Version 10.08.18

MARITIME LABOUR CONVENTION 2006 AS AMENDED (MLC)

FINANCIAL SECURITY REQUIREMENTS

International Group FAQs for Members

IMPORTANT NOTE: The entry into force of the 2014 amendments to MLC on 18 January 2017 raised a number of complex and novel questions. These FAQs are intended to provide guidance to assist Members and Clubs in complying with the amendments. While efforts have been made to provide clarity, uncertainty remains on some aspects of the financial security requirements. There may also be differences in the way some states implement and enforce the amendments. These FAQs should not be regarded as providing definitive legal advice and Members should also consult their flag state authorities.

Members should refer to their Club's website for details of the MLC financial security certificate application process and an explanation of the terms on which MLC certificates can be issued. Incidentally, point 3 of the amended Standard A2.5.2 states that the "financial security system may be in the form of a social security scheme or insurance…". Where we have used the term "insurance" in these FAQs the term may generally also be read as "financial security", and "financial security" may be read as "insurance".

CERTIFICATION

1 What Certification is required?

From 18 January 2017, all ships which are subject to MLC have been required to carry and display on board two certificates confirming that financial security is in place for:

(a) shipowners' liabilities for repatriation of crew, essential needs such as food, accommodation and medical care and up to four months' outstanding contractual wages and entitlements in the event of abandonment (Regulation 2.5, Standard A2.5.2 Paragraph 9)

(b) contractual payments for death or long-term disability due to an occupational injury, illness or hazard set out in the employment agreement or collective agreement (Regulation 4.2, Standard A4.2.1 paragraph 1(b)).

2. Which ships need Certificates?

Ships will require MLC certificates if they are:

- registered in a State where MLC is in force, or

- calling at a port in a jurisdiction where MLC is in force

Details of States which are party to MLC can be found in the MLC Database maintained by the International Labour Organisation (ILO).

3. Which categories of ship does the MLC apply to?

The MLC definition of a ship is very wide: "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"[1]. Ships only operating domestically in coastal waters may therefore not need financial security certificates, but Members are advised to consult their Flag State authority.

The MLC applies to ships "ordinarily engaged in commercial activities, other than ships engaged in fishing or in similar pursuits and ships of traditional build such as dhows and junks"[2].

As a general rule, if the vessel concerned has been issued with DMLC parts I and II and the Flag State has issued a Document of Maritime Labour Compliance then financial security certificates are required. On the other hand, if the vessel is deemed to be out of scope of the MLC, it should not require financial security certificates. A State should not cherry pick from the provisions of MLC – either the whole convention applies or none of it.

MLC State Parties are authorized to determine that MLC does not apply to certain categories of ships or other floating structures, including ships of less than 200gt not engaged in international voyages[3]. State Parties are obliged to notify the ILO of such determinations which are recorded in the ILO database against the individual state as "National determinations"[4].

4. Will ships which are flagged in a State which is not party to the MLC need Certificates if calling at ports where the MLC is in force?

State Parties to the MLC are required to implement it in a way which ensures that ships flying the flag of a State which has not ratified the MLC do not receive a more favourable treatment[5]. States are also obliged to enforce the MLC through effective port state control inspection and ensure that inspected ships meet the requirements of the Convention[6]. The IG Clubs have concluded that the best way of ensuring compliance with the financial security provisions in the MLC is to provide the same financial security certificates to ships registered in MLC States and to ships registered in non-MLC States, providing they call at ports in MLC States.

5. Will all State Parties apply the financial security requirements?

The 2014 Amendments have been accepted and implemented in most State Parties to the MLC. A list identifying these States can be found on the ILO Website here.

[1] MLC Article II.1(i)
[2] Article II.1.4
[3] Some states have issued determinations in relation to mobile offshore units.
[4] Article II.5, 6 & 7.
[5] Art V.7
[6] Regulation 5.2.1

Members should proceed on the basis that the financial security requirements apply, unless they have clear confirmation to the contrary from their Flag State, providing the Flag State is a party to the MLC. If a ship is registered in a State that has not ratified the MLC and the ship calls at a port in the jurisdiction of a State that has, the ship's Master may be required to produce evidence of financial security arrangements that are equivalent to, and consistent with, the requirements established under Standards 2.5.2 and 4.2 of the MLC.

Members that are informed by the proper authorities of a port or flag state regarding a perceived deficiency in the MLC financial security certificates carried on board the ship, should attempt to resolve these issues at the time of the inspection. If necessary, Members may choose to consult their Club, who may obtain guidance from the IG Secretariat.

6. What is the period of validity of MLC Certificates?

Certificates will follow the period of insurance and will usually run from noon GMT on 20 February for a period of one year. Certificates for the next insurance year will be issued once there is a binding agreement to enter the ship for the coming policy year. Alternatively, Clubs may issue certificates before a binding agreement has been reached providing the Club receives an undertaking from the Member to renew with them or another IG Club.

7. What form do the Certificates take?

MLC sets out relevant information which must be provided on the certificates but does not provide a prescribed form. Standard wordings of the certificates have been developed by the International Group (IG) and are widely accepted by MLC State Parties. The wording is similar to the "blue cards" issued by Clubs under International Maritime Organisation (IMO) Conventions.

8. Who are the Certificates issued to?

They are sent to Members in PDF format and will be capable of verification on the ship search facility of Club websites. Members are responsible for printing the certificates and ensuring that they are displayed in a clearly visible place on board where they will be available to the seafarers[7].

Certificates are not issued by Flag States (in contrast to the blue card and certification procedure under IMO Conventions). However, some Flag States may require owners on their register to supply the competent authority with copies of certificates for their records.

9. Will States accept Certificates issued by an IG Club without carrying out financial controls?

States follow the practice for blue cards issued under IMO Conventions and recorded in the IMO Guidelines[8]. MLC certificates issued by IG Clubs will then be accepted without the need for additional financial checks.

[7] Standards A2.5.2.6 & A4.2.11

[8] See IMO Circular Letter 3464 2 July 2014 with Guidelines for accepting insurance companies, financial security providers and IG P & I Clubs.

INSURANCE

10. Is the risk covered by the Rules?

Liability for disability due to occupational injury under Regulation 4.2 will normally fall within the scope of standard crew cover under the Rules. Repatriation and unpaid wages will be covered under the Rules in some cases, including when due to a shipwreck. However, repatriation and overdue wages fall outside the scope of P&I cover when arising from abandonment under Standard A2.5.2 due to, for example, a shipowner's financial default.

11. How are wages and repatriation costs under Standard 2.5.2 covered, if outside the scope of Club cover provided under the rules?

The MLC Extension Clause provides that Clubs will discharge and pay claims made by seafarers pursuant to the certificates. The Clause imposes an obligation on Members to reimburse their Club if the claims which the Club has paid to seafarers fall outside the scope of cover provided by the Rules. This is on the basis that Clubs will want to take measures to minimise the risk of bearing the financial consequence of shipowners abandoning their crew.

12. Which entities are obliged to reimburse the Club where a claim paid to a seafarer falls outside the scope of cover?

Some of the risk under the MLC certificates falls outside the scope of standard P&I cover (see FAQ 11 for more information). Paragraph 2 of the MLC Extension Clause 2016 imposes an obligation on the Member to reimburse its Club if a claim which the Club has paid to a seafarer falls outside the scope of cover (see FAQ 12 for more information).

Paragraph 9 of the MLC Extension Clause 2016 defines a Member as "any insured party who is liable for the payment of calls, contributions, premium or other sums due under the terms of entry". The Club is entitled to claim reimbursement from any insured party falling within this definition.

Some shipowners outsource crew management to a crew manager. If a crew manager becomes insolvent, or for other reasons does not pay the seafarers' wages, the shipowner remains responsible for paying the crew. If the Club is required to meet claims by seafarers it will be entitled to seek reimbursement from the Member. If all the entities which fall within the definition of Member (see above) are insolvent, the loss will remain with the Club.

13. Can the Club rely on any insurance exclusions?

It has been accepted that certain limited exclusions can be relied upon. These are referred to in the MLC Extension Clause which is available on all Club websites and relate to war, nuclear, bio-chem and cyber risks and sanctions.

14. Will Clubs pool liabilities outside the scope of standard Club cover and the Pooling Agreement?

No. The boards of IG Clubs have decided against pooling these risks. They are therefore not poolable and not covered by the standard IG reinsurance programme and general excess of loss contracts.

15. Have Clubs protected their position through reinsurance?

Yes. Separate reinsurance has been arranged through the IG's brokers for USD 200m per fleet in excess of USD 10 million per fleet. The combined total of USD 210 million per fleet will be sufficient for all Members, with the possible exception of a small number of fleets with exceptionally high crew numbers.

16. What is the excess under the reinsurance?

The excess is USD 10 million per fleet. If a fleet is entered with a single Club, that Club will bear the first USD 10 million. If a fleet is split between clubs, then each Club will bear its proportion of USD 10 million calculated on a pro rata basis according to the amount borne by each Club. Clubs will need to cooperate if an event gives rise to claims which may exceed USD 10 million on a fleet basis.

17. Why is the cover limit "per fleet"?

Abandonment may be caused by insolvency, and if so, will likely affect a fleet rather than just a single ship in a fleet. Reinsurers require the cover limit to apply on a per fleet basis regardless of how the fleet is split between Clubs.

18. Can Certificates be provided when the P&I policy excludes crew risks?

Yes. Some shipowners elect to exclude crew risks and have outsourced crew management to a third party who arranges separate P&I insurance for crew risks. If the other insurers are unwilling or unable to provide MLC Certificates, Members may approach their Club to provide them. In assessing such request, the Club will need to take account of the fact that if it issues certificates it is accepting responsibility for liabilities which are covered by another insurer. This is a matter for the Club's discretion. If it agrees to such a request, it will require an indemnity from the other insurer for liabilities covered under the other insurance. If the other insurer is an IG Club, or a wholly owned subsidiary of an IG Club, this indemnity will be provided automatically under an underlying agreement between the Clubs. If the other insurer is not an IG Club, a separate indemnity will be required. The other insurer, whether an IG Club or not, shall on request provide details of the insurance cover.

19. Are payments made to crew under MLC Certificates subject to deductibles?

No. Payments made to seafarers under certificates are not subject to deductibles.

However, if the payments made to the seafarers are within cover (see FAQs 11 and 12) the Member is required to reimburse the deductible under the standard P&I Rules. If the payments made to the seafarers are not within cover, the Member is obliged to reimburse the Club the entire amount paid to the seafarers under the certificates and the deductible is therefore irrelevant.

STATE SCHEMES

20. Can financial security be provided by a Club when crew risks are partly covered by a State scheme?

Yes. MLC acknowledges that financial security can be provided in the form of social security or a national fund or similar arrangement[9]. The Club financial security will respond to the extent that liabilities arise under the certificates which are not included in the State scheme.

SEAFARERS

21. What constitutes abandonment pursuant to the MLC?

The Clubs' obligation to pay, for example, a seafarer's repatriation and outstanding wages under the Certificates only arises when the seafarer is deemed to have been *abandoned* by the shipowner.

Pursuant to the MLC Regulation 2.5 Standard A2.5.2 paragraph 2, 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; 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

22. Do seafarers have to be serving on board to claim under MLC Certificates?

Regulation 2.5 – "Repatriation" and Standard A.2.5.2 refers to financial security in the case of abandonment. A claim for unpaid wages under the financial security is therefore only available to seafarers serving on board.

Regulation 4.2 applies to contractual claims which relate to death or long-term disability of seafarers due to an occupational injury, illness or hazard occurring in the course of employment and until the date on which they are repatriated. The security responds to claims arising out of events occurring while the crew member is serving on board the vessel or being repatriated.

23. What category of seafarers can claim under the security?

The MLC definition is very simple: "any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies." In general terms, MLC is intended to provide protection to persons whose principal place of work is on the ship. It will normally include hotel staff on a passenger ship, and cadets. In cases of doubt, MLC State Parties can determine whether particular categories of persons are to be regarded as seafarers for MLC purposes. States are obliged to notify the ILO of such determinations which are recorded in the ILO database against the individual state as "National determinations"[10].

[9] Standards A2.5.2.3 & A4.2.2.2
[10] Art II.3 & 7.

WAGES

24. What is the liability for wages and what is meant by "wages"?

The security required under Regulation 2.5 is for up to four months' owed contractual wages and entitlements.

Security is required for "outstanding wages and other entitlements due from the shipowner to the seafarer under their employment agreement, the relevant collective bargaining agreement or the national law of the Flag State, limited to four months of any such outstanding wages and four months of any such outstanding entitlements."

MLC contains definitions of "basic pay or wages" and "consolidated wage" in Guideline B.2.2 but neither of these terms is used in the context of financial security. The term "entitlement" indicates that the seafarer must have a legally enforceable right to recover the amounts claimed. Financial security would respond for wages and other items such as overtime where these are legally due, but not otherwise.

25. Will the Club pay wages without repatriating seafarers?

No. Regulation 2 of MLC governs seafarers' Conditions of Employment. Regulation 2.2 deals with wages and Regulation 2.5 deals with repatriation. The financial security requirement is contained in Regulation 2.5. and forms part of, and is dependent on, seafarers' entitlement to be repatriated. The financial security extends to the costs of repatriation, essential needs such as food and necessary medical care and up to four months' unpaid wages and entitlements. It does not extend to other costs, expenses and liabilities, such as the cost of finding and supplying replacement crew or costs of maintaining the ship with a skeleton crew on board.

INFORMATION

26. What information is to be provided in the MLC Certificates?

Name, call sign, port of registry and IMO number of ship

Name, full address and website of the provider of insurance or other financial security

Details will be inserted of Clubs' or Managers' head offices.

Contact details of the persons or entity responsible for handling seafarers' request for relief

Clubs will provide a telephone number and e-mail address which will provide seafarers with immediate access.

Name of the shipowner

The Club will insert the name of the registered owner of the ship. Clubs are not able to issue Certificates in the name of an entity which is not the member or a co-assured.

Period of validity of the financial security

The period stated in the Certificates will normally commence at noon GMT on 20 February (or at 00:00 hours on the start date of the insurance if not 20 February) and end at noon GMT the following 20 February.

27. What information is to be provided on Club Websites?

Clubs will ensure that when MLC Certificates have been issued, they will be referred to on the ship search facilities on Club websites. These websites are listed here on the International Group website.

Certificates will be listed as soon as they have been issued and withdrawn as soon as notice of termination has been given.

TERMINATION

28. Can liability under MLC Certificates be terminated by the Club?

Yes. MLC permits the termination of the financial security on at least 30 days' notice by the issuer to the competent authority of the Flag State[11]. If notice of termination is not given, the security remains effective.

CLAIMS HANDLING

29. What should seafarers do?

Seafarers should firstly liaise with their employers and union representatives in order to seek a solution to any issues. If that does not resolve matters, any seafarer intending to claim under the Certificates should contact the Club which has issued the Certificate which is displayed on board the vessel. Alternatively, their representatives may contact the Club. Seafarers or their representatives should ensure that they provide as much documentation as they can to substantiate and quantify their claims. They will also need to cooperate in enabling repatriation arrangements to be made. As noted in FAQ 25, the right to recover wages is linked to repatriation.

30. What will the Clubs do?

The Club will acknowledge receipt of the claim immediately and take steps to investigate. The validity of the Certificate will be checked and it will in most cases be necessary to contact the shipowners. As noted in FAQ 25, the right to recover wages is linked to repatriation. Clubs will often appoint local correspondents or other representatives to provide assistance in handling claims.

There is in place a Memorandum of Understanding (MOU) between the International Transport Workers' Federation (the ITF) and the IG on the handling of claims by seafarers under the MLC Certificates. The IG Clubs have also agreed on a common Claims Handling Guidance and an MOU regulating the issuance of MLC Certificates and the management of claims arising under such certificates.

[11] Standards A2.5.211 & A4.2.12