



## TECHNICAL CIRCULAR No. 123 of 21<sup>st</sup> April 2013

To:	All Surveyors/Auditors
Applicable to flag:	All Flags
Subject:	<b>MLC, 2006- Workers and Ships B1-B7</b>
Reference:	<b>MLC, 2006 – Maritime Labour Convention, 2006</b>

### **MLC, 2006, Workers and Ships B1-B7**

#### **B1. Who is protected by the MLC, 2006?**

The MLC, 2006 applies to “seafarers” as defined in its Article II, paragraph 1(f), that is all persons who are employed or are engaged or work in any capacity on board a ship to which the Convention applies [see B4. What ships does the MLC, 2006 apply to?]. This definition thus includes not just the crew involved in navigating or operating the ship but also, for example, hotel personnel working on the ship. There could be cases where it is not clear whether a category of workers are to be regarded as “seafarers” covered by the Convention. Article II, paragraph 3, addresses this situation. In the event of doubt, the national competent authority [see A25. Who is the competent authority?] must make a determination on the question after consultation with the shipowners’ and seafarers’ organizations concerned. In 2006 when it adopted the MLC, 2006 the International Labour Conference also adopted a Resolution concerning information on occupational groups, (see Resolution VII of the 94th ILC MLC, 2006 Resolutions 15) which provides international tripartite guidance on factors to consider in making determinations in these cases.

#### **B2. Does the MLC, 2006 apply to entertainers and hotel service staff?**

Since the MLC, 2006 applies to “any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies” [see B1. Who is protected by the MLC, 2006?], it covers all workers including cabin and cleaning personnel, bar staff, waiters, entertainers, singers, kitchen staff, casino personnel and estheticians. This conclusion is applicable irrespective of whether the seafarers concerned have been recruited directly by a shipowner or are employed under a subcontracting arrangement. Nevertheless, there are certain categories of workers, who only board the ship briefly and who normally work on land, for example Flag State or Port State control inspectors, who clearly could not be considered as working on the ship concerned. In other cases, the

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situation may not be clear, for example when a performer has been engaged to work on a cruise ship for the whole of the cruise or to carry out on going ship maintenance or repair or other duties on a voyage. In such cases, a determination will be necessary under Article II paragraph 3, mentioned in answer to the question [see B1. Who is protected by the MLC, 2006?].

### **B3. Does the MLC, 2006 apply to cadets?**

On the assumption that cadets are performing work on the ship, although under training, they would be considered as “seafarers” in accordance with the provisions and principles indicated in answer to the question [see B1. Who is protected by the MLC, 2006?].

### **B4. What ships does the MLC, 2006 apply to?**

The MLC, 2006 defines a ship in Article II, paragraph (1)(i) as “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” [see B6. What are “sheltered waters” etc.?]. The MLC, 2006 applies to all ships as so defined, whether publicly or privately owned, that are ordinarily engaged in commercial activities except (see Article II, paragraph 4):

- **ships engaged in fishing or in similar pursuits;**
- **ships of traditional build such as dhows and junks;**
- **warships or naval auxiliaries.**

The MLC, 2006 recognizes (Article II, paragraph 5) that there may be situations where there is doubt as to whether it applies to a ship or particular category of ships. In the event of doubt, the national competent authority [see A25. Who is the competent authority?] must make a determination on the question after consultation with the shipowners’ and seafarers’ organizations concerned.

### **B5. When is a ship considered to be “ordinarily engaged in commercial activities”?**

The MLC, 2006 does not have a definition of the phrase “ordinarily engaged in commercial activities”, used in Article II, paragraph 4 [see B4. What ships does the MLC, 2006 apply to?]. This would be a matter for good faith determination by the country concerned, and subject to the usual oversight role taken by the Committee of Experts under the ILO supervisory system (ILO supervisory system 16).

### **B6. What are “sheltered waters” etc.?**

The MLC, 2006 does not explicitly define the terms “closely adjacent to” or “sheltered waters” used in Article II, paragraph 1(i) [see B4. What ships does the MLC, 2006 apply to?]. It is impossible to determine this question on an international level for all member States, since this determination could to a certain extent depend upon the geographical or geological situations in each State. In principle, it would be for the competent authority of a Member that has ratified the MLC, 2006 to determine, in good faith and on a tripartite basis, taking into account the objectives of the Convention and the physical features of the country, which areas could be considered as covering “sheltered waters” and what distance away from those waters could be considered as “closely adjacent to sheltered waters”. Any questions of doubt are to be resolved on the basis of consultation with the national social partners in accordance with paragraph 5 of Article II.

### **B7. Can a ratifying country make exemptions from certain provisions of the MLC, 2006?**

Exemptions are possible to a limited extent and only where they are expressly permitted by the

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Convention (most of the permitted exemptions are found in Title 3, on accommodation). In addition, for ships less than 200 gross tonnage (GT) that do not go on international voyages, a country may (under Article II, paragraph 6) determine that it is not reasonable or practicable at the present time to apply certain details of the Code [see A9. What is the Code of the MLC, 2006?] and cover the subject matter of those provisions by different provisions under its national law. This determination must be made by the government in consultation with the shipowners' and seafarers' organizations concerned.

**REFERENCES:**

- **MLC, 2006 – Maritime Labour Convention, 2006**

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