation 4.2, Standard A4.2 (b)) and for which the shipowner must provide financial security.

9. Who is the "shipowner" under the MLC 2006?

Shipowner is defined under the MLC as "the owner of the ship or another organization or person, such as the manager, agent or 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 in accordance with this Convention, regardless of whether any other organization or persons fulfil certain of the duties or responsibilities on behalf of the shipowner".

10. To what extent does P&I insurance currently provide cover for the liabilities specified above?

Claims under paragraph (a), (b) and (c) in 8 above are generally covered under a Member's Club entry for standard P&I cover save for repatriation costs in cases of insolvency, termination of insurance etc – see below. However it should be noted that the P&I cover is usually subject to exclusions under the Rules, such as war and terror risks, nuclear risks, sanction risks etc, and other general conditions of entry such as termination of cover.

11. What defences are there for the shipowners under the MLC?

Shipowners are only afforded limited defences under the MLC:

In the case of repatriation, where the seafarer is in 'serious default' of his employment obligations [Standard A.2.5.3]

In the case of seafarers' sickness, injury or death occurring in connection with their employment, where

(a) injury incurred otherwise than in the service of the ship;
(b) injury or sickness due to the wilful misconduct of the sick, injured or deceased seafarer; or
(c) sickness or infirmity intentionally concealed when the engagement is entered into. [Standard A.4.2.5]

Whilst liability is virtually absolute, owners will in most cases be able to recover from the Club under the normal P&I entry. However, there may be circumstances in which a shipowner cannot recover from the Club, because of a policy defence or exclusion in cover (for example if a claim arises out of a war risk), or because a claim is beyond the scope of insurance (such as repatriation following termination of employment, or when cover has been terminated).

The MLC mandates that in relation to repatriation [Regulation 2.5] and seafarers' sickness, injury or death occurring in connection with their employment [Regulation 4.2], States Parties to the Convention will require ships flying their flag to maintain "financial security" in respect of such claims.

12. What form of financial security is required under MLC 2006?

Financial security is not defined and the MLC does not prescribe the form or any amount of coverage - unlike the IMO liability and compensation regimes. The MLC does not require "blue cards" and does not impose a right of direct action against the provider of financial security. However each individual State can determine the precise form of financial security in its domestic legislation to implement the Convention, and some form of evidence (such as proof that adequate insurance is in place) is likely to be required to satisfy the requirement of financial security for claims for repatriation [Regulation 2.5] and seafarers' sickness, injury or death occurring in connection with their employment [Regulation 4.2].

A Certificate of Entry may be accepted as such evidence. As of July 2013, some 19 States have indicated that they will accept a Certificate of Entry in a P&I club as sufficient evidence of financial security (see para 16 below). Although States could make additional requirements for claims which might fall outside the scope of cover (such as war risks), the International Group is not aware of any State that is imposing any such requirements.

Different States could take different views on what constitutes appropriate evidence of financial security and there is no guarantee that States will take a consistent approach, but it is encouraging that the number of States that have indicated acceptance of a Certificate of Entry for ships entered in an International Group P&I club has been steadily growing.

13. What are the key requirements regarding repatriation of seafarers under the Convention?

Standard A.2.5.1 of the Convention provides that seafarers are entitled to repatriation in the following circumstances:

if the seafarers' employment agreement expires while they are abroad;

when the seafarers' employment agreement is terminated:

(i) by the shipowner; or
(ii) by the seafarer for justified reasons; and also

when the seafarers are no longer able to carry out their duties under their employment agreement or cannot be expected to carry them out in the specific circumstances.

Guideline B.2.5.1(b) of the Convention gives further details of the circumstances where seafarers are entitled to repatriation:

(i) in the event of illness or injury or other medical condition which requires their repatriation when found medically fit to travel;
(ii) in the event of a shipwreck;

(iii) in the event of the shipowner not being able to continue to fulfil their legal or contractual obligations as an employer of the seafarers by reason of insolvency, sale of ship, change of ship's registration or any other similar reason;

(iv) in the event of a ship being bound for a war zone, as defined by national laws or regulations or seafarers' employment agreements, to which the seafarer does not consent to go, and

(v) in the event of termination or interruption of employment in accordance with an industrial award or collective agreement or termination of employment for any other similar reason.

Whilst P&I cover will in general encompass repatriation costs linked to injury or illness or due to a shipwreck ((i) and (ii) above), the other causes in (iii) to (v) were until 2013 beyond the scope of cover.

14. What are the main areas of concern so far as P&I cover is concerned?

The main areas of concern at present are as follows:

(a) Cover for shipowner's liability to pay repatriation costs in case of shipowner's insolvency and the requirement of financial security to cover such liability;

Until 2013, Club cover did not extend to pay costs of repatriation to crewmembers where a shipowner Member becomes insolvent; where the ship is bound for a war zone that seafarers refuse to go; where employment is terminated for various reasons. However, with effect from the 2013 policy year cover has been extended by a Rule change to enable the Club to provide financial security in respect of these risks.

As these formerly excluded risks are in the nature of operational costs rather than liabilities, the cover provided is subject to a reimbursement obligation, so that in normal circumstances these costs will continue to be met ultimately by the Member.

However, in the cases which are of most concern to States, where the shipowner has become insolvent, the Club will not be reimbursed by the Member and the costs will remain for the Club's account.

(b) Financial security in respect of shipowners' liability for seafarers' illness, injury or death in connection with their employment

These risks are part of the traditional cover provided by the Club and it is expected that the ship's Certificate of Entry will be accepted as sufficient evidence under the MLC, knowing that the ship's entry is subject to the Rules, including the Club's policy defences.

Historically, Group Clubs have generally treated seafarer death, injury and illness claims with greater flexibility than many other types of claim. Since 2008, the Club have waived the application of the 'pay to be paid' and retrospective cancellation of cover for non-payment of premium Rules in respect of claims by seamen or their dependents, where there would otherwise be no enforceable right of recovery and the claim would go uncompensated.

15. Which claims under MLC required a change in Club Rules?

Repatriation costs in the three scenarios below were not covered prior to 2013. They are now covered as described in this FAQ in para 13 above:

(a) in the event of the shipowner not being able to continue to fulfil their legal or contractual obligations as an employer of the seafarers by reason of insolvency, sale of ship, change of ship's registration or any other similar reason;
(b) in the event of a ship being bound for a war zone, as defined by national laws or regulations or seafarers' employment agreements, to which the seafarer does not consent to go, and
(c) in the event of termination or interruption of employment in accordance with an industrial award or collective agreement or termination of employment for any other similar reason.

16. Which Flag States have already indicated that they will accept a Group club Certificate of Entry as evidence of financial security? Have any declined?

None have declined. Those who have already indicated acceptance are:- Antigua & Barbuda, Bahamas, Cayman, Cyprus, Denmark, Greece, Kiribati, Liberia, Malta, Marshall Islands, Norway, Singapore, Spain, Sweden, Switzerland, St Kitts & Nevis, St Vincent & Grenadines, Tuvalu, United Kingdom.

17. If we have insured our crew risks with a commercial underwriter and excluded them from Club cover, will the Club's Certificate of Entry be acceptable evidence of financial security under MLC when applying for a compliance certificate from the Flag State?

No, if your crew risks are excluded from Club cover and insured by a commercial underwriter, you should ask that underwriter to help you evidence the cover you have and you should not seek to rely upon your Club Certificate of Entry.

18. If we insure crew risks partly with the Club and partly under a State scheme will our Club Certificate of Entry be sufficient evidence of financial security when applying for a compliance certificate from the Flag State?

We anticipate that States will accept Club Certificates of Entry in these cases. The exclusion from Club cover will usually be expressed as being an exclusion "…to the extent that…" cover is provided under the relevant State scheme. States can therefore have confidence that the Club's Certificate of Entry does evidence financial security for any MLC liabilities that are not covered by the State's own scheme.

19. If we have a deductible for crew risks, will this make the Flag State unwilling to accept the Certificate of Entry as evidence of financial security?

Flag States are generally aware that clubs use deductibles. It is not anticipated that States will object to use of a Certificate of Entry as evidence of financial security because of a deductible.