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Circular N.º 42

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Subject:	**MLC 2006 – Implementation of the Maritime Labour Convention (MLC) to ships flying the Portuguese flag – Certification Process**
To:	Shipowners, Companies, Operators, Recognized Organizations, Seafarers

References: *Presidential Decree n.º 7/2015, of 12th January: The Maritime Labour Convention, adopted by the General Conference of the International Labour Convention in its 94th session, in Geneva, on 23rd February 2006, approved by the Assembly Resolution n.º 4/2005, of 21st November 2014, is ratified; Assembly Resolution n.º 4/2015, of 12th January: Approves the Maritime Labour Convention, adopted by the General Conference of the International Labour Convention in its 94th session, in Geneva, on 23 rd February 2006; Law n.º 146/2015, of 9th September: Regulates the activity of seafarers on board ships flying the Portuguese flag, as well as the Portuguese State responsibilities as Flag State or Port State, taking into consideration the compliance of the mandatory provisions of the Maritime Labour Convention, 2006, of the International Labour Convention, transposes Directives 1999/63/EC, of the Council of 21 June 1999, 2009/13/EC, of the Council of 16 February 2009, 2012/35/EC of the European Parliament and of the Council of 21 November 2012, and 2013/54/EC, of the European Parliament and of 20 November 2013, and proceeds to the second amendment of Decree-Laws n.ºs 274/95, of 23rd October and 260/2009, of 25th September, and the fourth amendment to Law n.º 102/2009, of 10th September, and revokes Decree-Law n.º 145/2003, of 2nd July; Law n.º 7/2009, of 12th February: approves the Labour Code; Decree-Law n.º 34/2015, of 4th March: transposes into internal law Directive n.º 2012/EC/EU, of the European Parliament and of the Council of 21 November 2012, amending Directive n.º 2008/106/EU, of the European Parliament and of the Council, of 19 November 2008 on the minimum level of training of seafarers, and follows the regulation of the implementation of the Manila Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (the "STCW Convention"); Order n.º*

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253/2016, of 23rd September: establishes the types of professional certificates, conditions for their issuing, their validity and associated models, under the Decree-Law n.º 34/2015, of 4th March, transposing into internal law Directive n.º 2012/35/EC, of the European Parliament and of the Council of 21 November 2012, amending Directive n.º 2008/106/EC, of the European Parliament and of the Council, of 19 November 2008 on the minimum level of training of seafarers, and follows the regulation of the implementation of the Manila Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW Convention); other national legislation referred in Part I of the Declaration of Maritime Labour Compliance.

1. PURPOSE

The purpose of this Circular is to provide the procedure to be followed for the process of certification of ships flying the Portuguese flag under the MLC 2006. This Circular will enter into force next 12th May 2017, data from which the Circular n.º 12, of 10th January 2014 is revoked, except item 6. of this Circular which will enter into force immediately.

2. SCOPE

This 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.

3. DEFINITIONS

3.1 Seafarer – means any person who is employed or engaged or works in any capacity on board a ship, not including, in particular, the following:

3.1.1 Harbour pilots, inspectors, auditors, superintendents and others, whose work is not part of the routine activity of the ship;

3.1.2 Scientists, investigators, divers and others, whose work is not part of the routine activity of the ship;

3.1.3 Guest entertainers, repair technicians, port workers and others, with occasional and short-term work on board, with its main place of work ashore.

4. 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.

5. HOW TO OBTAIN THE MARITIME LABOUR CERTIFICATE (CMLC) AND THE DECLARATION OF MARITIME LABOUR COMPLIANCE (DCMLC)

5.1 General provisions

5.1.1 The Maritime Labour Certificate (CMLC), complemented by a Declaration of Maritime Labour Compliance (DCMLC), 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 CMLC relating to working and living conditions of the seafarers have been met to the extent so certified. The DCMLC must be attached to the CMLC.

5.1.2 The CMLC and the DCMLC shall conform, respectively, to the models included in the appendix I and II to this procedure.

5.2 **General procedure for the issuing of CMLC and DCMLC**

As from 12 May 2017, inclusively, date from which Portugal is a State Party to the MLC, the issuing of the CMLC and of the DCMLC is carried out according to the following steps:

5.2.1 ***Step 1*** *(DCMLC Part I - to be carried out by DGRM)* - The shipowner shall apply to DGRM for the issuing of DCMLC Part I for the vessel concerned by filling and sending the Application Form and the model of ANNEX II (Part I of DCMLC), which may be downloaded from the DGRM's official website, to the following email address mlc@dgrm.mm.gov.pt, accompanied by a copy of the certificate, or certificates, confirming the financial security for repatriation and the financial security relating to shipowners liability.

Part I is drawn up by DGRM which: (i) identifies the list of items to be inspected in accordance with Standard A5.3.1.1 and Appendix A5-I of MLC; (ii) identifies the national

requirements embodying the relevant provision of MLC, by providing a reference to the relevant national legal provisions including, whenever necessary, concise information on the main content of the national requirements; (iii) refers 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 of MLC.

The shipowner will receive an electronic version of Part I and the original document, duly signed by DGRM, will follow by express mail.

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

The shipowner shall draw up Part II of DCMLC before the inspection on board is carried out and the procedures to be included in Part II of DCMLC 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 Safety Management System (SMS).

The measures referred to in DCMLC 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 maintained, as well as the procedures to be followed where non-compliance is noted.

5.2.3 ***Step 3*** *(analysis of DCMLC Part II – to be carried out by DGRM or the RO[1])* – Before requesting the inspection on board, the shipowner shall submit DCMLC Part II to DGRM or to the recognized organization (RO) authorized for that purpose. DGRM or the RO will assess if the measures outlined in Part II are relevant to the national requirements listed in DCMLC Part I, and if they endure a permanent compliance with those prescriptions. This assessment may be carried out on shore.

5.2.4 ***Step 4*** *(to be carried out by DGRM or the RO)*

5.2.4.1 The shipowner shall request to DGRM or the RO for an on board inspection.

5.2.4.2 Upon successful completion of the inspection, DGRM or the RO shall:

i) Issue an inspection report[2];

ii) Sign the DMLC Part II;

[1] The list of Recognized Organizations authorized by DGRM to act on its behalf is stated on circular n.º 34 Rev.1, of 29/11/2016.
[2] 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.mm.gov.pt, or, alternatively, sent to DGRM through the RO site.

iii) Issue the Maritime Labour Certificate (CMLC).

The "Guidelines for Flag State Inspections" published by the International Labour Office should be consulted by inspectors as well as by 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 judgement.

6. PROCEDURE FOR THE TRANSITIONAL PERIOD (UNTIL 11TH MAY 2017)

6.1 During the transitional period, ending by the 11th May 2017 and occurred from the fact that Portugal only becomes a State Party to MLC from 12th May, circular n.º 12, of 10/1/2014, issued by DGRM, is still in force.

6.2 During this transitional period, the Document of Maritime Labour Compliance (DCMLC) must always be accompanied by a copy of the certificate or certificates confirming the financial security for repatriation and the financial security relating to shipowners' liability, complying therefore with the provided in the "Resolution on the transitional measures relating to the entry into force of the amendments to the Maritime Labour Convention, 2006, concerning financial security requirements in respect of abandonment of seafarers and for shipowners' liability" adopted by the International Labour Convention (ANNEX III).

7. REPLACEMENT OF THE DOCUMENTS ISSUED BEFORE 12TH MAY 2017

7.1 The DCMLC and DIMLC are replaced, respectively, by the CMLC and the DCMLC, in the renewal date of the DCMLC or in the date of the intermediate inspection, whichever occurs first after 12th May 2017.

7.2 The request for replacement of the DCMLC and the DIMLC follows the Procedure in 5.2, "General procedure for the issuing of the CMLC and the DMLC" and is submitted to DGRM until three months prior the due date for the replacement of the DCMLC and the DIMLC (renewal date of the DCMLC or the date of the intermediate inspection).

7.3 The validity of the CMLC to be issued is of five years, in the case the shipowner carries out a renewal inspection, or until the date of validity of the DCMLC in the case an intermediate inspection is carried out.

7.4 Ships covered by this item 7. shall always hold on board the declaration issued by the Portuguese Maritime Administration (DGRM), as per ANNEX IV, for consultation by the different authorities.

7.5 The Document of Maritime Labour Compliance (DCMLC) must always be accompanied by a copy of the certificate or certificates confirming the financial security for repatriation and the financial security relating to shipowners' liability complying therefore with the provided in the resolution adopted by the International Labour Convention (ANNEX III).

8. VALIDITY OF THE CMLC

8.1 The CMLC is valid for a period of five years provided that an intermediate inspection is successfully carried on board the ship on the sixteen points of the DCMLC between the second and third anniversary dates of the certificate.

8.2 The CMLC shall be endorsed following a satisfactory intermediate inspection.

8.3 The CMLC is no longer valid in the following situations.

8.3.1 If the inspections prescribed are not carried out within the period referred to in 1;

8.3.2 If the CMLC is not endorsed according to as required in 2;

8.3.3 In case a change in the ship's flag occurs;

8.3.4 Whenever the shipowner is no longer responsible for the operation of the ship;

8.3.5 Whenever significant changes to the structure or equipment mentioned in Title 3 of MLC occur.

8.4 The CMLC shall be withdrawn by DGRM, or by the RO, if there is sufficient evidence that the ship no longer complies with the provisions of the CMLC and that no corrective measure

has been taken. By taking this decision, DGRM, or the RO, shall have into consideration the seriousness or the recurrence of deficiencies.

9. ISSUE OF THE INTERIM CMLC

9.1 The CMLC may be temporarily issued in the following situations:

9.1.1 New ships whenever they are delivered

9.1.2 Whenever flag changing occurs;

9.1.3 Whenever the shipowner is responsible for the operation of a ship which is new to that shipowner.

9.2 The interim CMLC is issued for a period no longer than six months, by the DGRM or the RO, when the following has been verified:

9.2.1 The ship has been inspected, in so far as is reasonable and possible, concerning the provisions in ANNEX II (Part I of DCMLC), taking into account the elements mentioned in subparagraphs b), c) and d) of this number;

9.2.2 The shipowner has demonstrated to DGRM, or the RO, that the on-board procedures adequate to the compliance of the CMLC have been implemented;

9.2.3 The master has knowledge of the regulating standards of the CMLC and of its obligations related to its implementation;

9.2.4 The relevant information was submitted to DGRM, or the RO, for the issue of a DCMLC.

9.3 The issuing of the CMLC with five year validity is dependent of the carry out, before the expiry of the validity of the interim CMLC of a complete inspection to items of ANNEX II (Part I of DCMLC).

9.4 After the initial period of six months a new interim DCMLC shall not be issued.

9.5 The issuing of a DCMLC for the period of validity of the interim CMLC is not required.

10. COMPLAINTS

10.1 Complaints received by the RO during a CMLC inspection

If a seafarer written complaint is received during a CMLC 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.

In addition, 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 requirements of the Portuguese national legislation, 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 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

10.2 Complaints received by the RO and other than during a CMLC inspection

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

10.3 Verbal complaints

Where an RO receives a verbal complaint, the complainant should be encouraged to turn to the procedure of on-board complaint and seek resolution of the on-board complaint. 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 handed over to the seafarer) 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.

10.4 Written complaints

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

Items 10.1 and 10.2 describe measures the ROs should take further to receiving a written complaint from a seafarer on a ship that has inspected and/or certified under the Maritime Labour Convention, 2006.

11. RECRUITMENT AND PLACEMENT AGENCIES, PUBLIC OR PRIVATE

11.1 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 for recruitment and placement of seafarers on board ships flying the Portuguese flag, respect the provisions of the mentioned Convention.

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

11.2.1 Shall be licensed or certified, respectively, by the public employment service in the case of agencies in the national territory[3], or by the competent authority of a State which has ratified the MLC 2006, in case the agency is established in that State.

11.2.2 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.

[3] The national seafarer recruitment and placement agencies mentioned in ANNEX V are authorized, until their Certification, to recruit and place seafarers on board ships flying the national flag.

12. CHARGES

There is a specific fee for all applications mentioned in 5.2. Both national legislation and the current rates may be downloaded from DGRM's webpage.

Lisbon, 27 of January 2017

O Director of the Maritime Administration Services Directorate

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