

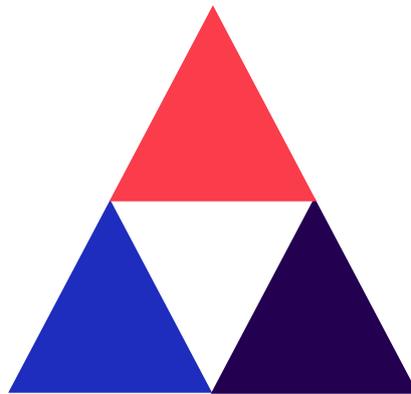


International  
Labour  
Organization

► Guidelines/2021

# Guidelines for port State control officers carrying out inspections under the Maritime Labour Convention, 2006, as amended

Second revised edition



\* In accordance with the procedure set out in the Resolution concerning amendments to the ILO flag State inspection and port State control guidelines to reflect amendments to the Code of the Maritime Labour Convention, 2006 adopted by the Special Tripartite Committee (STC) in 2018, these Guidelines will be submitted to the 341st Session (March 2021) of the Governing Body of the ILO for authorization to publish them on the ILO website.

**International Labour Office**  
Geneva



## ► Acknowledgements

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## ► 1. Introduction

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### 1.1. Explanation of the objectives and content of the guidelines

**1.** The In accordance with resolution IV of the 94th (Maritime) Session of the International Labour Conference (ILC), these international guidelines for port State control officers <sup>1</sup> (PSCOs) have been developed to:

- assist port State administrations to effectively implement their responsibilities under the Maritime Labour Convention, 2006, as amended (MLC, 2006); and
- promote harmonization in the implementation of the provisions of the Convention concerning port State responsibilities.

Pursuant to the 2018 Resolution of the Special Tripartite Committee established under Article XIII of the MLC, 2006, the guidelines have been updated to reflect the 2014, 2016 and 2018 amendments.

**2.** The guidelines are intended to provide supplementary practical information and guidance to port State administrations that can be adapted to reflect national practices and policies and other applicable international arrangements governing port State control inspections.

**3.** The guidelines should be regarded as complementary to the national measures taken by administrations of flag States in their countries and abroad. They are intended to provide assistance to port State administrations in securing compliance with the

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<sup>1</sup>The MLC, 2006, uses the term “authorized officer” in Regulation 5.2.1 to reflect the fact that national situations differ and in some cases the person carrying out a port State inspection under the Convention may not necessarily be the same person or persons as those currently carrying out inspection under the existing international (regional) port State control arrangements. The 94th (Maritime) Session of the ILC resolution used the term “port State control officers”. In these guidelines the same term and the related acronym PSCO is used to refer to “authorized officer”.

MLC, 2006. They should be read in conjunction with the guidelines for flag State inspections under the MLC, 2006, as much of the information contained in the flag State guidelines will also be helpful to personnel carrying out MLC, 2006, port State control inspections.

**4.** The rest of Chapter 1 of these guidelines provides general information on the MLC, 2006, regarding its structure, key concepts and terminology.

**5.** Chapter 2 provides background information on port State control inspection responsibilities in connection with the MLC, 2006.

**6.** Chapters 3 and 4 address the procedures for carrying out port State control inspections under the MLC, 2006. The procedures describe, from a practical perspective, the various stages or steps that an inspection might go through, depending on the circumstances that the PSCO finds when going on board a ship. Chapter 3 covers matters such as preparing for an inspection and the beginning part of a PSCO inspection, which is the on-board review of the ship's MLC-related documents that provide prima facie evidence that the ship is in compliance. Chapter 3 also provides guidance on the matters that a PSCO would need to consider in making a determination as to whether an inspection is finished at that first point – the document review – or whether there are grounds for carrying out a more detailed inspection. Chapter 4 addresses the next stage, the more detailed on-board inspection of conditions on a ship in cases where the PSCO has concluded that there are grounds under the MLC, 2006, to carry out this level of inspection.

**7.** Chapter 5 provides guidance on action to be taken by PSCOs on finding, after a more detailed inspection, that there are deficiencies or non-conformities on a ship.

**8.** Chapter 6 outlines the steps to be taken in connection with the handling of onshore complaints that are made by seafarers (Regulation 5.2.2).

## 1.2. Brief overview of the MLC, 2006

**9.** The Preamble to the MLC, 2006, sets out the intentions and the objectives of the Members of the International Labour Organization in adopting the Convention. The Preamble refers to the global nature of the shipping industry and the need for seafarers to have special protection. It also links the MLC, 2006, to the other key international Conventions that establish minimum standards for the shipping industry in connection with safety, security and marine environmental protection. The MLC, 2006, complementing other major international Conventions, reflects international agreement on the minimum requirements for working and living conditions for seafarers.

**10.** Like other international labour standards, the MLC, 2006, only sets out minimum international standards. However, recalling paragraph 8 of article 19 of the Constitution of the International Labour Organisation, the Preamble goes on to clarify that in no case shall the adoption of any Convention and Recommendation by the Conference or the ratification of any Convention by any Member be deemed to affect any law, award, custom or agreement which ensures more favourable conditions to the workers concerned than those provided for in the Convention or Recommendation.

**11.** The MLC, 2006, contains an explanatory note, which was adopted by the 94th (Maritime) Session of the International Labour Conference to assist governments with respect to their legislative obligations and to understanding the legal relationship between the different parts of the MLC, 2006. It also provides an outline of the overall structure of the MLC, 2006.

### [Explanatory note to the Regulations and Code of the Maritime Labour Convention, 2006](#)

1. This explanatory note, which does not form part of the Maritime Labour Convention, is intended as a general guide to the Convention.
2. The Convention comprises three different but related parts: the Articles, the Regulations and the Code.
3. The Articles and Regulations set out the core rights and principles and the basic obligations of Members ratifying the Convention. The Articles and Regulations can only be changed by the Conference in the framework of article 19 of the Constitution of the International Labour Organization (see Article XIV of the Convention).
4. The Code contains the details for the implementation of the Regulations. It comprises Part A (Mandatory standards) and Part B (Non-

mandatory guidelines). The Code can be amended through the simplified procedure set out in Article XV of the Convention. Since the Code relates to detailed implementation, amendments to it must remain within the general scope of the Articles and Regulations.

5. The Regulations and the Code are organized into general areas under five 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;
- Title 5: Compliance and enforcement.

6. Each Title contains groups of provisions relating to a particular right or principle (or enforcement measure in Title 5), with connected numbering. The first group in Title 1, for example, consists of Regulation 1.1, Standard A1.1 and Guideline B1.1 relating to minimum age.

7. The Convention has three underlying purposes:

- (a) to lay down, in its Articles and Regulations, a firm set of rights and principles;
- (b) to allow, through the Code, a considerable degree of flexibility in the way Members implement those rights and principles; and
- (c) to ensure, through Title 5, that the rights and principles are properly complied with and enforced.

8. There are two main areas for flexibility in implementation: one is the possibility for a Member, where necessary (see Article VI, paragraph 3), to give effect to the detailed requirements of Part A of the Code through substantial equivalence (as defined in Article VI, paragraph 4).

9. The second area of flexibility in implementation is provided by formulating the mandatory requirements of many provisions in Part A in a more general way, thus leaving a wider scope for discretion as to the precise action to be provided for at the national level. In such cases, guidance on implementation is given in the non-mandatory Part B of the Code. In this way, Members which have ratified this Convention can ascertain the kind of action that might be expected of them under the corresponding general obligation in Part A, as well as action that would not necessarily be required. For example, Standard A4.1 requires all ships to provide prompt access to the necessary medicines for medical care on board ship (paragraph 1(b)) and to "carry a medicine chest" (paragraph 4(a)). The fulfilment in good faith of this latter obligation clearly

means something more than simply having a medicine chest on board each ship. A more precise indication of what is involved is provided in the corresponding Guideline B4.1.1 (paragraph 4) so as to ensure that the contents of the chest are properly stored, used and maintained.

10. Members which have ratified this Convention are not bound by the guidance concerned and, as indicated in the provisions in Title 5 on port State control, inspections would deal only with the relevant requirements of this Convention (Articles, Regulations and the Standards in Part A). However, Members are required under paragraph 2 of Article VI to give due consideration to implementing their responsibilities under Part A of the Code in the manner provided for in Part B. If, having duly considered the relevant Guidelines, a Member decides to provide for different arrangements which ensure the proper storage, use and maintenance of the contents of the medicine chest, to take the example given above, as required by the Standard in Part A, then that is acceptable. On the other hand, by following the guidance provided in Part B, the Member concerned, as well as the ILO bodies responsible for reviewing implementation of international labour Conventions, can be sure without further consideration that the arrangements the Member has provided for are adequate to implement the responsibilities under Part A to which the Guideline relates.

**12.** Title 5 relates to compliance and enforcement and includes the requirements of the MLC, 2006, in connection with carrying out inspections of foreign ships in a port (port State control) in Regulation 5.2.1 and Standard A5.2.1 with guidance provided in Guideline B5.2.1. It is important to take account of the four seven appendices located at the end of Title 5 of the MLC, 2006.

- Appendix A2-I: Evidence of financial security under Regulation 2.5, paragraph 2;
- Appendix A4-I: Evidence of financial security under Regulation 4.2;
- Appendix B4-I: An optional Model Receipt and Release Form referred to in Guideline B4.2.2 (not subject to port State control);
- Appendix A5-I: List of matters for flag State inspection for certification purposes;
- Appendix A5-II: Model documents relating to the flag State inspection and certification system established in Title 5:
  - Maritime Labour Certificate;
  - Interim Maritime Labour Certificate;

- Declaration of Maritime Labour Compliance (DMLC (two parts – Part I and Part II));
- Appendix A5-III: List of areas that may be the subject of a more detailed inspection in a port State;
- Appendix B5-I: An example, to provide guidance as to the way both parts of the DMLC might be filled out by the flag State (Part I) and a shipowner (Part II).

### 1.3. Key concepts in the MLC, 2006

**13.** This section of Chapter 1 sets out some of the key concepts relating to the application of the MLC, 2006. Section 1.4, which follows, contains the definitions of terms that are found in the MLC, 2006.

#### 1.3.1. Application

**14.** The MLC, 2006, applies to all seafarers on all ships covered by the Convention. A seafarer is any person <sup>2</sup> who is employed or engaged or works in any capacity on board a ship to which this Convention applies. <sup>3</sup> The terms “seafarer” and “ship” are defined in the MLC, 2006 (see section 1.4 below).

#### 1.3.2. Seafarers’ rights

**15.** The MLC, 2006, is intended to help achieve decent work for all seafarers. It sets out the fundamental rights and principles that seafarers have with respect to their working and living conditions.

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<sup>2</sup> The MLC, 2006, provides that, in the event of doubt as to whether any categories of persons are to be regarded as “seafarers” for the purpose of the Convention, the question is to be determined by the competent authority in the flag State, after consultation with the shipowners and seafarers concerned. Guidance on this matter is provided in the resolution concerning information on occupational groups (No. VII), adopted at the 94th (Maritime) Session of the International Labour Conference.

<sup>3</sup> The MLC, 2006, applies to all ships, whether publicly or privately owned, ordinarily engaged in commercial activities. Subject to any national provisions to the contrary, the MLC, 2006, does not apply to: ships which navigate exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply; ships engaged in fishing or in similar pursuits and ships of traditional build such as dhows and junks; warships or naval auxiliaries.

**16.** Article III of the MLC, 2006, relates to fundamental rights and principles requiring ILO Member States to satisfy themselves that the provisions of their law and regulations respect, in the context of this 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.

**17.** Article IV relates to seafarers' employment and social rights and states:

1. Every seafarer has the right to a safe and secure workplace that complies with safety standards.
2. Every seafarer has a right to fair terms of employment.
3. Every seafarer has a right to decent working and living conditions on board ship.
4. Every seafarer has a right to health protection, medical care, welfare measures and other forms of social protection.
5. Each Member shall ensure, within the limits of its jurisdiction, that the seafarers' employment and social rights set out in the preceding paragraphs of this Article are fully implemented in accordance with the requirements of the Convention. Unless specified otherwise in the Convention, such implementation may be achieved through national laws or regulations, through applicable collective bargaining agreements or through other measures or in practice.

### **1.3.3. Compliance and enforcement**

**18.** The flag State must verify, through an effective and coordinated system of regular inspection, monitoring and other control measures that ships comply with the requirements of the Convention as implemented in national laws or regulations, or collective bargaining agreements or other measures or practices implementing the requirements of the MLC, 2006. Generally, under Regulation 5.1.3, in addition to being inspected, ships must

also be certified for compliance with the requirements for the 16 areas of seafarers' working and living conditions set out in Title 5, Appendix A5-I. For ships that do not have to be certified (under 500 gross tonnage (gt)), or ships that are not engaged in international voyages and that do not operate from a port or between ports in another country) the flag State must still verify compliance for all the same requirements as a certified ship.

**19.** The MLC, 2006, recognizes that ILO Members need some flexibility to address particular national situations, especially with respect to smaller ships and ships that do not go on international voyages or specific kinds of ships. It also recognizes that flag States may not always be in a position to implement the requirements of the MLC, 2006, in the manner set out in Part A of the Code and allows them to adopt measures which are "substantially equivalent". The MLC, 2006, provides guidance primarily directed to national law-making bodies in flag States as to the ways in which this national flexibility can be exercised. For ships that are engaged in international voyages or operate from a port or between ports in another country, these matters will be stated on the MLC, 2006, documents carried on ships for the information of flag State inspectors and authorized officers carrying out port State control inspections (PSCOs).

### **Certified ships**

**20.** For ships of 500 gt or over that are engaged in international voyages or ships of 500 gt or over that fly the flag of one country and operate from a port or between ports in another country, the MLC, 2006, contains a list of 16 areas that are subject to a mandatory certification system (see MLC, 2006, Title 5, Appendix A5-I). Certification is mandatory only for some ships that are covered by the MLC, 2006; however a shipowner can also request that a ship be certified even in cases where certification is not required.

**21.** The documents that are issued by the flag State, or by an RO on its behalf, if so authorized, are the Maritime Labour Certificate and a DMLC. The DMLC has two parts. Part I is filled out by the flag State and refers to the relevant national requirements that are to be certified as having been complied with. Part II is prepared by the shipowner and outlines the measures that the shipowner has put in place to ensure ongoing compliance on the ship with these flag State requirements.

**22.** These two documents and also the conditions that they certify may be the subject of an inspection in foreign ports (port State control inspection).

**Models for the documents that must be carried on ships can be found in Appendix A5-II which is located at the end of Title 5 of the MLC, 2006.**

**23.** The Maritime Labour Certificate and DMLC, if properly maintained by the ship concerned, constitute **prima facie evidence that the ship meets the requirements of the MLC, 2006**, and will facilitate the process of inspection when the ship visits foreign ports.

**24.** The MLC, 2006, was expressly designed to harmonize with the existing arrangements in the maritime sector for ship inspections (by flag and port States) in connection with an earlier maritime labour Convention – the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)) and the major ship safety and security and pollution protection Conventions developed by the International Maritime Organization (IMO).<sup>4</sup> It also seeks to take account of the arrangements currently in place under the various regional memoranda of understanding (MOU) or Agreements on port State control.

**25.** To help ensure decent conditions of work for seafarers and a level playing field for shipowners, all ships covered by the MLC, 2006, irrespective of size, visiting foreign ports in ratifying States are potentially subject to an inspection (Article V, paragraph 4).

**26.** States that ratify the MLC, 2006, are given the responsibility to carry out port State control inspections of foreign ships that come into their ports. This responsibility, essentially reflecting a right, can also be understood as part of the ratifying Member States' shared interests and obligation (under Article I, paragraph 2) to cooperate with each other to help ensure the effective implementation and enforcement of the MLC, 2006.

### **Ships that are not certified**

**27.** Inspection in a foreign port applies even if the ship is flying the flag of a country that has not ratified the MLC, 2006, because the MLC, 2006, obliges the States that ratify it to give no more favourable treatment to ships of States that have not ratified it (Article V, paragraph 7). This means that

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<sup>4</sup> See Regulation 5.2.1, paragraph 3; International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS); and the International Convention for the Prevention of Pollution from Ships, 1973, and the Protocol 1978 (MARPOL 73/78).

these ships may be the subject of a more detailed inspection as provided under the MLC, 2006.<sup>5</sup>

## 1.4. Definitions

**28.** The following definitions are found in Article II, paragraph 1, of the MLC, 2006:

- (a) *competent authority* means the minister, government department or other authority having power to issue and enforce regulations, orders or other instructions having the force of law in respect of the subject matter of the provision concerned;
- (b) *declaration of maritime labour compliance* means the declaration referred to in Regulation 5.1.3;
- (c) *gross tonnage means* the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I to the International Convention on Tonnage Measurement of Ships, 1969, or any successor Convention; for ships covered by the tonnage measurement interim scheme adopted by the International Maritime Organization, the gross tonnage is that which is included in the REMARKS column of the International Tonnage Certificate (1969);
- (d) *Maritime Labour Certificates* means the certificate referred to in Regulation 5.1.3;
- (e) *requirements of this Convention* refers to the requirements in these Articles and in the Regulations and Part A of the Code of this Convention;

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<sup>5</sup> The MLC, 2006, does not expressly address the requirements for these ships; however, the Convention was intended to operate as consistently as possible with existing practices in the maritime sector and key international Conventions of the International Maritime Organization. Based on the example found in IMO resolution A.787(19), section 1.5, on port State control, the following would apply as the appropriate approach: "All Member Parties should as a matter of principle apply the procedures set out in these guidelines to ships of non-ratifying States and ships of ratifying States that, for reasons related to size, are not carrying documents required by the MLC, 2006, in order to ensure that equivalent inspections are conducted and that equivalent levels of seafarers' working and living conditions (including seafarers' rights) apply on board these ships. The seafarers' working and living conditions on such ships should be compatible with the aims of the provisions of the MLC, 2006; otherwise, the ship should be subject to such requirements as are necessary to obtain a comparable level with the MLC, 2006." A similar approach is also reflected in the Paris Memorandum of Understanding on port State Control.

- (f) *seafarer* means any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies;
- (g) *seafarers' employment agreement* includes both a contract of employment and articles of agreement;
- (h) *seafarer recruitment and placement service* means any person, company, institution, agency or other organization, in the public or the private sector, which is engaged in recruiting seafarers on behalf of shipowners or placing seafarers with shipowners;
- (i) *ship* means 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;
- (j) *shipowner* means 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 organizations or persons fulfil certain of the duties or responsibilities on behalf of the shipowner.



## ► 2. Port State control inspection responsibilities under the MLC, 2006

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### 2.1. Overview of the MLC, 2006, port State responsibilities

**29.** Although port State control inspection is voluntary or discretionary in character as noted above, if a country chooses to carry out such inspections, they must be based on an effective port State inspection and monitoring system (Regulation 5.2.1, paragraph 4). The main aspect of this obligation is the need to ensure that the port State has an adequate number of qualified officers trained to carry out port State control under the MLC, 2006. In most cases this will involve personnel that are already qualified under the existing international port State control arrangements, developed in connection with the IMO Conventions and under regional MOU on port State control.<sup>1</sup> However, in some countries it is possible that these inspections would be carried out by an authorized officer who is not necessarily qualified as a PSCO for other purposes, for example, a maritime labour inspector. Irrespective of the approach adopted in each country, in general, most of the expectations and guidance for PSCOs, especially with respect to conduct and the level of training expected for a person to exercise professional judgement will be equally applicable.

### 2.2. Port State control officers

**30.** Port State control inspection under the MLC, 2006, is to be carried out by “authorized” officers (Regulation 5.2.1, paragraph 3). As mentioned earlier, the term “port State control officer (PSCO)” is adopted in these guidelines. This means that persons must be authorized, by the competent authority in the port State to carry out these inspections and should carry official identification that can be shown to ships’ masters and to seafarers.

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<sup>1</sup> See for example IMO resolution A.787(19), section 2.5, and Annex 7 of the Paris MOU.

**31.** PSCOs should also be given sufficient power under relevant national laws or regulations to carry out their responsibilities under the MLC, 2006, in the event that a port State authority decides to inspect a foreign ship.

**32.** The MLC, 2006, does not set out specific requirements with respect to PSCOs, but port State control is to be carried out in accordance with the MLC, 2006, and "... other applicable international arrangements governing port State control inspections" (Regulation 5.2.1, paragraph 3). This means that existing requirements and international guidance with respect to qualifications and training required for persons functioning as a PSCO would be generally relevant.<sup>2</sup>

### 2.2.1. Professional profile of authorized officers/PSCOs under the MLC, 2006<sup>3</sup>

**33.** Port State control should be carried out only by authorized PSCOs who have the qualifications and training necessary for them to carry out their duties under the MLC, 2006.

**34.** The PSCO may be assisted by any person with the required expertise acceptable to the port State.

**35.** The PSCOs and any persons assisting them should be impartial and should have no commercial interest, either in the port of inspection, or in the ships inspected. PSCOs should not be employed by or undertake work on behalf of ROs. They should, as appropriate, be required to apply the *Code of good practice for port State control officers*, adopted in the framework of the IMO (MSC-MEPC.4/Circ.2).

**36.** The PSCOs should hold credentials issued by the port State in the form of a document or identity card bearing the holder's photograph and indicating that they are authorized to carry out the port State control (see paragraph 57 below). Any person assisting the PSCO should also hold an appropriate authorization issued by the port State.

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<sup>2</sup> See: IMO resolution A.787(19), section 2.5; Annex 7 of the Paris MOU, and the *Code of good practice for port State control officers*, adopted in the framework of the IMO (MSC-MEPC.4/Circ.2). The provisions of the MLC, 2006, relating to flag State inspectors may also be useful for port State authorities to consider (Regulation A5.1.4, paras 2, 3, 6, 7, 10, 11 and 12).

<sup>3</sup> See also IMO resolution A.787(19), section 2.4.

### 2.2.2. Requirements of PSCOs

**37.** The PSCO should be able to review documents written in English and communicate in English with seafarers.

**38.** Specific training with respect to labour inspections under the MLC, 2006, is essential and, for personnel who have not been involved in port State control inspections previously, also with respect to the role and professional practice of PSCO.



## ► 3. Carrying out port State control inspections under the MLC, 2006

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**39.** As PSCOs should use their professional judgement in carrying out all duties, and consult others where they consider it appropriate to do so.

**40.** To ensure consistent enforcement of port State control requirements, PSCOs should carry a copy of the MLC, 2006, and of these guidelines, either in a digital format or paper copy, for ready reference when carrying out any port State control inspections. The PSCO may also have a copy of the *Guidelines for flag State inspections under the MLC, 2006*.

### 3.1. General considerations for MLC, 2006, port State control inspections

#### 3.1.1. The purpose and subject matter of MLC, 2006, port State control inspections

**41.** The purpose of the inspection by PSCOs is to determine whether a ship is in compliance with the requirements of the Convention (including seafarers' rights) (Article IV, paragraph 5). These requirements are laid down in the Articles and Regulations and in Part A (Standards) of the Code of the MLC, 2006, relating to the working and living conditions of seafarers on the ship (Regulation 5.2.1, paragraphs 1 and 3). Part B (guidelines) of the MLC, 2006, Code is not subject to inspection by port State control. Port State control inspections are, in principle, concerned with the 16 areas of working and living conditions on the ship (Standard A5.2.1, paragraph 2) that are listed in Title 5, Appendix A5-III of the MLC, 2006, and are to be certified by flag States as being in compliance with the related requirements of the Convention. However, the PSCO may also take action in the case of non-compliance with any other requirement of the Convention relating to working and living conditions (Regulation 5.2.1, paragraph 1).

**42.** The details for the implementation of the MLC, 2006, requirements are to be prescribed, in accordance with the Convention, in the national laws or regulations, collective agreements or other measures in the flag State concerned. On ships carrying a Maritime Labour Certificate, a summary of

the relevant national standards adopted to implement the MLC, 2006, in the 16 areas referred to will be set out in Part I of the DMLC attached to the Certificate. As indicated below, the Certificate and DMLC should be the starting point in the inspection process as they constitute prima facie evidence that the ship is in compliance with the requirements of the MLC, 2006 (including seafarers' rights).

**43.** PSCOs may also be entrusted with handling and investigating complaints made by seafarers on ships visiting their ports. If complaint handling is not part of their functions, they should be able to direct seafarers to the competent official for handling complaints or to receive complaints for transmittal to the competent official.

### **3.1.2. Conducting an MLC, 2006, port State control inspection**

**44.** The guidance in this section and in Chapters 4 and 5 of these guidelines describes port State control under the MLC, 2006, as a process involving three potential phases or stages, depending on the situation that the PSCO encounters when going on board a ship to initiate the inspection:

- review of the Maritime Labour Certificate and the DMLC constituting prima facie evidence of compliance (Chapter 3);
- more detailed inspection, where applicable (Chapter 4);
- action to be taken in case of deficiencies or non-conformities (Chapter 5).

**45.** An inspection may end after a satisfactory document review or it may move to a more detailed inspection and end at that point or an inspection may also require that action be taken if deficiencies are identified. At all stages of the inspection, PSCOs should bear in mind the obligation to make all possible efforts to avoid a ship being unduly detained or delayed (Standard A5.2.1, paragraph 8).

**46.** The procedures recommended in the following sections deal with the initiation of the inspection, the first (or often only) stage of the inspection, which is mainly concerned with reviewing a ship's MLC, 2006, documentation, the Maritime Labour Certificate and the DMLC. They are based on MLC, 2006, Standard A5.2.1 "Inspections in port", taking account of other relevant

inspection procedures. The PSCO should be familiar with Standard A5.2.1, especially paragraphs 1 and 4. Paragraph 1 reads as follows:

1. Where an authorized officer, having come on board to carry out an inspection and requested, where applicable, the Maritime Labour Certificate and the Declaration of Maritime Labour Compliance, finds that:

- (a) the required documents are not produced or maintained or are falsely maintained or that the documents produced do not contain the information required by this Convention or are otherwise invalid; or
- (b) there are clear grounds for believing that the working and living conditions on the ship do not conform to the requirements of this Convention; or
- (c) there are reasonable grounds to believe that the ship has changed flag for the purpose of avoiding compliance with this Convention; or
- (d) there is a complaint alleging that specific working and living conditions on the ship do not conform to the requirements of this Convention;

a more detailed inspection may be carried out to ascertain the working and living conditions on board the ship. Such inspection shall in any case be carried out where the working and living conditions believed or alleged to be defective could constitute a clear hazard to the safety, health or security of seafarers or where the authorized officer has grounds to believe that any deficiencies constitute a serious breach of the requirements of this Convention (including seafarers' rights).

Paragraph 4 reads as follows (see also section 5.1 of these guidelines):

4. Where, following a more detailed inspection, the working and living conditions on the ship are found not to conform to the requirements of this Convention, the authorized officer shall forthwith bring the deficiencies to the attention of the master of the ship, with required deadlines for their rectification. In the event that such deficiencies are considered by the authorized officer to be significant, or if they relate to a complaint made in accordance with paragraph 3 of this Standard, the authorized officer shall bring the deficiencies to the attention of the appropriate seafarers' and shipowners' organizations in the Member in which the inspection is carried out, and may:

- (a) notify a representative of the flag State;
- (b) provide the competent authorities of the next port of call with the relevant information.

**47.** Inspections may be carried out by the port State authority either on its own initiative or upon receipt of a complaint. Where an inspection is to take place, the PSCO should first determine whether or not the ship is carrying a Maritime Labour Certificate and DMLC, which constitute prima facie evidence of compliance (see paragraph 52 below). If the ship is not flying the flag of a ratifying Member then the ship may be the subject of a more detailed inspection (Chapter 4) and a document review is not applicable. The initial inspection may be followed by a more detailed inspection (see Chapter 4) in any of the four cases described in subparagraphs (a)–(d) of Standard A5.2.1, paragraph 1. In some cases a more detailed inspection must be carried out (see the last sentence of the Standard).

## **3.2. Procedure where inspection is initiated by the PSC authority**

### **3.2.1. Preparing for inspections**

**48.** The effectiveness and conduct of a port State control inspection may be improved if basic information is obtained prior to carrying out an inspection. In this regard basic information concerning the type of ship, cargo, flag and history as well as its previous and next ports of call and time available in port for the inspection should be obtained in advance, if possible.

**49.** Special attention should be paid to any previously reported deficiencies or non-conformities and any related plan of action to rectify the non-conformities. Depending upon their nature, number and frequency on the ship concerned, or on ships of the same shipowner, prior non-conformities may affect the decision whether or not to carry out an inspection on a particular ship. The non-conformities may be clear grounds for a more detailed inspection (see paragraph 67 below), especially if the subsequent review of the ship's documentation shows no evidence that a prescribed rectification has been completed (see paragraphs 95 and 104 below).

### **3.2.2. Sources of information**

**50.** Information on previous non-conformities is available, for example, from deficiency notices or inspection reports issued by the port State control authority itself and from the port State control authorities of

previous ports of call, as well as from port State control databases or other material.

**51.** In addition, it is important to share information and generally coordinate activities with the PSCOs responsible for the inspection of ships for compliance with the requirements of the SOLAS, STCW and the MARPOL and other IMO Conventions. Certain non-conformities with the MLC, 2006, may have already been noted as also constituting non-compliance with a requirement of the SOLAS or STCW Conventions, or noted by the PSCO on the occasion of an inspection in connection with the IMO Conventions.

### 3.2.3. Scope of the port State control inspection

**52.** Where the ship carries a Maritime Labour Certificate and DMLC issued by a flag State that has ratified the MLC, 2006, these documents constitute “prima facie evidence that ... the requirements of this Convention relating to working and living conditions of the seafarers have been met to the extent so certified” (Regulation 5.1.1, paragraph 4). **Except in the four situations set out under paragraph 1(a)–(d) of Standard A5.2.1 (see section 3.2.5 below), a port State control inspection, if undertaken, would be limited to carrying out a review of the ship’s Certificate and the DMLC** (Regulation 5.2.1, paragraph 2).

**53.** The document review is concerned with:

- (a) ascertaining the existence of a MLC, 2006, Certificate and a DMLC (or an Interim Certificate) and verifying that these documents have been **validly** established for the ship; and
- (b) verifying that the documents are **complete**, in the sense that they contain all the information required by the MLC, 2006 (see paragraph 63 below), especially with respect to the 16 subject areas listed in Appendix A5-I.

**54.** Where the PSCO having come on board finds that the documentation is **valid** and **complete**, the inspection would come to an end at that point unless there are **clear grounds** for believing that the working and living conditions on the ship do not conform to the requirements of the Convention (Standard A5.2.1, paragraph 1(b)) or **reasonable grounds** to believe that the ship has changed flag for the

purpose of avoiding compliance (Standard A5.2.1, paragraph 1(c)) or there has been a **complaint** (Standard A5.2.1, paragraph 1(d)).

### 3.2.4. The MLC, 2006, requirements that may be the subject of a more detailed inspection by a PSCO

**55.** As stated earlier, the requirements for working and living conditions to be met by all ships are those set out in the MLC, 2006, with the detailed implementation of those requirements being prescribed in the national law of the flag State concerned. Since many of the basic requirements of the MLC, 2006, are worded in general terms, reference should be made – in the case of ships carrying a Certificate and a DMLC – to the national law requirements outlined in **Part I** of the DMLC, with note being taken of those that vary from the MLC, 2006, because of substantial equivalence, for example. Shipowners' approved measures for ongoing compliance will be set out in **Part II**. Guidance relating to ships which do not carry a Certificate and a DMLC is provided in paragraph 85 below.

### 3.2.5. Review of a ship's MLC, 2006, documents in a port State control inspection

**56.** The following guidance applies only in the case of ships flying the flag of a State for which the MLC, 2006, is in force. In any other case, the PSCO may decide to proceed immediately to carry out a more detailed inspection (see Chapter 4 below).

#### Step 1: Boarding the ship and requesting documentation

**57.** When boarding a ship, the PSCO should present to the master or to the duty officer, if requested to do so, the document or identity card (bearing the holder's photograph), issued by the port State, confirming his or her authority to carry out the inspection (see paragraph 36 above).

**58.** A PSCO having come on board should gain an impression of whether the ship is well maintained and operated. It should be borne in mind that the purpose of the inspection is (where applicable) to review the Certificate and DMLC. When on board the PSCO may observe situations or practices that suggest that the working and living conditions on the ship may be inconsistent with the requirements of the MLC, 2006. Except in the case of a deficiency that requires immediate attention, any deficiencies observed should be dealt with after the review of these documents has taken place.

59. If a Maritime Labour Certificate and DMLC are not produced, the PSCO may proceed to consider whether a more detailed inspection is needed (see **step 5** below and Chapter 4 (Standard A5.2.1, paragraph 1(a))).

### Step 2: Reviewing the documents

60. As explained above (paragraph 53), a review of the ship's Maritime Labour Certificate and DMLC should include checking for:

- validity; and
- completeness.

61. To the extent necessary to verify the Maritime Labour Certificate and DMLC, further documentation referred to in the Certificate and the DMLC with regard to the working and living conditions may be checked at this stage of the inspection.

62. *Validity.* In addition to checking the date of validity stated on the Maritime Labour Certificate, the PSCO should check that:

- the period of validity does not exceed five years<sup>1</sup> or, in the case of an Interim Certificate, six months;
- in the case that the validity of the Maritime Labour Certificate has been extended by the competent authority or a recognized organization (see Standard A5.1.3, paragraph 4), the extended period of validity does not exceed five months from the expiry date of the existing certificate;<sup>2</sup>

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<sup>1</sup> For Certificates that have been renewed the period may, in some cases, be up to three months longer than five years (see Standard A5.1.3, paragraph 3).

<sup>2</sup> The new certificate shall be valid for a period not exceeding five years starting from the date provided for in paragraph 3 of Standard A5.1.3, as applicable:

- when the renewal inspection has been completed **within three months before the expiry of the existing Maritime Labour Certificate**, the new Maritime Labour Certificate shall be valid from the date of completion of the renewal inspection **for a period not exceeding five years from the date of expiry of the existing certificate**;
- when the renewal inspection is completed **more than three months before the expiry date of the existing Maritime Labour Certificate**, the new Maritime Labour Certificate shall be valid **for a period not exceeding five years starting from the date of completion of the renewal inspection**.

- except in the case of an Interim Certificate, the ship is covered by a signed and sealed or stamped certification and, where applicable, endorsements, that purport to be based on an initial or intermediate inspection carried out in compliance with Standard A5.1.3, paragraphs 2 to 4 and Standard A5.1.4, paragraph 4 (see, in particular, *Guidelines for flag State inspections under the Maritime Labour Convention, 2006*, sections 2.2.4–2.2.7);
- the Certificate, and the accompanying DMLC (where applicable), have apparently been signed and sealed or stamped by an authorized flag State official; where the person authorized to sign is an employee of an RO, reference should be made to the list of ROs authorized by the flag State concerned, made available by the ILO in accordance with Standard A5.1.2, paragraph 4 (see *Guidelines for flag State inspections under the Maritime Labour Convention, 2006*, section 2.2);

**63. Completeness.** A Maritime Labour Certificate must have a DMLC attached or it is incomplete. An Interim Maritime Labour Certificate, however, need not be accompanied by a DMLC. The PSCO should ensure that all spaces requiring input from the flag State<sup>3</sup> have been completed in the Maritime Labour Certificate and the DMLC, or in the Interim Maritime Labour Certificate. The check for completeness should then ensure (except in the case of an Interim Certificate) that:

- Part I of the DMLC identifies, for each of the 16 certified areas, the national requirements embodying the relevant provisions of the MLC, 2006, by providing a reference to the relevant national legal provisions as well as setting out, to the extent necessary, concise information on the main content of the national requirements, including ship-type specific requirements. In that connection PSCOs may find it helpful to consider the guidance provided in the MLC, 2006, to flag States to help them complete the DMLC Part I. The MLC, 2006, provides that “The statement of national requirements in Part I of the Declaration of Maritime Labour Compliance should include or be accompanied by references to the legislative provisions relating to seafarers’ working and living conditions in each of the matters listed in Appendix A5-I. Where national legislation precisely follows the requirements stated in this Convention, a reference may be all that is necessary. Where a provision of the Convention is implemented

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<sup>3</sup> See Title 5, MLC, 2006, Appendix A5-II, and Standard A5.1.3, paragraphs 10 and 11; see also the example in Appendix B5-I.

through substantial equivalence as provided under Article VI, paragraph 3, this provision should be identified and a concise explanation should be provided. Where an exemption is granted by the competent authority as provided in Title 3, the particular provision or provisions concerned should be clearly indicated.”

- Part II of the DMLC indicates the main measures adopted by the shipowner to ensure ongoing compliance with the national requirements between flag State inspections;
- The results of any subsequent flag State verifications, including those related to measures referred to in Part II of the DMLC are recorded in or attached to the DMLC or made available to the PSCO in some other way, and include information not only on any deficiencies found during the verifications but also the dates when the deficiencies were found to have been remedied.

**64.** The DMLC is not expected to cover every single national law or regulation or other measure adopted by the flag State to implement the requirements of the MLC, 2006. A DMLC should be considered as complete if it identifies, in each of the 16 areas, the national law requirements on the matters that are referred to as Basic requirements in Chapter 4 below.

**65.** The documents will not be complete if any necessary element in them is not in English or accompanied by a translation into English, as required (for ships on international voyages) (Standard A5.1.3, paragraphs 11 and 12).

**66.** If the documents are not complete, the PSCO may, instead of proceeding to a determination as to whether there are grounds for a more detailed inspection in step 3 below, decide to consider undertaking a more detailed inspection (see **step 5** below) (Standard A5.2.1, paragraph 1(a)).

### **Step 3: Determining whether there are clear grounds for believing that the conditions do not conform to requirements**

**67.** Clear grounds for believing that the working and living conditions on the ship do not conform to the requirements of the Convention (Standard A5.2.1, paragraph 1(b)) may result from:

- the ship’s Maritime Labour Certificate or DMLC or documents referred to in the Certificate or DMLC; or
- other elements (see paragraphs 71 and 72 below).

**68.** *Clear grounds from the ship's documentation.* The ship's Maritime Labour Certificate and DMLC must be viewed as prima facie evidence of compliance with the requirements of the Convention (including seafarers' rights), to the extent that they certify compliance with the national requirements implementing the MLC, 2006, relating to the working and living conditions of seafarers (Regulation 5.1.1, paragraph 4). When reviewing these documents for completeness under step 2 above, the PSCO should form an opinion as to whether the information provided in the DMLC shows that:

- the requirements of the MLC, 2006, in each of the 16 areas appear to be complied with, especially the requirements on the matters that are referred to as *Basic requirements* in Chapter 4 below;
- Part II of the DMLC identifies measures in each of the 16 areas to ensure ongoing compliance between inspections (see Standard A5.1.3, paragraph 10(b)).

**69.** If the information contained in the Certificate or the DMLC or documents referred to in the Certificate or DMLC or other elements clearly indicate that the ship may not be in compliance with the requirements of the Convention (including seafarers' rights), relating to the working and living conditions of seafarers on the ship, the PSCO should consider taking the action indicated in the following paragraph.

**70.** The following action would be appropriate:

- (a) The PSCO should first take account of the relevant requirements of the national law of the flag State as reflected in the DMLC Part I, paying particular attention to any substantial equivalences and permitted exemptions and variations that may be stated in the DMLC Part I. If it is not a case of non-compliance, no further action with respect to that question should be taken.
- (b) If the DMLC Part I indicates a possible non-compliance, the PSCO should check whether or not the specific Convention requirements concerned are being complied with on the ship. If no case of non-compliance is found on the ship, no further action with respect to that question should be taken.
- (c) If, however, it is clear to the PSCO that the requirement(s) concerned may not have been complied with on the ship, the PSCO should discuss the matter with the Master and, if necessary, with a representative of the flag State.

- (d) If, after having carefully considered the information provided by the Master and, if applicable, by the flag State, the PSCO concludes that, in his or her professional judgement, one or more requirements of the Convention may not have been complied with on the ship, he or she should take a decision as to whether a more detailed inspection of the ship should be carried out in accordance with paragraph 1(b) of Standard A5.2.1. If further clarifications are necessary concerning the national requirements, as reflected in the DMLC Part I, the matter should first be promptly referred to the port State control authority, with a view to consultation with the flag State.

**71. Clear grounds from other elements.** Clear grounds for believing that the working and living conditions on the ship do not conform to the requirements of the Convention may arise in several other contexts, including during the preparations for inspections (see sections 3.2.1 and 3.2.2 above), general impressions, visual observations when on board (paragraph 58 above) and during the investigation of a complaint (see paragraphs 83 and 117 below).

**72.** Where clear grounds exist for believing that the working and living conditions on the ship do not conform to the requirements of the Convention, the PSCO should proceed to **step 5** below. Where clear grounds do *not* exist and there has been no change of flag justifying consideration of step 4 below, **a more detailed inspection should not be carried out.**

#### **Step 4: Determining whether there are reasonable grounds to believe that the ship has changed flag to avoid compliance with the Convention**

**73.** A PSCO may also decide to undertake a more detailed inspection if there are **reasonable grounds** to believe that the ship has changed flag for the purpose of avoiding compliance with the MLC, 2006 (Standard A5.2.1, paragraph 1(c)). Any change or changes of flag should be noted in the documentation of the ship concerned, in particular its Continuous Synopsis Record, maintained under Regulation 5 of the SOLAS Convention, Chapter XI-1. There must be **“reasonable grounds”**, rather than **“clear grounds”**, to believe that the purpose of the change or changes was to avoid compliance. The PSCO could form an opinion on the purpose of changing flag by looking at any relevant inspection report. Significant outstanding deficiencies which have not been transferred to the new flag’s records may be **reasonable grounds**. The previous flag State may provide information, which could include difficulties it had in enforcing compliance. However, the

shipowner's representative may be able to inform the PSCO of legitimate reasons for changing flag which were not for the purposes of avoiding compliance.

**74.** In the absence of **reasonable grounds** to believe that the ship has changed flag for the purpose of avoiding compliance with the MLC, 2006, **a more detailed inspection should not be carried out**. If there are reasonable grounds, the PSCO must determine whether or not to carry out a more detailed inspection.

#### **Step 5: Determining whether or not to carry out a more detailed inspection**

**75.** Where the inspection has not been determined to be complete in any of the steps set out above, the question of whether or not to carry out a more detailed inspection (see Chapter 4 below) will normally be at the discretion of the PSCO or the PSC authority. A more detailed inspection must be carried out where the working and living conditions believed (by the PSCO) or alleged (by a complainant: see section 3.3 below) to be defective could constitute a clear hazard to the safety, health or security of seafarers or where the PSCO has grounds to believe that any deficiencies constitute a serious breach of the requirements of the Convention (including seafarers' rights). Guidance on the concept of a serious breach is provided below (Chapter 5, section 5.2, paragraphs 96 and 98).

**76.** If the PSCO decides, or is required, to carry out a more detailed inspection, the ship's master should be informed as soon as possible of the grounds for this action. If the PSCO determines that a more detailed inspection is not needed, no further action is required.

### **3.3. Procedure for inspections initiated upon receipt of a complaint**

**77.** The MLC, 2006, envisages complaints in a port State in two different situations. Both situations can result in a more detailed inspection. However the steps and considerations differ. One relates to onshore complaints made by a seafarer under Regulation 5.2.2 and is addressed below in Chapter 6. The present section deals with complaints that are made as part of the port State control inspection procedure (Standard A5.2.1, paragraph 1(d)). A complaint in this context means information submitted by a seafarer, a professional body, an association, a trade union or generally any person with

an interest in the safety of the ship, including an interest in safety or health hazards to seafarers on board (Standard A5.2.1, paragraph 3).

**78.** The PSCO and/or port State authority should keep a record of the time when the complaint was received, the means by which it was transmitted, the source of the complaint, the name of the person receiving the complaint, the name and flag of the ship concerned, and the nature and details of the alleged non-conformity with the requirements of the MLC, 2006. A record of action taken upon receipt of the complaint should also be kept.

**79.** Before taking any action upon a complaint, the PSCO needs to check that it relates to a requirement of the Convention (including seafarers' rights) that is laid down in its Articles and Regulations or in Part A of the Code and that it relates to the working and living conditions of seafarers on the ship concerned (Standard A5.2.1, paragraph 1(d)). It need not be in one of the 16 areas listed in Appendix A5-III of the Convention.

**80. Appropriate steps shall be taken to safeguard the confidentiality of complaints made by seafarers** (Standard A5.2.2, paragraph 7).

**81.** On the basis of the complaint, the PSCO may, or must (where the working and living conditions alleged to be defective could constitute a clear hazard to safety or health or a serious breach referred to in the last sentence of Standard A5.2.1, paragraph 1 – see paragraph 75 above), decide to carry out a more detailed inspection on board ship.

**82.** If the PSCO decides not to carry out a more detailed inspection and the complaint has been made by the seafarer with respect to his or her individual case, it should be handled in accordance with Regulation 5.2.2 (see Chapter 6 below).

**83.** The inspection carried out in response to a complaint must generally be limited to matters within the scope of the complaint. However, as noted in Standard A5.2.1, paragraph 3, information in the complaint itself or gained during its investigation may give the PSCO clear grounds for believing that the working and living conditions on the ship do not conform to the requirements of the Convention. In such a case, the PSCO *may* (or *must*, in the circumstances referred to above) decide to carry out a more detailed inspection (see paragraph 71 above). In addition, where the results of the investigation seriously contradict information provided in the ship's documentation, including with respect to ongoing compliance in Part II of

the DMLC, this may constitute evidence that the required documents are falsely maintained, warranting a more detailed inspection on the basis of Standard A5.2.1, paragraph 1(a).

## ► 4. More detailed inspection of maritime labour conditions on ships

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### 4.1. General note

**84.** The MLC, 2006, This chapter is intended to provide a practical tool for guidance concerning the subject matter of a more detailed inspection under the MLC, 2006. For an authoritative statement of requirements on any issue, reference should be made to the text of the MLC, 2006, and – insofar as they are outlined in a valid Maritime Labour Certificate and attached DMLC – to the national laws or regulations or collective bargaining agreements or other measures implementing the MLC, 2006, that are applicable to the ship concerned.

**85.** Where a ship is not carrying a Maritime Labour Certificate and DMLC (because it is a ship for which certification is not mandatory (Regulation 5.1.3, paragraph 1) and has not requested a certificate or it is a ship of a non-ratifying State), PSCOs will need to use their professional judgement when evaluating compliance with the specific requirements of the MLC, 2006. This will also apply if the information contained in the Certificate or the DMLC or documents referred to in the Certificate or DMLC or other elements clearly indicate that the ship may not be in compliance with the requirements of the Convention (including seafarers' rights) relating to working and living conditions of seafarers on the ship. The exercise of professional judgement by PSCOs will be particularly necessary where a requirement of the MLC, 2006, may be stated in general terms in the Standards (Part A of the Code). Guidance as to the general expectations regarding this requirement may be found in Part B of the Code, but this guidance should be considered with care since Part B is not mandatory and is not itself the subject of port State control; however, it provides information on the intention of the mandatory provisions. In cases of perceived non-conformity, the master should be given an opportunity to produce evidence of the national requirements concerned and provide any necessary explanations.

**86.** With respect to inspections that are initiated by the PSC authority, information is provided below on the basic requirements to be complied with, accompanied by suggestions concerning sources of information for

ascertaining compliance, as well as by examples of deficiencies or non-conformities, in the 16 areas for port State inspection that are specified in Appendix A5-III of the MLC, 2006. Since these are the same as those that are to be the subject of flag State certification under Appendix A5-I (see paragraph 20 above), this guidance is based on the relevant parts of Chapter 3 of the *Guidelines for flag State inspections under the Maritime Labour Convention, 2006*. The guidance below may also be relevant to inspections initiated upon a complaint, within the limits of the scope of the complaint.

**87.** It should, however, be borne in mind that except where a ship is evidently substandard, or the PSCO already has clear grounds to believe that aspects of the living and working conditions on a ship are not in compliance with the MLC, 2006, the more detailed inspection by the PSCO may be much less extensive than that carried out by the flag State. If, after visiting the main spaces on the ship and talking to seafarers, the PSCO finds that the ship appears to be well maintained and operated and the seafarers appear to be satisfied with their general conditions of work, the PSCO may decide to choose several of the 16 areas of the requirements for a closer scrutiny, with a view to ascertaining whether the flag State inspections of the ship have been carried out and whether the shipowner's measures for ensuring ongoing compliance are adequate and are being adequately implemented. Depending upon the results, the PSCO may decide to end the more detailed inspection, or to extend it to more or even all of the other areas referred to in Appendix A5-III.

**88.** Finally, in the following section, frequent reference is made to requirements under the national laws or to national requirements or to similar terms. These relate to the relevant national requirements that have been adopted by the flag State to implement the requirements of the Convention. It should be understood that it is not the function of PSCOs to enforce any national requirements that go beyond the requirements of the MLC, 2006.

## 4.2. The basic requirements; sources of information; examples of deficiencies or non-conformities

### Regulation 1.1 – Minimum age (Appendix A5-III – Minimum age)

#### Basic requirements

- Persons below the age of 16 shall not be employed or engaged or work on a ship (Standard A1.1, paragraph 1).
- Seafarers under the age of 18 shall not be employed or engaged or work where the work is likely to jeopardize their health or safety (Standard A1.1, paragraph 4).
- Special attention must be paid to the safety and health of seafarers under the age of 18, in accordance with national laws and regulations (Standard A4.3, paragraph 2(b)).
- Night work \* for seafarers under the age of 18 is prohibited, except to the extent that an exemption has been made by the competent authority under Standard A1.1, paragraph 3, in the case of training programmes (Standard A1.1, paragraph 2).

\* "Night" is defined in accordance with national law and practice. It covers a period of at least nine hours starting no later than midnight and ending no earlier than 5 a.m. (Standard A1.1, paragraph 2).

#### Sources of information

- A crew list, a passport or other official document confirming seafarers' birth dates.
- Work schedule with respect to seafarers under the age of 18 to determine hours and nature of work.
- Information on types of work on board that have been identified as likely to jeopardize the safety of seafarers under the age of 18.
- Recent accident reports and safety committee reports to determine whether seafarers under the age of 18 were involved.
- Interviews, in private, with seafarers.

### Examples of deficiencies

- Person under the age of 16 working as a seafarer.
- Seafarer under the age of 18 working at night (and not as part of a training programme).
- Seafarer under the age of 18 carrying out tasks that are likely to jeopardize their safety or health.

## Regulation 1.2 – Medical certificate (Appendix A5-III – Medical certification)

### Basic requirements

- Seafarers are not allowed to work on a ship unless they are certified \* as medically fit to perform their duties (Regulation 1.2, paragraph 1).
- For seafarers working on ships ordinarily engaged on international voyages the certificate must be provided as a minimum in English (Standard A1.2, paragraph 10).
- The medical certificate must have been issued by a duly qualified medical practitioner and must still be valid (Standard A1.2, paragraphs 1 and 4).
- The period of validity \*\* for a certificate is determined under the national law of the flag State in accordance with the following:
  - two-year maximum for medical certificates except for seafarers under 18; then it is one year (Standard A1.2, paragraph 7(a));
  - six-year maximum for a colour vision certificate (Standard A1.2, paragraph 7(b)).

**\* Certificates issued in accordance with, or meeting the substance of the applicable requirements, under the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW), as amended, are to be accepted as meeting these requirements** (Standard A1.2, paragraph 3).

\*\* The above requirements should be read in light of the following provisions of the MLC, 2006:

8. In urgent cases the competent authority may permit a seafarer to work without a valid medical certificate until the next port of call where the seafarer

can obtain a medical certificate from a qualified medical practitioner, provided that:

- (a) the period of such permission does not exceed three months; and
- (b) the seafarer concerned is in possession of an expired medical certificate of recent date (Standard A1.2, paragraph 8).

9. If the period of validity of a certificate expires in the course of a voyage, the certificate shall continue in force until the next port of call where the seafarer can obtain a medical certificate from a qualified medical practitioner, provided that the period shall not exceed three months (Standard A1.2, paragraph 9).

### Sources of information

- The crew list.
- The medical certificates.
- Colour vision certificates, where appropriate.
- Work schedules and interviews, in private, with seafarers to determine that medical restrictions on work for individual seafarers are being respected and that seafarers are not assigned to, or carrying out, work contrary to these restrictions.
- The authorization or permit (subject to a maximum validity of three months) where the competent authority of the flag State has permitted a seafarer to work without a valid, or with an expired, certificate in urgent cases.

### Examples of deficiencies

- Seafarer on board without a valid medical or colour vision certificate (where appropriate) or authorization from the competent authority in urgent cases.
- Seafarer working on the ship or performing tasks contrary to a restriction on a medical certificate.
- Seafarer's medical certificate not in the English language on a ship ordinarily engaged in international voyages.
- A medical certificate that has not been issued by a duly qualified medical practitioner.

## **Regulation 1.3 – Training and qualifications (Appendix A5-III – Qualifications of seafarers)**

### **Basic requirements**

- Seafarers must be trained or certified \* as competent or otherwise qualified to perform their duties in accordance with flag State requirements (Regulation 1.3, paragraph 1).
- Seafarers must have successfully completed training for personal safety on board ship (Regulation 1.3, paragraph 2).

\* Training and certification in accordance with the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW), as amended, is to be accepted as meeting these requirements.

### **Sources of information**

- Minimum Safe Manning Document (SMD) to verify the required qualifications of the seafarers.
- Certificates and endorsements for STCW personnel confirming seafarers' competency with respect to their duties (as well as the crew list to determine duties).
- Documentary evidence (from a shipowner or, if relevant to the position concerned, a national authority or otherwise) confirming that seafarers have any qualifications that may be required under the MLC, 2006, for those performing other duties on board ship (for example, ships' cooks – see below, Regulation 3.2).
- Evidence confirming that seafarers have successfully completed training for personal safety on board ship.
- Appropriate training material that is available to the crew.
- Interviews, in private, with seafarers to confirm training.

### **Examples of deficiencies**

- Seafarer's qualifications not in accordance with the SMD.
- Seafarer working on the ship who is not trained or certified or otherwise qualified to perform required duties.

- Certificates or endorsements are not up to date or have expired.
- Seafarer working on the ship who has not successfully completed personal safety training.
- Absence of a valid dispensation issued under STCW, where needed.

### **Regulation 1.4 – Recruitment and placement (Appendix A5-III – Use of any licensed or certified or regulated private recruitment and placement service)**

#### **Basic requirements**

- Where a shipowner has used a private seafarer recruitment and placement service it must be licensed or certified or regulated in accordance with the MLC, 2006 (Standard A1.4, paragraph 2).
- Seafarers shall not be charged for use of these services (Standard A1.4, paragraph 5(b)).
- Shipowners using services based in States not party to the MLC, 2006, must ensure, as far as practicable, that these services meet the requirements of the MLC, 2006 (Standard A1.4, paragraph 9).

#### **Sources of information**

- National websites of the competent authority regarding the licensing or regulation of seafarer recruitment and placement services (manning agencies).
- If seafarers were engaged through a seafarer recruitment and placement service based in a country that has not ratified the MLC, 2006, documentation should be available to show that the shipowner has, as far as practicable, verified through a proper system that the service is operated consistently with the MLC, 2006. The shipowner's system may, for example, take account of information collected by the flag State, as well as any audits or certifications concerning the quality of services operating in countries that have not ratified the MLC, 2006. Other evidence which shipowners could provide might be checklists against the MLC requirements or an RO audit of a recruitment and placement service based in a country that has not ratified the MLC, 2006.

- Interviews, in private, with seafarers to determine that they have not paid a fee or other charge to a recruitment or placement service and have been informed of their rights and duties.
- Interviews, in private, with seafarers to determine that the recruitment and placement service used does not operate a blacklist.

### Examples of deficiencies

- No documentary evidence available to indicate that the service or agency is operated in accordance with the MLC, 2006.
- A seafarer who was recruited through a private seafarer recruitment and placement service that was not licensed or certified or regulated in accordance with the MLC, 2006, or whose license or certificate or any other similar document is no longer valid.
- Use of a private recruitment and placement service requiring the seafarer to pay a fee or other charge for employment services.
- A seafarer working on board who was recruited by a recruitment and placement service operating in a State which is not party to the MLC, 2006, in cases where the shipowner cannot support its conclusion of consistency with the MLC, 2006.

## Regulation 2.1 – Seafarers’ employment agreements (Appendix A5-III – Seafarers’ employment agreements)

### Basic requirements

- All seafarers must have a copy of their seafarers’ employment agreement (SEA) signed by both the seafarer and the shipowner or shipowner’s representative (or other evidence of contractual or similar arrangements) (Standard A2.1, paragraph 1(a)).
- A SEA must, at a minimum, contain the matters set out in Standard A2.1, paragraph 4(a)–(k) of the MLC, 2006 (Standard A2.1, paragraph 4).
- Seafarers must also be given a document containing a record of their employment on the ship (such as a discharge book) (Standard A2.1, paragraph 1(e)).
- Where a collective bargaining agreement forms all or part of the SEA, the agreement must be on board the ship with relevant provisions in English

(except for ships engaged only in domestic voyages) (Standard A2.1, paragraph 2).

- A SEA continues to have effect while a seafarer is held captive on or off the ship as a result of acts of piracy<sup>1</sup> or armed robbery against ships,<sup>2</sup> regardless of whether the date fixed for its expiry has passed or either party has given notice to suspend or terminate it (Standard A2.1, paragraph 7).

### Sources of information

- A copy of the SEA (or other evidence of contractual or similar arrangements) and any applicable collective bargaining agreements for seafarers and, at a minimum, a standard form of the SEA (in English) for the ship.
- Evidence, where possible, given the timing of the inspection relative to employment period, of possession by seafarers of a record of their employment.
- Seafarers' records of employment to determine that they do not contain statements as to the quality of their work or as to their wages.
- Interviews, in private, with seafarers to confirm that, on signing a SEA, they were given an opportunity to examine and seek advice and freely accepted the agreement before signing.

### Examples of deficiencies

- A seafarer without a SEA (or other evidence of contractual or similar arrangements) working on the ship.
- A seafarer, with a SEA that does not contain all the items in Standard A2.1, paragraph 4(a)–(k).

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<sup>1</sup> *Piracy* has the same meaning as in the United Nations Convention on the Law of the Sea, 1982 (Standard A2.1, paragraph 7(a)).

<sup>2</sup> *Armed robbery against ships* means any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a State's internal waters, archipelagic waters and territorial sea, or any act of inciting or of intentionally facilitating an act described above (Standard A2.1, paragraph 7(b)).

- A seafarer with a SEA that is inconsistent with the national requirements of the flag State.
- No system or provisions for seafarers to have their employment recorded.
- Seafarers are not given a record of their employment on the ship on completion of engagement.
- A collective bargaining agreement that forms all or part of the SEA is either not on board or, if on board, not in English on a ship that engages in international voyages.
- Standard form SEA is not in English.
- The SEA contains clauses that violate seafarers' rights.

## **Regulation 2.2 – Wages (Appendix A5-III – Payment of wages)**

### **Basic requirements**

- Seafarers must be paid at no greater than monthly intervals and in full for their work in accordance with their employment agreements (Regulation 2.2, paragraph 1; Standard A2.2, paragraph 1).
- Seafarers are entitled to an account each month indicating their monthly wage and any authorized deductions such as allotments (Standard A2.2, paragraphs 2, 3 and 4).
- No unauthorized deductions, such as payments for travel to or from the ship (Regulation 2.2, paragraph 1).
- Charges for remittances/allotment\* transmission services must be reasonable and exchange rates in accordance with national requirements (Standard A2.2, paragraph 5).
- Where a seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships, wages and other entitlements under the SEA, relevant collective bargaining agreement or applicable national laws, including the remittance of any allotments, must continue to be paid during the entire period of captivity and until the seafarer is released and duly repatriated; or, where the seafarer dies while in captivity, until the date of death as determined in accordance with applicable national laws or regulations (Standard A2.2, paragraph 7).

\* An allotment is an arrangement whereby a proportion of seafarers' earnings are regularly remitted, on their request, to their families or dependants or legal beneficiaries whilst the seafarers are at sea (Standard A2.2, paragraphs 3 and 4).

### Sources of information

- The SEA and documentation, such as the payroll records to confirm that wages are being paid at intervals no greater than one month as specified in their SEA or relevant collective agreements.
- Relevant documents showing service charges and exchange rates applied to any remittances made to the seafarers' families or dependants or legal beneficiaries at their request.
- Relevant documents to confirm the payment of wages including the requirement that a monthly account (such as a wage slip) is provided to the seafarers. Copies of individual accounts should be available to PSCOs at their request.
- Interviews, in private, with seafarers to confirm compliance with requirements on the payment of wages.

### Examples of deficiencies

- A seafarer is not paid regularly (at least monthly) and in full in accordance with the SEA or collective bargaining agreement.
- A seafarer is not given a monthly account (such as a wage slip) of wages.
- Allotments are not being paid or are not being paid in accordance with the seafarer's instructions.
- Charge for converting and transmitting currencies is not in line with national requirements.
- More than one set of wage accounts is in use.
- A seafarer who is held captive on or off the ship as a result of acts of piracy or armed robbery against ships is not or has not been paid during the entire period of captivity and until the release and due repatriation of the seafarer or, where the seafarer dies while in captivity, until the date of death, as determined in accordance with national laws and regulations.

## Regulation 2.3 – Hours of work and hours of rest (Appendix A5-III – Hours of work or rest)

### Basic requirements

- The minimum hours of rest \* must not be less than ten hours in any 24-hour period, and 77 hours in any seven-day period, if the relevant national law relates to hours of rest, or, if the relevant national law relates to hours of work, the maximum hours of work \*\* must not exceed 14 hours in any 24-hour period and 72 hours in any seven-day period (Standard A2.3, paragraph 5, as implemented in national standards). \*\*\*
- Hours of rest may be divided into no more than two periods, one of which must be at least six hours; the interval between consecutive periods of rest must not exceed 14 hours (Standard A2.3, paragraph 6, as implemented in the national standards). \*\*\*
- Account must be taken of the danger posed by the fatigue of seafarers (Standard A2.3, paragraph 4).

\* Hours of rest means time outside hours of work; this term does not include short breaks (Standard A2.3, paragraph 1(b)).

\*\* Hours of work means time during which seafarers are required to do work on account of the ship (Standard A2.3, paragraph 1(a)).

\*\*\* With respect to the national standards implementing Standard A2.3:

*Standard A2.3, paragraph 3, provides that “Each Member acknowledges that the normal working hours’ standard for seafarers, like that for other workers, shall be based on an eight-hour day with one day of rest per week and rest on public holidays. However, this shall not prevent the Member from having procedures to authorize or register a collective agreement which determines seafarers’ normal working hours on a basis no less favourable than this standard.”*

*Standard A2.3, paragraph 7, provides that “Musters, firefighting and lifeboat drills, and drills prescribed by national laws and regulations and by international instruments, shall be conducted in a manner that minimizes the disturbance of rest periods and does not induce fatigue.”*

*Standard A2.3, paragraph 8*, provides that “When a seafarer is on call, such as when a machinery space is unattended, the seafarer shall have an adequate compensatory rest period if the normal period of rest is disturbed by call-outs to work.”

*Standard A2.3, paragraph 13*, provides that “Nothing in paragraphs 5 and 6 of this Standard shall prevent a Member from having national laws or regulations or a procedure for the competent authority to authorize or register collective agreements permitting exceptions to the limits set out. Such exceptions shall, as far as possible, follow the provisions of this Standard but may take account of more frequent or longer leave periods or the granting of compensatory leave for watchkeeping seafarers or seafarers working on board ships on short voyages.”

### Sources of information

- An approved standardized table of shipboard working arrangements setting out the national requirements for maximum hours of work or the minimum hours of rest and the schedule for service at sea and in port, which should be posted in an easily accessible place on the ship (the table of working arrangements or schedule in the working language or languages of the ship and in English).
- Documents (the SEA or the relevant collective agreement and other documents, such as the bridge and engine room logbooks, that can also be checked) to confirm compliance with the basic requirements concerning minimum hours of rest or maximum hours of work.
- A table of working arrangements or schedule in the working language or languages of the ship and in English.
- Up to date records of work or rest, as required under national standards, for each seafarer serving on the ship.
- Cases of seafarer fatigue, possibly indicated by hours of work that are consistently at the upper limits and by other contributory factors, such as disrupted rest periods; or cases of seafarers showing symptoms such as lack of concentration, irrelevant and inconsistent replies to questions, yawning and slow reaction times.

### Examples of deficiencies

- A seafarer’s work schedule does not conform to the applicable standards.
- Table of working arrangements is not posted or does not contain required information.
- Table of working arrangements is not in English and the working language(s) of the ship.
- Records of work or rest are not available or are not maintained.
- Evidence of exceeding the limits of work and no record of suspension of the schedule, in accordance with Standard A2.3, paragraph 14, have been noted in a logbook or other document.

## Regulation 2.5 – Repatriation (Appendix A5-III – Financial security for repatriation)

### Basic requirements

For all ships:

- A financial security system to assist seafarers in the event of their abandonment, <sup>3</sup> is in place (Standard A2.5.2, paragraphs 1 and 3).
- The financial security system may be in the form of a social security scheme or insurance or a national fund or other similar arrangements (Standard A2.5.2, paragraph 3).
- The financial security system must provide direct access, sufficient coverage and expedited financial assistance (Standard A2.5.2, paragraph 4).

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<sup>3</sup> Note: A seafarer is deemed to have been abandoned where the shipowner:

- (a) fails to cover the cost of the seafarer’s repatriation; or
- (b) has left the seafarer without the necessary maintenance and support (adequate food, accommodation, drinking water supplies, essential fuel for survival on board the ship and necessary medical care (Standard A2.5.2, paragraph 5)); or
- (c) has otherwise unilaterally severed their ties with the seafarer including failure to pay contractual wages for a period of at least two months.

- Assistance provided by the financial security system must be granted promptly upon a request made by the seafarer or seafarer's nominated representative and supported by the necessary justification of entitlement (Standard A2.5.2, paragraphs 8 and 2).
- Assistance provided by the financial security system must be sufficient to cover (Standard A2.5.2, paragraph 9):
  - (a) outstanding wages and other entitlements due from the shipowner limited to four months;
  - (b) all expenses reasonably incurred by the seafarer, including the cost of repatriation (which must cover travel by appropriate and expeditious means, normally by air, and provision for food and accommodation from the time of leaving the ship until arrival at home, necessary medical care, passage and transport of personal effects and any other reasonable costs or charges arising from the abandonment (Standard A2.5.2, paragraph 10));
  - (c) essential needs of the seafarer including such items as: adequate food, clothing where necessary, accommodation, drinking water supplies, essential fuel for survival on board the ship, necessary medical care and any other reasonable costs or charges from the act or omission constituting the abandonment until the seafarer's arrival at home.
- The financial security must not cease before the end of the period of validity of the financial security unless the financial security provider has given prior notification of at least 30 days to the competent authority of the flag State (Standard A2.5.2, paragraph 11).

**Additional basic requirements for ships required to be certified:** <sup>4</sup>

- Ships must carry on board a certificate of financial security or other documentary evidence issued by the financial security provider (Standard A2.5.2, paragraph 6).

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<sup>4</sup> This means "ships to which paragraph 1 or 2 of Regulation 5.1.3 applies" (Standard A2.5.2, paragraph 6), i.e. ships of 500 gross tonnage or over, engaged in international voyages (voyages from a country to a port outside such a country); ships of 500 gross tonnage or over, flying the flag of a Member and operating from a port, or between ports, in another country; and other ships at the request of the shipowner to the Member concerned.

- A copy of the certificate or other documentary evidence must be posted in a conspicuous place on board where it is available to the seafarer (Standard A2.5.2, paragraph 6).
- Where more than one financial security provider provides cover, the document provided by each provider must be carried on board (Standard A2.5.2, paragraph 6).
- The certificate or other documentary evidence of financial security must contain the information required in Appendix A2-I (Standard A2.5.2, paragraph 7).
- The certificate or other documentary evidence must be in English or accompanied by an English translation (Standard A2.5.2, paragraph 7).

### Sources of information

#### For all ships:

- Relevant documents confirming that financial security has been provided.
- SEA.
- Collective bargaining agreement, if any.
- Relevant on-board complaint, if any.
- Last inspection report for MLC, 2006 as amended.
- Consultation of a relevant labour authority ashore, if considered appropriate.

#### In addition, for ships required to be certified:

- The valid financial security certificate or other documentary evidence issued by the financial security provider, including as regards the social security scheme in place.
- Interviews, in private, with seafarers.
- The DMLC, Part I to check whether there are any national substantial equivalences, and, if so, DMLC, Part II to check for compliance.

### Examples of deficiencies

For all ships:

- No evidence that financial security for repatriation has been provided.
- Seafarers are not provided with direct access to the financial security system when they have been abandoned.
- The assistance provided by the financial security system does not cover outstanding wages limited to four months, reasonable expenses including the cost of repatriation and the seafarer's essential needs.
- The financial security:
  - (i) has ceased before the expiration date stated on the financial security certificate or
  - (ii) has ceased before the end of the notice period of at least 30 days given to the competent authority (where applicable); or
  - (iii) is otherwise invalid.

In addition, for ships required to be certified:

- The certificate of financial security or other documentary evidence issued by the financial security provider, including as regards the social security scheme in place, is not carried on board.
- Where more than one financial security provider provides cover, not all documents provided by each provider are carried on board.
- The certificate or other documentary evidence is not posted in a conspicuous place on board where it is available to seafarers.
- The certificate or other documentary evidence does not include the required information as set out in Appendix 2-I.
- The certificate or other documentary evidence is not available in English or is not accompanied by an English translation.
- The financial security certificate or other documentary evidence is invalid, for example, is expired or falsified.

## **Regulation 2.7 – Manning levels (Appendix A5-III – Manning levels for the ship)**

### **Basic requirements**

- Ships must have a sufficient number of seafarers employed on board to ensure that ships are operated safely, efficiently and with due regard to security under all conditions, taking into account concerns about fatigue and the particular nature and conditions of voyage (Regulation 2.7).
- Ships as a minimum must comply with the manning levels as stated in the SMD or equivalent issued by the competent authority (Standard A2.7, paragraph 1).

### **Sources of information**

- SMD or applicable equivalent.
- Crew list to ascertain number, category (such as cooks and those responsible for food preparation and those who are responsible for medical care) and qualifications of seafarers working on board.
- On-board table of working arrangements to confirm that safe manning requirements are being implemented.
- Interviews, in private, with seafarers to confirm that requirements are met.

### **Examples of deficiencies**

- Numbers and/or categories of seafarers working on board do not comply with at least the minimum specified in the SMD.
- No SMD or equivalent on board.

## **Regulation 3.1 – Accommodation and recreational facilities (Appendix A5-III – Accommodation) (Appendix A5-III – On-board recreational facilities)**

### **Basic requirements**

- Ships must be in compliance with the minimum standards established by the MLC, 2006, providing and maintaining decent accommodation and

recreational facilities for seafarers working or living on ships, or both, consistent with promoting seafarers' health and well-being (Regulation 3.1, paragraph 1).

- Seafarer accommodation must be safe and decent and must meet national requirements implementing the MLC, 2006 (Standard A3.1, paragraph 1).
- Frequent inspections of seafarer accommodation areas are carried out by the master or a designate (Standard A3.1, paragraph 18) and are recorded and the records are available for review.

Note: For ships that were in existence before entry into force of the MLC, 2006, for the flag State: These ships may still be inspected in connection with seafarers' accommodation and recreational facilities to verify that the ship:

- meets the standards set out in ILO Conventions Nos 92, 133 or 147 (if applicable in the flag State) (Regulation 3.1, paragraph 2); and/ or
- provides and maintains decent accommodation and recreational facilities for seafarers working or living on board, or both, consistent with promoting the seafarers' health and well-being (Regulation 3.1, paragraph 1).

### Sources of information

- The construction plan of the ship showing dimensions and identifying the use to be made of each room or other area.
- The crew list for a comparison with the number of sleeping rooms and berths.
- Visual observation of seafarers' on-board accommodation and recreational facilities with particular attention paid to the following requirements in the MLC, 2006:
  - general requirements (Standard A3.1, paragraph 6);
  - the size of rooms and other accommodation spaces (Standard A3.1, paragraphs 9 and 10);
  - heating and ventilation (Standard A3.1 paragraph 7);
  - noise and vibration and other ambient factors (Standard A3.1, paragraph 6(h));
  - sanitary and related facilities (Standard A3.1, paragraphs 11 and 13);
  - lighting (Standard A3.1, paragraph 8);

- hospital accommodation (Standard A3.1, paragraph 12);
- recreational facilities (Standard A3.1, paragraphs 14 and 17);
- occupational safety and health and accident prevention requirements on ships, in light of the specific needs of seafarers who both live and work on ships (Standard A3.1, paragraphs 2(a) and 6(h)).
- The on-board records to confirm that frequent inspections are carried out by or under the authority of the ship's master as well as for ships that carry a Maritime Labour Certificate, the DMLC Part II to check that other inspections or actions provided for in the shipowners' approved measures have been carried out.
- Evidence that measures are being taken on the ship to monitor noise and vibration levels in seafarers' working and living areas.

#### **Examples of deficiencies**

- Location of sleeping rooms on the ship does not conform to national standards implementing the MLC, 2006.
- Number and/or size (including height) of sleeping rooms do not conform to national standards implementing the MLC, 2006.
- There is more than one seafarer per berth.
- Recreational facilities do not conform to national standards implementing the MLC, 2006.
- Heating, lighting or ventilation is inadequate or not functioning correctly.
- Fittings and fixtures within seafarer accommodation areas, including the hospital, mess rooms and recreational rooms, do not conform to national standards implementing the MLC, 2006.
- Separate sleeping rooms are not provided for males and females.
- Separate sanitation facilities are not provided for males and females.
- Sanitary facilities are inadequate or not functioning correctly.
- Hospital is being used to accommodate persons who are not sick.
- Seafarer accommodation or recreational facilities are not being maintained in a clean and tidy condition.

- Regular inspections of seafarer accommodation are not being carried out by the master or another designated person.
- Laundry facilities are inadequate or not functioning correctly.
- Exposure to hazardous levels of noise and vibration and other ambient factors and chemicals in the seafarer accommodation or recreational or catering facilities.

### **Regulation 3.2 – Food and catering (Appendix A5-III – Food and catering)**

#### **Basic requirements**

- Food and drinking water must be of appropriate quality, nutritional value and quantity, taking into account the requirements of the ship and the differing cultural and religious backgrounds of seafarers on the ship (Regulation 3.2, paragraph 1).
- Food is to be provided free of charge to seafarers during the period of engagement (Regulation 3.2, paragraph 2).
- Seafarers employed as ship's cooks \* with responsibility for preparing food must be trained and qualified for their positions (Standard A3.2, paragraph 3).
- Seafarers working as ships' cooks must not be under the age of 18 (Standard A3.2, paragraph 8).
- Frequent and documented inspections of food, water and catering facilities must be carried out by the master or a designate (Standard A3.2, paragraph 7).

\* "Ship's cook" means a seafarer with responsibility for food preparation (Regulation 3.2, paragraph 3; Standard A3.2, paragraphs 3 and 4).

#### **Sources of information**

- Documents (see Regulation 1.1 on minimum age) to confirm that the ship's cooks are 18 years old or older and that the ship's cooks are trained, qualified and competent for their positions in accordance with national requirements. In cases where a fully qualified cook is not required, evidence that seafarers processing food in the galley are trained or

instructed in food and personal hygiene and handling and storage of food on board ships.

- On-board records to confirm that frequent and documented inspections are made of:
  - supplies of food and drinking water;
  - spaces used for handling and storage of food;
  - galleys and other equipment used in the preparation and service of meals.
- Visual observation of catering facilities, including galleys and storerooms, to check that they are hygienic and fit for purpose.
- Evidence concerning how drinking water quality is monitored and the results of such monitoring.
- Menu plans together with visual observation of food supplies and storage areas to ensure that the food supplied is of an appropriate quality (for example, not out of date) and quantity and nutritional value and is varied in nature.
- Interviews, in private, with a representative number of seafarers to ensure that seafarers are not charged for food and are provided with drinking water and that food and drinking water are of appropriate quality and quantity.

#### **Examples of deficiencies**

- Food and drinking water are not of appropriate quality, nutritional value and quantity, for the seafarers on the ship.
- Seafarer is charged for food and/or is not provided with drinking water.
- Seafarer who has responsibility for preparing food is untrained or not instructed as required.
- Ship's cook is not trained and qualified.
- Ship's cook is under the age of 18.
- Frequent and documented inspections of the food or water, or of the preparation, storage or handling areas, are not being carried out.
- Catering facilities are not hygienic or are otherwise unfit for their purpose.

## Regulation 4.1 – Medical care on board ship and ashore (Appendix A5-III – On-board medical care)

### Basic requirements

- Seafarers must be covered by adequate measures for the protection of their health and have access to prompt and adequate medical care, including essential dental care, whilst working on board (Regulation 4.1, paragraph 1; Standard A4.1, paragraph 1).
- Health protection and care are to be provided at no cost to the seafarer, in accordance with national law and practice (Regulation 4.1, paragraph 2).
- Shipowners are to allow seafarers the right to visit a qualified medical doctor or dentist without delay in ports of call, where practicable (Standard A4.1, paragraph 1(c)).

Note: Port States are required to ensure that seafarers on board ships in their territory who are in need of immediate medical care are given access to the port State's medical facilities on shore (Regulation 4.1, paragraph 3).

### Sources of information

- Documents (such as the SEA) to confirm that, to the extent consistent with the flag State's law and practice, medical care and health protection services while seafarers are on board ship or landed in a foreign port are provided free of charge to seafarers (Standard A4.1, paragraph 1(d)).
- Documents (such as the SEA) to confirm that seafarers are given the right to visit a qualified medical doctor or dentist without delay in ports of call, where practicable (Standard A4.1, paragraph 1(c)).
- The DMLC Part II to check what provision the shipowner has made for access to medical facilities ashore.
- Records and equipment to confirm that general provisions on occupational health protection and medical care are being observed (Standard A4.1, paragraph 1(a)).
- Visual observation to confirm that the ship is equipped with sufficient medical supplies including a medicine chest and equipment, including either the most recent edition of the *International Medical Guide for Ships* or a medical guide as required by national laws and regulations.

- Documents (such as the SMD and crew list) to confirm that:
  - a qualified medical doctor is working on board (in the case of ships that carry 100 or more people and that are ordinarily engaged in voyages of more than three days' duration); or
  - where ships are not required to carry a medical doctor, they have at least one seafarer on board (who is trained and qualified to the requirements of STCW) to be in charge of medical care or is competent to provide medical first aid as part of their regular duties.
- Evidence that medical report forms are carried on board the ship.
- Interviews, in private, with a representative number of seafarers to confirm that seafarers have access to medical care on board without charge and are given leave to obtain medical and dental care services when calling in a port, where practicable.
- Evidence that procedures are in place for radio or satellite communications for medical assistance.

#### **Examples of deficiencies**

- A seafarer working on the ship is denied, without justification, shore leave by the master and/or shipowner to go ashore for medical or dental care.
- A seafarer is not provided with appropriate health protection and medical care on board ship.
- Medical personnel, with appropriate qualifications, as required by national laws or regulations, are not on board.
- Medical chest or equipment does not meet national standards and/or no medical guide is on board.
- No medical report forms are on board.
- There is evidence that a seafarer is being charged for medical or dental care contrary to national law or practice.

## **Regulation 4.2 – Shipowners’ liability (Appendix A5-III – Financial security relating to shipowners’ liability)**

### **Basic requirements**

- Seafarers have a right to material assistance and support from the shipowner with respect to the financial consequences of sickness, injury or death occurring while they are serving under a SEA or arising from their employment under such agreement (Regulation 4.2, paragraph 1).
- Shipowners are 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 sickness or incapacity has been declared of a permanent character (Standard A4.2.1, paragraph 1(c)).
- Measures are to be taken by shipowners or their representatives for safeguarding property of seafarers left on board by sick, injured or deceased seafarers and for returning it to them or to their next of kin (Standard A4.2.1, paragraph 7).
- Shipowners are to provide financial security to assure compensation in the event of the death or long-term disability of seafarers due to an occupational injury, illness or hazard, as set out in national law, the SEA or collective agreement (Standard A4.2.1, paragraph 1(b)).
- The system of financial security, as provided for in Standard A4.2.1, paragraph 1(b), may be in the form of a social security scheme, insurance fund or other similar arrangements (Standard A4.2.2, paragraph 2).
- The contractual compensation where set out in the SEA and without prejudice to Standard A4.2.1, paragraph 8(c), must be paid in full and without delay (Standard A4.2.1, paragraph 8(a)).
- There must not be pressure to accept a payment less than the contractual amount (Standard A4.2.1, paragraph 8(b)).
- Where the nature of the long-term disability of a seafarer makes it difficult to assess the full compensation to which the seafarer may be entitled, an interim payment or payments must be made to the seafarer so as to avoid undue hardship (Standard A4.2.1, paragraph 8(c)).

- The seafarer must receive payment without prejudice to other legal rights, but such payment may be offset by the shipowner against any damages resulting from any other claim made by the seafarer against the shipowner and arising from the same incident (Standard A4.2.1, paragraph 8(d)).
- The claim for contractual compensation may be brought directly by the seafarer concerned, or their next of kin, or a representative of the seafarer or designated beneficiary (Standard A4.2.1, paragraph 8(e)).
- For the purposes of Standard A4.2.1, paragraph 8, the term “contractual claim” means any claim which relates to death or long-term disability of seafarers due to an occupational injury, illness or hazard as set out in national law, the SEA or collective agreement (Standard A4.2.2, paragraph 1).
- Effective arrangements must be in place to receive, deal with and impartially settle contractual claims relating to compensation referred to in Standard A4.2.1, paragraph 8, through expeditious and fair procedures (Standard A4.2.2, paragraph 3).
- Seafarers must receive prior notification if a shipowner’s financial security is to be cancelled / terminated (Standard A4.2.1, paragraph 9).
- The provider of the financial security must notify the competent authority of the flag State if a shipowner’s financial security is cancelled or terminated (Standard A4.2.1, paragraph 10).
- The financial security shall not cease before the end of the period of validity of the financial security unless the provider has given prior notification of at least 30 days to the competent authority of the flag State (Standard A4.2.1, paragraph 12).
- The financial security must provide for the payment of all contractual claims covered by it, which arise during the period for which the document is valid (Standard A4.2.1, paragraph 13).
- A certificate or other documentary evidence of financial security issued by the financial security provider must be carried on board (Standard A4.2.1, paragraph 11).
- A copy of the certificate or other documentary evidence of financial security must be posted in a conspicuous place on board where it is available to the seafarers (Standard A4.2.1, paragraph 11).

- Where more than one financial security provider provides cover, the document provided by each provider must be carried on board (Standard A4.2.1, paragraph 11).
- The certificate or other documentary evidence of financial security must contain the information required in Appendix A4-I (Standard A4.2.1, paragraph 14).
- It must be in English or accompanied by an English translation (Standard A4.2.1, paragraph 14).

#### **Sources of information**

- The valid financial security certificate or other documentary evidence issued by the financial security provider.
- The DMLC, Part I to check whether there are any national substantial equivalences and, if so, the DMLC, Part II to check for compliance.
- The SEA and/or relevant collective bargaining agreement to verify that seafarers have the coverage required by national law implementing the MLC, 2006.
- Relevant on-board complaint, if any.
- Interviews, in private, with seafarers.
- Consultation of a relevant labour authority ashore, if considered appropriate.

#### **Examples of deficiencies**

- Where applicable, provisions in the SEA or collective bargaining agreement are not consistent with national requirements implementing the MLC, 2006.
- Seafarers do not receive contractual compensation payments as set out in the SEA or collective bargaining agreement.
- Contractual compensation delayed or not paid in full.
- Seafarers are pressured to accept a payment less than the contractual amount.

- Interim payment(s) are not made to the seafarer, where the nature of the long-term disability of a seafarer makes it difficult to assess the full compensation to which the seafarer may be entitled.
- Seafarers are not provided with direct access to the financial security system.
- No effective arrangements are in place to receive, deal with and impartially settle contractual claims.
- If the shipowner's financial security is to be or has been cancelled or terminated, and seafarers have not been notified.
- The financial security:
  - (i) has ceased before the expiration date stated on the financial security certificate or
  - (ii) has ceased before the end of the notice period of at least 30 days given to the competent authority (where applicable); or
  - (iii) is otherwise invalid.
- The certificate of financial security or other documentary evidence issued by the financial security provider, is not carried on board.
- Where more than one financial security provider provides cover, not all documents provided by each provider are carried on board.
- The certificate or other documentary evidence is not posted in a conspicuous place on board or is not available to seafarers.
- The financial security certificate or other documentary evidence does not include the required information as set out in Appendix A4-I.
- The certificate or other documentary evidence is not available in English or is not accompanied by an English translation.
- The financial security certificate or other documentary evidence is invalid, for example is expired or falsified.

## **Regulation 4.3 – Health and safety protection and accident prevention (Appendix A5-III – Health and safety and accident prevention)**

### **Basic requirements**

- The working, living and training environment on ships must be safe and hygienic and conform to national laws and regulations and other measures for occupational safety and health protection and accident prevention on board ship. Reasonable precautions are to be taken on the ships to prevent occupational accidents, injuries and diseases including risk of exposure to harmful levels of ambient factors and chemicals as well as the risk of injury or disease that may result from the use of equipment and machinery on the ship (Standard A4.3, paragraph 1(b)).
- Ships must have an occupational safety and health policy and programme to prevent occupational accident injuries and diseases, with a particular concern for the safety and health of seafarers under the age of 18 (Standard A4.3, paragraphs 1(c) and 2(b)).
- A ship safety committee, that includes participation by the seafarer safety representative, is required (for ships with five or more seafarers) (Standard A4.3, paragraph 2(d)).
- Risk evaluation is required for on-board occupational safety and health management (taking into account relevant statistical data) (Standard A4.3, paragraph 8).

### **Sources of information**

- Relevant documents, such as the on-board occupational accident reports, and the reports of risk evaluations undertaken for the management of occupational safety and health on the ship.
- Documents evidencing membership and meetings of the safety committee (e.g. records and minutes of the meetings, etc.) if the ship has five or more seafarers.
- Documents related to the ship's on-board ongoing occupational safety and health policy and programme, to confirm that:
  - it is available to seafarers;

- it is consistent with national provisions;
- it includes risk evaluation, training and instruction for seafarers;
- it pays special attention to the health and safety of young seafarers;
- adequate preventive measures are being taken;
- appropriate personal protective equipment is being used and maintained correctly.
- Relevant occupational safety and health and accident prevention notices and official instructions with respect to particular hazards on the ship, which should be posted on the ship in a location that will bring it to the attention of seafarers (Standard A4.3, paragraph 7).
- Evidence that appropriate protective equipment is available for seafarers to use.
- Evidence that a reporting procedure for occupational accidents is in place.
- Interviews, in private, with a representative number of seafarers to confirm on-board occupational safety and health programmes and practices.
- Evidence that, with respect to health and safety protection and accident prevention, special consideration is given to any national requirements, if applicable, covering:
  - the structural features of the ship, including means of access and asbestos-related risks;
  - machinery;
  - the effects of the extremely low or high temperature of any surfaces with which seafarers may be in contact;
  - the effects of noise in the workplace and in shipboard accommodation;
  - the effects of vibration in the workplace and in shipboard accommodation;
  - the effects of ambient factors (other than noise and vibration) in the workplace and in shipboard accommodation, including tobacco smoke;
  - special safety measures on and below deck;
  - loading and unloading equipment;

- fire prevention and firefighting;
- anchors, chains and lines;
- dangerous cargo and ballast;
- personal protective equipment for seafarers;
- work in enclosed spaces;
- physical and mental effects of fatigue;
- the effects of drug and alcohol dependency;
- HIV and AIDS protection and prevention;
- emergency and accident response.

#### **Examples of deficiencies**

- Conditions exist on board which may impair efforts to prevent accidents.
- No evidence of an on-board policy and/or programmes for the prevention of occupational accidents, injuries and diseases.
- No established or functioning ship's safety committee when there are five or more seafarers working on board.
- Personal protective equipment is in poor condition or being incorrectly used or not being used.
- Risk assessments are missing.
- Seafarers are unaware of the measures adopted by the management to provide OSH and to prevent accidents.
- Risks posed to young seafarers have not been addressed.
- Occupational accidents are not being investigated or reported in accordance with the ship's procedures.

### **Regulation 5.1.5 – On-board complaint procedures (Appendix A5-III – On-board complaint procedures)**

#### **Basic requirements**

- Ships must have on-board procedures for the fair, effective and expeditious handling of seafarer complaints alleging breaches of

the requirements of the MLC, 2006 (including seafarers' rights) (Regulation 5.1.5, paragraph 1).

- All seafarers must be provided with a copy of the on-board complaint procedures applicable on the ship (Standard A5.1.5, paragraph 4). This should be in the working language of the ship.
- Victimization of seafarers for filing complaints under the MLC, 2006, is prohibited (Regulation 5.1.5, paragraph 2).

### Sources of information

- The document outlining the on-board complaint procedures to confirm that the procedures are functioning on the ship, particularly with respect to the right of representation, the required safeguards against victimization and the ability of seafarers to complain directly to the ship's master or to an external authority.
- Interviews, in private, with a representative number of seafarers to confirm that they are given a copy of the on-board complaint procedures in the working language of the ship, that they are able to complain directly to the ship's master or an external authority and that there is no victimization.

### Examples of deficiencies

- No document setting out the on-board complaint procedures.
- Ship's on-board complaint procedures are not operating.
- Victimization of a seafarer for making a complaint.
- Seafarer is not provided with a copy of the ship's on-board complaint procedures in the working language of the ship.

## ► 5. Action to be taken by port State control officers when finding deficiencies or non-conformities

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### 5.1. Overview of the MLC, 2006, port State responsibilities

**89.** Where, following a more detailed inspection, the PSCO finds that the working and living conditions on the ship do not conform to the requirements of the Convention, certain action must or may be taken, depending upon the situation (Standard A5.2.1, paragraph 4). This chapter describes the three main steps to be taken in connection with this final stage in a port State control inspection.

#### Step 1: Notification of any deficiencies

**90.** The following action must be taken:

- the deficiencies found must be brought to the attention of the master of the ship, with required deadlines for their rectification;
- if the deficiencies are considered by the PSCO to be significant, or if they relate to a complaint referred to in section 3.3 above, they must, in accordance with the MLC, 2006 (Standard A5.2.1, paragraph 4), be brought to the attention of the appropriate seafarers' and shipowners' organizations in the port State in which the inspection was carried out.

**91.** Whether or not deficiencies are determined to be significant will depend upon the professional judgement of the PSCO concerned. Deficiencies which, having regard to their nature or quantity or repetition, the PSCO would not expect to find on a well-run ship would be significant. Rectification of a deficiency related to shipowner use of recruitment and placement services should not, in principle, be to the detriment of the seafarers affected.

**92.** Where the deficiencies are significant or relate to a complaint, the PSCO may also:

- notify a representative of the flag State;

- provide the competent authority of the next port of call with the relevant information (Standard A5.2.1, paragraph 4).

**93.** The notifications referred to in paragraphs 90 and 91 above should draw attention to any non-conformities that need to be rectified before the ship can proceed to sea, stating (unless obvious) the reason why the non-conformities concerned fall within Standard A5.2.1, paragraph 6(a) and/or (b) (see paragraph 96 below). The notification of significant deficiencies should always be in writing.

**94.** A PSC authority may decide to send the PSCO's report to the ILO Director-General accompanied by any comments received by the flag State authorities (Standard A5.2.1, paragraph 5).

**95.** If information is provided to the competent authority of the next port of call, the PSCO in that port may decide to inspect the ship to verify that measures have been or are being taken by it to rectify the deficiency within the deadline given (see paragraph 104 below). If the rectification has not been made, the information may be considered as providing clear grounds warranting a more detailed inspection in accordance with Standard A5.2.1, paragraph 1(b) (see paragraph 71 above) and may eventually lead to the deficiency being considered a non-conformity constituting a repeated breach referred to in Standard A5.2.1, paragraph 6 (see below).

## **Step 2: Determining whether the ship can sail prior to rectification**

**96.** Since all possible efforts must be made to avoid a ship being unduly detained or delayed (see paragraph 108 below), the ship should be allowed to sail (on the understanding that all deficiencies identified will be rectified within the deadline given) unless:

- (a) the conditions on board are clearly hazardous to the safety, health or security of seafarers; or
- (b) the non-conformity or non-conformities found constitute a serious or repeated breach of the requirements of the Convention (including seafarers' rights, whose violation is relevant for the consideration of the seriousness of a non-conformity) (Standard A5.2.1, paragraph 6; see also Guideline B5.2.1, paragraph 2).

**97.** In either case, the PSCO must take steps to ensure that the ship does not proceed to sea until all non-conformities corresponding to (a) or (b)

above have been rectified, or until the PSCO has accepted a proposal for a plan of action to rectify those non-conformities.

## 5.2. Examples of circumstances that may require detention of the ship

**98.** Not every deficiency would be sufficiently serious to warrant preventing a ship from sailing. However repeated breaches may be a reason for detaining a ship. **The following are examples – and examples only – of the kinds of circumstances which could warrant a decision to keep the ship in port (in the absence of agreement on a proposal for a plan of action to rectify the deficiency) either because they are repeated (in the sense of occurring several times on a voyage or recurring after a previous voyage in which the same deficiency was noted) or because of the seriousness of a single instance:**

- the presence of any seafarer on board under the age of 16 (Standard A1.1, paragraph 1);
- the employment of any seafarer under the age of 18 in work likely to jeopardize their health or safety (Standard A1.1, paragraph 4) or in night work (see Standard A1.1, paragraphs 2 and 3);
- insufficient manning (Regulation 2.7 and Standard A2.7), including that caused by the removal from the SMD of under-age seafarers;
- any other deficiencies constituting a violation of fundamental rights and principles or seafarers' employment and social rights in Articles III and IV;
- any non-conformity applied in a way that violates those fundamental rights (for example, the attribution of substandard accommodation based on the race or gender or trade union activity of the seafarers concerned);
- repeated cases of seafarers without valid certificates confirming medical fitness for duties (Standard A1.2);
- seafarers on board the same ship repeatedly not in possession of valid seafarers' employment agreements (SEAs) or seafarers with SEAs containing clauses constituting a denial of seafarers' rights (Regulation 2.1, paragraph 1);

- seafarers repeatedly working beyond maximum hours of work (Standard A2.3, paragraph 5(a)) or having less than the minimum hours of rest (Standard A2.3, paragraph 5(b));
- ventilation and/or air conditioning or heating that is not working adequately (Standard A3.1, paragraph 7);
- accommodation, including catering and sanitary facilities, that is unhygienic or where equipment is missing or not functioning (Standards A3.1, paragraph 11, and A3.2, paragraph 2; Regulation 4.3, paragraph 1);
- quality and quantity of food and drinking water not suitable for the intended voyage (Standard A3.2, paragraph 2);
- medical guide or medicine chest or medical equipment, as required, not on board (Standard A4.1, paragraph 4(a));
- no medical doctor for passenger ships engaged in international voyages of more than three days, carrying 100 persons or more, or no seafarer in charge of medical care on board (Standard A4.1, paragraph 4(b) and (c));
- repeated cases of non-payment of wages or the non-payment of wages over a significant period or the falsification of wage accounts or the existence of more than one set of wage accounts (Standard A2.2, paragraphs 1 and 2).

**99.** In considering the above examples, particular reference should be made to the guidance to be provided to PSCOs by their authority in accordance with Standard A5.2.1, paragraph 7, which requires PSCOs to be “given guidance, of the kind indicated in Part B of the Code, as to the kinds of circumstances justifying detention of a ship under paragraph 6 of this Standard”. Guideline B5.2.1, paragraph 1, recommends that there should be an inspection policy for PSCOs with the objective of ensuring consistency and otherwise guiding inspection and enforcement activities related to the requirements of this Convention (including seafarers’ rights).

**100.** Guideline B5.2.1, paragraph 2, indicates circumstances warranting the detention of a ship considering that with respect to the breaches referred to in paragraph 6(b) of Standard A5.2.1, the seriousness could be due to the nature of the deficiency concerned. This would be particularly relevant in the case of the violation of fundamental rights and principles or seafarers’ employment and social rights under Articles III and IV. For example, the employment of a person who is under age should be considered as a serious breach even if there is only one such person on board. In other cases, the

number of different defects found during a particular inspection should be taken into account: for example, several instances of defects relating to accommodation or food and catering which do not threaten safety or health might be needed before they should be considered as constituting a serious breach.

### 5.3. Factors to be considered by a PSCO in deciding whether to accept a rectification proposal

**101.** PSCOs should exercise professional judgement to determine whether to detain a ship until the non-conformities of the kind referred to in the above examples are corrected or to allow it to sail with some non-conformities, on the basis of an acceptable proposal for rectification. Before accepting the shipowner's or master's proposal for rectifying a deficiency, the PSCO must be satisfied that it will be implemented in an expeditious manner (Standard A5.2.1, paragraph 6). PSCOs should therefore not accept a proposal if they have reason to believe that it may not be implemented expeditiously, unless they have a means of ensuring, through the assistance of the flag State or other port States, that the ship will be prevented from any further sailing if rectification is not expeditiously implemented.

**102.** In deciding whether or not to accept a proposal for rectification, the following considerations may also be relevant:

- whether or not the non-conformities can be rapidly remedied in the port of inspection;
- the length and nature of the intended voyage or service;
- the nature of the hazard to seafarers' safety, health or security;
- the seriousness of the breach of the requirements of the MLC, 2006, (including seafarers' rights);
- any previous history of the non-conformities or similar ones on the ship;
- the size and type of ship and equipment provided;
- whether or not the appropriate work or rest periods for seafarers are being observed;
- safe manning requirements;

- the nature of the cargo;
- any non-conformities which have been discovered in previous ports of call;
- the number of deficiencies found during the particular inspection.

#### **5.4. Consultation prior to a decision concerning a rectification proposal**

**103.** Detention of a ship is a serious matter involving many issues. It will be important for the PSCO to work with other interested parties. For example, the PSCO may request the shipowner's representatives or seafarers' representatives to propose a plan of action for correcting the situation. Since the flag State would have been notified of the concern, the PSCO should cooperate with the flag State administration's representatives or the RO responsible for issuing the Maritime Labour Certificate and the DMLC, consulting them regarding the PSCO's or the shipowner's proposal for actions that will be taken to rectify the deficiency.

#### **5.5. Form and content of a proposal for rectification**

**104.** The proposal for rectification should be signed on behalf of the port State authority and the shipowner and specify the actions to be taken and the related time frame. It should contain an undertaking by the shipowner to facilitate the inspection of the ship by PSCOs in other ports in order to verify that the plan of action to rectify the non-conformities has been properly implemented, as well as a warning that the ship may be prevented from further sailing if rectification does not occur as proposed.

#### **Step 3: Notifying a decision to allow/not to allow the ship to sail**

#### **5.6. Action to be taken if a rectification proposal is agreed**

**105.** If the PSCO allows the ship to proceed to another port, subject to its implementation of the proposal for rectification, the PSCO should ensure that the competent authority of the next port of call and the flag State are notified.

## 5.7. Action to be taken if the ship is not allowed to sail

**106.** Where an agreement is not concluded on rectification, including the time frame for it to be carried out, the ship must not be allowed to proceed to sea.

**107.** The PSCO must forthwith (by email or fax or similar means of communication):

- notify the flag State;
- invite a representative of the flag State to be present, if possible; and
- request the flag State to reply within a reasonable deadline (Standard A5.2.1, paragraph 6).

The PSCO must also inform forthwith the appropriate shipowners' and seafarers' organizations in the port State.

**108.** In performing their functions referred to in this section, PSCOs should bear in mind the obligation of port States under Standard A5.2.1, paragraph 8, **to make all possible efforts to avoid a ship being unduly detained or delayed, and to pay compensation for any loss or damage suffered if a ship is found to be unduly detained or delayed.** The burden of proof in each case is on the complainant.



## ► 6. Onshore complaints by seafarers

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**109.** A complaint by a seafarer alleging a breach of the requirements of the MLC, 2006 (including seafarers' rights), may be made to an authorized officer in the port at which the seafarer's ship has called in accordance with Standard A5.2.2. Appropriate steps must be taken to safeguard the confidentiality of these complaints (Standard A5.2.2, paragraph 7) and the receipt of the complaint should be recorded by the authorized officer (see paragraph 78 above). This chapter outlines the steps in the onshore complaints process.

### **Step 1: Determining whether the complaint should be handled under the PSC inspection procedures**

**110.** The PSCO must undertake an initial investigation to determine whether the complaint relates to the working and living conditions on the ship visiting the port and whether to undertake a more detailed inspection, following the procedure for complaints set out in section 3.3 above (Standard A5.2.2, paragraph 2; Guideline B5.2.2, paragraphs 1 and 2). A more detailed inspection must be carried out (see Chapter 5, paragraph 75, above) if the working and living conditions alleged to be defective could constitute a clear hazard to the safety, health or security of seafarers or where there are grounds to believe that any deficiencies constitute a serious breach of the requirements of the MLC, 2006 (including seafarers' rights), even if they relate to a single seafarer.

**111.** In cases not covered by the procedure set out in section 3.3 above, the PSCO or other officer authorized to handle complaints under Regulation 5.2.2 should follow the procedures set out below.

### **Step 2: Ascertaining whether on-board complaint procedures have been explored**

**112.** As noted in paragraph 110 above the authorized officer should carry out an initial investigation to find out the basic issues of the complaint and determine the appropriate process to follow. In making this determination the PSCO should bear in mind the objective of the onshore complaint handling procedures which is to facilitate a prompt and practical

means of redress (Regulation 5.2.2, paragraph 1). In making this determination the PSCO may find it helpful to consider the guidance provided in Guideline B5.2.2.

**113.** The authorized officer must, where appropriate, seek to promote a resolution of the complaint at the shipboard level and the initial investigation should include consideration of whether the on-board complaint procedures provided under Regulation 5.1.5 have been explored (Standard A5.2.2, paragraphs 2 and 3). A seafarer is not required to use the on-board complaints procedures and there may be good reasons for not doing so. If those procedures have not yet been explored and the authorized officer concludes, having given due consideration to the guidance provided in Guideline B5.2.2, paragraph 3, that those procedures should first be explored, the officer may refrain from any further action on the complaint except to suggest that the complainant take advantage of those procedures.

### Step 3: Carrying out an investigation

**114.** In the investigation of the complaint, the master, the shipowner and any other person involved in the complaint should be given a proper opportunity to make known their views (see Guideline B5.2.2, paragraph 4).

**115.** If the investigation reveals a non-conformity that falls within the scope of Standard A5.2.1, paragraph 6(a) and/or (b) (see Onshore complaints by seafarers paragraph 96 above), the procedure outlined in Chapter 5 above should be followed (Standard A5.2.2, paragraph 4).

### Step 4: Seeking advice and a corrective plan of action from the flag State

**116.** In other cases, where a complaint has not been resolved at the ship-board level, the authorized officer must notify the flag State and seek, within a prescribed deadline, advice and a corrective plan of action (Standard A5.2.2, paragraph 5). Where the flag State demonstrates that it will handle the matter and that it has effective procedures and has submitted an acceptable plan of action, the authorized officer may refrain from any further involvement in the complaint (see Guideline B5.2.2, paragraph 5).

### Step 5: Reporting the unresolved complaint

**117.** If the complaint has not been resolved at the flag State level and it is not demonstrated that the flag State is in a position to deal with the matter

(see step 4), the authorized officer's report must be transmitted to the ILO Director-General, accompanied by any reply received from the flag State within the prescribed deadline. The appropriate shipowners' and seafarers' organizations in the port State must be similarly informed. After this step, no further action on the complaint should be taken in the port State. However if, during investigation of the complaint, clear grounds for believing that the working and living conditions on the ship do not conform to the requirements of the MLC, 2006, have arisen, a PSCO may decide to carry out a more detailed inspection (see Chapter 3, paragraph 71 above).