



## TECHNICAL CIRCULAR No. 126 of 17<sup>th</sup> May 2013

To:	All Surveyors/Auditors
Applicable to flag:	All Flags
Subject:	<b>MLC 2006, Title 1, C1.3-C1.4 Training and qualification</b>
Reference:	<b>MLC, 2006 – Maritime Labour Convention, 2006</b>

### **MLC, 2006, Title1, C1.3-C1.4** ***C1.3. Training and qualifications***

**C1.3.a.** Does the STCW certification meet the training requirements of the MLC, 2006? Under Regulation 1.3, paragraph 3 of the MLC, 2006, Training and certification in accordance with the mandatory instruments adopted by the International Maritime Organization must be considered as meeting the requirements of the MLC, 2006.

**C1.3.b.** Does this training requirement apply to seafarers who are not covered by the STCW? Regulation 1.3, paragraph 2 of the MLC, 2006 provides that seafarers shall not be permitted to work on a ship unless they have successfully completed training for personal safety on board ship. This requirement applies to all seafarers, irrespective of their duties on board ship. The question of other training or qualifications for seafarers not covered by STCW requirements would depend on the relevant national requirements for the work the seafarer is to perform on board a ship. For example, a person hired as a nurse or doctor on a ship would be expected to meet any national standards for those positions. However, the competent authority of a Member will not be responsible for the training or evaluation of the person for that position, but simply for requiring shipowners to ensure that personnel meet relevant national standards. This concept is set out in paragraph 1 of the Regulation 1.3. For catering personnel, including ships' cooks, the MLC, 2006 sets out some training requirements in Regulation 3.2 and the related Standards and Guidelines.

**C1.3.c.** Are countries still bound by the Officers' Competency Certificates Convention, 1946 (No. 74)?

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In accordance with Regulation 1.3, paragraph 4 of the MLC, 2006, obligations under ILO Convention No. 74 are to be replaced by any “mandatory provisions covering its subject matter have been adopted by the International Maritime Organization”. Such provisions have now been adopted as part of the STCW 2010 “Manila Amendments”. Countries that have ratified Convention No. 74 and subsequently ratify the MLC, 2006, will, when it enters into force, be bound by the relevant STCW provisions and no longer bound by Convention No. 74.

**C1.3.d. Why are there no Code provisions under this Regulation?**

In 2004 the Preparatory Technical Maritime Conference (PTMC) decided that this Regulation should not be followed by any indication that its provisions could be the subject of Standards or Guidelines. This was in response to a communication from the IMO regarding its willingness to take responsibility for the training and certification requirements for able seafarers, if these were transferred by the ILO. The PTMC agreed with this transfer, but also agreed with the view that it was necessary to include general provisions on training in the MLC, 2006, in view of the comprehensive nature of this consolidating Convention and order to justify the closure of the Officers’ Competency Certificates Convention, 1936 (No. 53) and the Certification of Able Seamen Convention, 1946 (No. 74), which are listed in Article X and also to ensure that any personnel who may not be covered by the IMO STCW provisions are trained or otherwise qualified [see C1.3.b. Does this training requirement apply to seafarers who are not covered by the STCW?]. It should be noted that the transfer of seafarers training and certification responsibility to IMO does not include training of ships’ cooks, a matter that will remain with the ILO and is addressed in the Convention under Title 3.

**C1.4. Recruitment & placement**

**C1.4.a. Must seafarer recruitment and placement services be established?**

The MLC, 2006 does not require that public or private seafarer recruitment and placement services be established. However under Article V, paragraph 5, Regulation 1.4, paragraph 2, and Regulation 5.3, paragraph 1, if such services are established in a country, they must be regulated in accordance with the MLC, 2006 requirements.

**C1.4.b. What is a seafarer recruitment and placement service?**

Article II, paragraph 1(h) of the MLC, 2006 defines a seafarer recruitment and placement service as “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”. Under Standard A1.4, paragraph 2, the Convention’s requirements relating to private seafarer recruitment and placement services apply where their primary purpose is the recruitment and placement of seafarers or where they recruit and place a significant number of seafarers. In the event of doubt as to whether the Convention applies to a private recruitment and placement service, the question is to be

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determined by the competent authority in each Member after consultation with the shipowners' and seafarers' organizations concerned.

**C1.4.c.** Is a recruitment department operated by a shipowner considered a private recruitment and placement service?

If seafarers are recruited directly by a shipowner flying the flag of a country that has ratified the MLC, 2006 then this situation *prima facie* does not fall within Regulation 1.4 and the related Code provisions.

**C1.4.d.** Who has obligations under Regulation 1.4?

The majority of the obligations under Regulation 1.4 are placed upon the country in which seafarers' recruitment and placement services are located. However there are also obligations placed on flag States (and shipowners) with respect to the use of seafarers' recruitment and placement and services, particularly if a shipowner uses a service based in a country that has not ratified the MLC, 2006. This is an issue that is subject to certification for ships that must be certified [see C5.1.j. Must all ships be certified under Regulation 5.1.3?].

**C1.4.e.** What are the shipowners' responsibilities under Regulation 1.4?

Under the MLC, 2006, shipowners are not required to use seafarer recruitment and placement services and may directly recruit seafarers to work on their ship. However where shipowners use a private seafarer recruitment and placement service, they must take steps to ensure that the service is licensed or certified or regulated in accordance with the requirements under Regulation 1.4. This responsibility, which is subject to inspection and also certification, is particularly important where the recruitment and placement service is in a country that has not ratified the MLC, 2006 [see C1.4.f. What happens if seafarers are recruited from a country that has not ratified the MLC, 2006?]. Useful guidance is provided in the section on Regulation 1.4 in Chapter 3 of the [Guidelines for flag State inspections under the Maritime Labour Convention, 2006](#).

**C1.4.f.** What happens if seafarers are recruited from a country that has not ratified the MLC, 2006?

Under Regulation 1.4, paragraph 3 and Standard A1.4, paragraph 9 of the MLC, 2006, shipowners who use seafarer recruitment and placement services that are based in countries or territories in which the Convention does not apply must ensure, as far as practicable, that those services meet the requirements of Standard A1.4.

Useful guidance is provided in the section on Regulation 1.4 in Chapter 3 of the [Guidelines for flag State inspections under the Maritime Labour Convention, 2006](#).

**C1.4.g.** Can recruitment and placement services charge seafarers fees?

Having regard to Standard A1.4, paragraph 5 of the MLC, 2006, no fees or other charges for seafarer recruitment or placement or for providing employment to seafarers may be borne directly or indirectly, in whole or in part, by the seafarer, other than the cost of the seafarer obtaining a national statutory medical certificate, the national seafarer's book and a passport or other similar personal travel documents, not including, however,

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the cost of visas, which must be borne by the shipowner.

**C1.4.h.** Who pays for documents that seafarers need to be able to travel to join ship?

In the light of Standard A.1.4, paragraph 5, relating to fees or other charges in the context of recruitment and placement [see C1.4.g. Can recruitment and placement services charge seafarers fees?], in the absence of any relevant provision in the seafarer's employment agreement or applicable collective bargaining agreement, one would expect the seafarer to cover the cost of a passport or similar travel document, and the shipowner to pay the cost of any necessary visa. The Conventions relating to seafarers' identity documents (SIDs), Nos 108 and 185 (not consolidated in the MLC, 2006 [see A20. Which ILO Conventions are consolidated in the MLC, 2006?]) do not contain a provision requiring the shipowner to pay for the SIDs.

**C1.4.i.** What is the system of protection against monetary loss that is required of private seafarer recruitment and placement services?

Standard A1.4, paragraph 5 of the MLC, 2006 requires countries to regulate any private seafarer recruitment and placement services that may be operating in their territory. One such requirement is that the countries concerned have to ensure (Standard A1.4, paragraph 5(c)(vi)) that any such services establish a system of protection, by way of insurance or an equivalent appropriate measure, to compensate seafarers for monetary loss that they may incur as a result of the failure of a recruitment and placement service or the relevant shipowner under the seafarers' employment agreement to meet its obligations to them.

The obligation on the ratifying country is not to provide this system of protection but rather, in the system that it adopts (pursuant to Standard A1.4, paragraph 2), to regulate these services through laws or regulations or other measures. The MLC, 2006 does not specify the form of this system, other than referring to insurance or an equivalent measure. It may be useful to also consider the system in light of the many provisions in the MLC, 2006 where shipowners are required to provide some form of insurance or other financial guarantees to cover potential monetary losses – for example, Regulation 2.5 (repatriation), Regulation 4.2 (shipowners' liability in the event of illness etc.) and Regulation 2.6 (ship's foundering). The term "monetary loss" is not defined and the Convention does not specify the scope of that term, which covers financial loss suffered.

## REFERENCES:

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

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