

<b>Subject:</b>	<b>Implementation of the Maritime Labour Convention (MLC) to Ships Flying the Portuguese Flag Interim Procedure</b>
<b>To:</b>	Shipowners, Seafarers and Recognized Organizations

The process of certification of ships flying the Portuguese flag will be held according to the following procedure while the Maritime Labour Convention has not been ratified by Portugal.

## **I - Introduction**

### **A - Ship**

This interim procedure applies to all ships flying the Portuguese flag of 500 gross tonnage and above and involved in international voyages or voyages between the mainland and the autonomous regions of the Azores and Madeira, and between these regions.

### **B - Seafarer**

Means any person who is employed or engaged or works in any capacity on board a ship, not including the following:

- i. Harbor pilots, inspectors, auditor, superintendents and others, whose work is not part of the routine activity of the ship;
- ii. Scientists, investigators, divers and others, whose work is not parte of the routine activity of the ship;
- iii. Guest entertainers, repair technicians, port workers and others, with occasional and short-term work on board, with its main place of work.

### **C - Doubts**

Doubts arising on the classification of a ship or qualification of seafarer are decided by the **Direção-Geral de Recursos Naturais, Segurança e Serviços Marítimos (DGRM)**, upon consultation of national associations of shipowners and seafarers on board.

## **II - HOW TO OBTAIN MARITIME LABOUR DOCUMENT OF COMPLIANCE (DCMLC) AND AN INTERIM DECLARATION OF MARITIME LABOUR COMPLIANCE (DPCMLC)**

### **A - General provisions**

The Maritime Labour Document of Compliance (DCMLC), complemented by an Interim Declaration of Maritime Labour Compliance (DPCMLC), shall constitute prima facie evidence that the ship has been duly inspected on behalf of the Portuguese maritime administration and that the requirements of the MLC relating to working and living conditions of the seafarers have been met to the extent so certified. The DPCMLC must be attached to the DCMLC.

The DCMLC and the DPCMLC shall conform, respectively, to the models included in the appendix 1 and 2 to this procedure.

### **B - Issuing DCMLC and DPCLMC**

The issue of DPCMLC to ships flying the Portuguese flag involves the following steps:

**Step 1 (DPCMLC Part I - to be carried out by DGRM)** - The shipowner shall apply to DGRM for issuing Part I of DPCMLC for the vessel concerned by filling the model form in [annex 2](#) and sending it to [mlc@dgrm.mam.gov.pt](mailto:mlc@dgrm.mam.gov.pt)

Part I is drawn up by DGRM which: (i) identify the list of items to be inspected in accordance with Standard A5.3.1.1 and Appendix A5-I of MLC; (ii) identify the national requirements embodying the relevant provision of MLC, by providing a reference to the relevant national legal provisions, as well as, to the extent necessary, concise information on the main content of the national requirements; (iii) refer to ship-type specific requirements under national legislation; (iv) record any substantially equivalent provisions adopted pursuant to paragraph 3 of Article VI; and (v) clearly indicate any exemption granted by DGRM as provided in Title 3. The shipowner will receive an electronic version of the Part I and the original document, duly signed by DGRM, will follow by express mail.

**Step 2 (DPCMLC Part II - to be carried out by the shipowner)** - After receiving from DGRM the ship's specific Part I of DPCLMC, the shipowner shall prepare Part II of DPCLMC to ensure continued compliance with the requirements set out in Part I.

The shipowner shall draw up Part II of DPCLMC before the inspection on board is carried out and the procedures to be included in Part II of DPCLMC shall identify the measures adopted to ensure ongoing compliance with the national requirements between inspections and the measures proposed to ensure that there is continuous improvement. The procedures should be part of the existing ISM-system.

The measures referred to in DPCMLC Part II, drawn up by the shipowner, should, in particular, indicate the occasions on which ongoing compliance with particular national requirements will be verified, the persons responsible for verification, the records to be taken, as well as the procedures to be followed where non-compliance is noted.

**Step 3 (Analysis of DPCMLC Part II - to be carried out by DGRM or the RO)** - Before requesting the inspection on board, the shipowner shall submit DPCMLC Part II to DGRM or to the authorized recognized organization (RO) for review. The purpose of the review is to verify that the measures outlined in part II are relevant to the national requirements listed in DPCMLC Part I, and that they lead to ongoing compliance. This review may be carried out on shore.

**Step 4 (To be carried out by DGRM or the RO)** - On board inspection

- a) The shipowner shall request to the DGRM or to the RO for an on board inspection.
- b) Upon successful completion of the inspection<sup>1</sup>, the DGRM or RO shall:
  - i. Issue an inspection report<sup>2</sup>;
  - ii. Sign the DPCMLC Part II;
  - iii. Issue the MARITIME Labour Document of Compliance (DCMLC).

### **C - Further guidance on the inspection process**

The “Guidelines for Flag State Inspections” published by the International Labour Office should be consulted by inspectors as well shipowners. This publication provides the basic framework for MLC-inspections on board ships flying the Portuguese flag, and indicates which regulations and standards form part of inspections in accordance with MLC 2006. Inspections should be carried out in accordance with these guidelines. The inspector has the discretion to determine the scope of the inspection within each area in accordance with his or her professional judgment.

<sup>1</sup>The on-board inspection shall cover at least the indicated in **annex 3** to these procedures.

<sup>2</sup>In the case of inspection be performed by the RO the inspection report shall be emailed to DGRM, using for this purpose the following email address: [mlc@dgrm.mam.gov.pt](mailto:mlc@dgrm.mam.gov.pt)

## **D - Validity of DCMLC**

- 1 - The DCMLC is valid for a period of five years provided that an intermediate inspection is successfully carried on board the ship on the 14 points of the DPCLMC Part I between the second and third anniversary dates of the certificate.
- 2 - The certificate shall be endorsed following satisfactory intermediate inspection.
- 3 - The DCMLC is no longer valid in the following situations:
  - a) If the inspections prescribed are not carried out within the period referred to in 1;
  - b) If the DCMLC is not endorsed according as required in 2;
  - c) In case a change in the ship's flag occurs;
  - d) Whenever the shipowner is no longer responsible for the operation of the ship;
  - e) Whenever significant changes to the structure or equipment mentioned in Title 3 occur.
- 4 - DCMLC shall be withdrawn by DGRM, or the RO, if there is sufficient evidence that the ship no longer complies with the provisions of the MLC and no corrective measure has been taken. In taking this decision, DGRM, or the RO, will have in consideration the seriousness or the recurrence of deficiencies.

## **E - Issue of the Maritime Labour Certificate (CMLC) and of the Declaration of Maritime Labour Compliance (DCMLC)**

### **E.1 - For ships holding the DCMLC and DPCMLC**

- 1 - The DCMLC and DPCMLC will be replaced by the CMLC and the DCMLC with the entry into force of the MLC 2006 for Portugal and with the publication of correspondent national legislation. The replacement shall take place before the limit date to carry out the next scheduled inspection (renewal or intermediate as will be the case), unless that date occurs within less than 3 months in which case the following scheduled inspection date will be the limit.
- 2 - The procedure for this replacement will be the following:
  - a) Steps B/1 to B/4 will be repeated;
  - b) The scope of the inspection on board may be limited to matters not covered on the occasion of the emission of the DPCMLC.
- 3 - The Maritime Labour Certificate (CMLC) will be issued with a validity date not later than the one of the DCMLC.

## **E.2 - For ships not holding the DCMLC and DPCMLC**

Steps B1 to B4 and D shall be followed.

## **F - Issuing on interim DCMLC**

1 - The DCMLC may be temporarily issued in the following situations:

- a) New ships whenever their delivery;
- b) Whenever flag changing occurs;
- c) Whenever the shipowner is responsible for the operation of a ship which is new to that shipowner.

2 - The interim DCMLC is issued by a period no longer than six months, by the DGRM or the RO, when the following has been verified:

- a) The ship has been inspected, in so far as is reasonable and possible, concerning the provision in annex 2, taking into consideration the elements mentioned in subparagraphs b), c) and d) of this number;
- b) The shipowner has demonstrated to DGRM, or the RO, that the on-board procedures adequate to the compliance of the MLC have been implemented;
- c) The shipowner has knowledge of the provisions of the MLC and of its obligations related to its implementation;
- d) The relevant information was submitted to DGRM, or the RO, for the issue of a declaration of maritime labour compliance, according to the established in items B1 and B2.

3 - Ships that before flying the Portuguese flag were flying the flag of a State for which the MLC has been already in force, and for that reason were already certified under the convention, are not subject to the inspection mentioned in subparagraph 2(a).

4 - Before the expiry date of the interim DCMLC, full term DCMLC shall to be issued, subject to verification of compliance with the items B4 and B4.

5 - After the initial period of six months new interim DCMLC shall not be issued.

6 - The issuance of a DPCMLC for the period of validity of the interim DCMLC is not required.

### **III - COMPLAINTS**

#### **A - Complaint received by the RO during a MLC inspection**

If a seafarer written complaint is received during a MLC inspection, the inspector should not intervene to resolve the complaint but instead check to see if the seafarer is aware of the on-board complaint procedure and whether the seafarer has made use of the procedure.

Additionally, the inspector should conduct the inspection taking into account the seafarer complaint(s) by selecting the appropriate sample size for the inspection and areas to be inspected in order to ascertain if the seafarer working and living conditions on board comply with the requirements of the Convention and the national requirements of Portugal, and whether the on-board complaint procedure is effective.

Any non-compliance discovered during the inspection, including deficiencies pertaining to the seafarer complaint should be documented in the inspections report keeping in mind the confidentiality requirements of the Convention.

A written complaint provided by the seafarer should nevertheless be attached to the copy of the report submitted to the DGRM.

Where the working and living conditions are alleged to be defective to the extent that a clear hazard to the safety, health or security of seafarers exists, the written complaint should be forwarded to DGRM without delay.

#### **B - Complaint received by the RO and other than during a MLC inspection**

A written complaint received by the RO other than during a MLC inspection should be forwarded to the DGRM for resolution. No further action by RO is required unless instructed otherwise by DGRM.

#### **C - Verbal complaints**

Where a RO receives a verbal complaint, the complaint should be referred to the on-board complaint procedure and encouraged to seek resolution of the complaint at the shipboard level. If the seafarer feels unable to use complaints procedure (perhaps for fear of victimization or lack of faith in its effectiveness) the RO should point out that the on-board complaint procedure (a copy of which should be in the seafarer's possession) contains contact details of DGRM and the name of a person or persons on board who can provide confidential assistance.

If the seafarer insists that he does not want to use on-board complaint procedure and would like to register the complaint with the ROs, as the DGRM representative on board, the RO should not refuse to pass on a complaint to the DGRM. However, the seafarer should be advised that the RO can do so only if the complaint is made in writing and signed by the complainant.

#### **D - Written complaints**

Written complaints that are received should clearly specify the source of the complaint including identifying information of the shipowner, seafarer(s) and the ship involved.

Points A - and B - describe the measures a RO should take subsequent to receiving a written complaint from a seafarer on a ship that has inspected and/or certified under the Maritime Labour Convention, 2006.

#### **IV - RECRUITMENT AND PLACEMENT AGENCIES, PUBLIC OR PRIVATE**

Shipowners shall ensure, as far as practicable, that the recruitment and placement services, public or private, established in States that have not ratified the Maritime Labour Convention, 2006, whose services they use the recruitment and placement of seafarers on board ships flying the Portuguese flag, respect the provisions of the mentioned Convention.

The recruitment and placement agencies, public or private, shall satisfy, at least, the following provisions:

- i. Shall be licensed or certified, respectively, by the public employment service in the case of agencies placed in the national territory<sup>3</sup>, or by the competent authority of a State which has ratified the MLC 2006, in case the agency is established in that State.
- ii. In the case of agencies established in a State that hasn't ratified MLC, the agency must be certified by an RO, according to MLC provisions, and the agency must yet have a certified quality management system according to ISO 9001.

Done in Lisbon, 10-01-2014

The Director of the Maritime Administration Services

<sup>3</sup>The national seafarer recruitment and placement agencies mentioned in **annex 4** are authorized, until its Certification, to recruit and place seafarers on board ships flying the national flag.



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