

---

# Maritime Labour Convention 2006 as amended (MLC) Amended requirements entering into force on 18<sup>th</sup> January 2017 The International Group of P&I Clubs

24<sup>th</sup> October 2016

The MLC came into force on 20<sup>th</sup> August 2013 , triggered by the Philippines becoming the 30<sup>th</sup> country to ratify the convention on the preceding 12<sup>th</sup> August 2012. In April 2014 the International Labour Organisation ( ILO) agreed several amendments to the MLC as agreed in 2006. These amendments will come into effect on 18<sup>th</sup> January 2017.

The purpose of this Newsletter is to recap the latest information now provided by The International Group of P&I Clubs on how they will assist Members with the issuance of required evidences of insurance or financial security for the period post 18<sup>th</sup> January 2017.

Further Newsletters will follow with the specifics of how the Club application process for obtaining certification will be handled. This aspect is still to be communicated by the Group Clubs.

## Requirements

On 18<sup>th</sup> January 2017 ships that are subject to MLC will be required to display , in a conspicuous place on board ships with availability of access / vision by seafarers , evidence of insurance or other financial security for;

- compensation for death or long-term disability in accordance with **Regulation 4.2., Standard A4.2. and Guideline B4.2.** , and
- outstanding wages and repatriation of seafarers together with incidental costs and expenses in accordance with MLC **Regulation 2.5, Standard A2.5.2 and Guideline B2.5**

Ships will require MLC Certificates if they are of 200 GT or over and \* ;

- are registered in a state where MLC is in force; or
- are calling at a port in a jurisdiction where MLC is in force.

MLC Certificates are not required by ships registered in States which are not party to MLC and which will not call at States which are party to MLC.

Since the MLC came into force in 2013 a significant number of flag states have ratified the convention. The International Labour Organisation keeps an updated data base of countries adhering countries which can be found at the link ;  
<http://www.ilo.org/global/standards/maritime-labour-convention/database-ratification-implementation/lang--en/index.htm>

*N.B. \* In ratifying the convention a number of flag states have used the prescribed option of 'national determination' to amend certain aspects pertaining to the application of the convention. One example is the threshold GT of ships to which MLC will apply. Accordingly and to capture this element of change the International Group is now considering a ship GT of 200 ( against the originally communicated threshold of GT 500 noted in 2013 ). Further details of variances per flag state resulting from their individual 'national determination' can be found by consulting the link mentioned above.*

## Meeting the requirements – The Documents that the Clubs will be issuing

The International Group of P&I Clubs will be issuing ;

1. Certificate of Insurance or Other Financial Security in respect of Shipowners' Liability as requested under Regulation 4.2 Standard A4.2 Paragraph 1 (b) of the Maritime Labour Convention 2006 as amended.

A copy is attached and is marked Annex 1.

2. Certificate of Insurance or Other Financial Security in respect of Seafarer Repatriation Costs and Liabilities as required under Regulation 2.5.2 Standard A2.5.2 of the Maritime Labour Convention 2006 as amended.

A copy is attached and is marked Annex 2.

These two documents will be provided by the clubs in pdf format for printing by Owners. **These two documents are to be placed on board the ships as described below.**

The period of validity for the documents will depend upon two factors , a) first the ability of the Club to issue a document from their systems which bridges the 20<sup>th</sup> February renewal date. Accordingly it may be that some clubs will be able to issue documents showing the period 18<sup>th</sup> January 2017 to 20<sup>th</sup> February 2018 whilst others may have to issue documents separately for the period 18<sup>th</sup> February 2017 to 20<sup>th</sup> February 2017 and then for the period 20<sup>th</sup> February 2017 to 20<sup>th</sup> February 2018.

We will advise on a case by case basis when requesting ship related details that will have to be passed to the club for obtaining documents;

b) secondly when issuing documents that show the period 18<sup>th</sup> January 2017 to 20<sup>th</sup> February 2018 it is envisaged that Clubs will ask Members to confirm their commitment to renew with their club at 20<sup>th</sup> February 2018 or with another club of the international group.

We will revert with the form and wording of the undertaking which clubs will be requesting.

## **What to do with the documents when received**

The documents will be sent to Members in pdf format and are to be printed off and placed on board the ship. Whilst it is uncertain if certain flag authorities may request a copy of the documents for their files.

N.B. It is to be noted these are not documents that need to be sent to Flag States for them to then issue a final certificate as is the case with for example Blue Cards for Bunker Convention of Wreck Removal Convention.

In addition to sending pdf files all the clubs will record on their web page under their ship search facility the certificates issued for open checking of validity by who may be so interested or required to do so.

## Background information

### MLC Extension Clause

We attach herewith a copy of the MLC Extension Clause which at the bottom of the page is titled Annex 3.

The MLC Extension Clause provide the basis upon which the clubs are able to provide certificates. The clause provides that the Club will pay claims advanced by seafarers which fall within the scope of the Regulations and Standards specified in the Certificates. The Clause also provides that if such payments fall outside the scope of standard cover, Members will be obliged to reimburse the Club.

The clause is necessary due to the fact that whilst certain of the liabilities which are now been asked to be certified fall within standard P&I cover others , and the clubs mention for example repatriation costs and wages arising from abandonment under Standard 2.5.2 of Regulation 2.5 , fall outside standard P&I cover.

The MLC Extension Clause should be inserted in the 2017/18 Rule Book of each club. For the period from 18<sup>th</sup> January 2017 to 20<sup>th</sup> February 2017 we would imagine that the Clubs may advise of the inclusion of the clause within the 2016/17 Policy Year rules by means of a specific Member circular to be issued prior to 18<sup>th</sup> January 2016 advising the Boards decision to incorporate the clause within the current Policy Year rules.

### Reinsurance for claims falling outside the scope of P&I cover

For those risks not covered under the International Group's pooling facility the clubs have advised that they are at an advanced stage in negotiations with the insurance market for a separate and independent reinsurance that will provide protection to levels which the clubs consider to be sufficient for all but a limited number of fleets which have exceptionally high crew numbers. When the details of this placement are confirmed we shall revert with details.

To assist Members further in the lead up to 18<sup>th</sup> January 2017 the International Group has issued a FAQ supplement which we attach herewith.

The scope of this Newsletter has been to provide a step by step overview of the latest news regarding certification from the International Group of P&I Clubs. It is evident that further information needs to be and will be forthcoming in the following weeks and in this respect we will be closely liaising with the clubs and monitoring the International Group communications , thereafter advising accordingly.

This Newsletter, and our information archive, can also be accessed at [www.pferrari.com](http://www.pferrari.com)

P. L. FERRARI & CO. S.r.l



Annex 2

**CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY**

**IN RESPECT OF SEAFARER REPATRIATION COSTS AND LIABILITIES AS REQUIRED  
UNDER REGULATION 2.5.2, STANDARD A2.5.2 OF THE MARITIME LABOUR CONVENTION  
2006, AS AMENDED**

Name of Ship:

Port of Registry:

Call sign:

IMO number of the ship:

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

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

Name of the shipowner on whose behalf financial security has been provided:

Period of validity of the financial security: \_\_\_\_\_ to \_\_\_\_\_

THIS IS TO CERTIFY that there is in force a policy of insurance or other financial security in respect of the above-named ship while in the above ownership which meets the financial security requirements of Regulation 2.5 paragraph 2 of the Maritime Labour Convention 2006 as amended, where it is in force and applicable.

Provided always that the insurer or provider of financial security may cancel this Certificate in accordance with Standard A2.5.2.11 by giving at least 30 days' written notice to the competent authority of the flag state whereupon the liability of the insurer hereunder shall cease as from the date of expiry of the said period of notice but only as regards events arising thereafter.

The policy of insurance is subject to certain conditions and limitations details of which can be found on the provider's website under "Maritime Labour Convention Extension Clause 2016".

This certificate has been issued for and on behalf of the above-named provider of insurance or other financial security.

Date:

Authorised Signatory

By

[Managers of the above Association]

### Annex 3

#### MARITIME LABOUR CONVENTION EXTENSION CLAUSE 2016

1. Subject only to the other provisions of this extension, the club shall discharge and pay on the member's behalf under the 2006 Maritime Labour Convention as amended (MLC 2006) or domestic legislation by a state party implementing MLC 2006:
  - (a) Liabilities in respect of outstanding wages and repatriation of a seafarer together with costs and expenses incidental thereto in accordance with Regulation 2.5, Standard A2.5 and Guideline B2.5; and
  - (b) Liabilities in respect of compensating a seafarer for death or long-term disability in accordance with Regulation 4.2, Standard A4.2 and Guideline B4.2.
2. The member shall reimburse the club in full:
  - (a) any claim paid under paragraph 1(a) save to the extent that such claim is in respect of liabilities, costs or expenses recoverable under rule 3.1.2; and
  - (b) any claim paid under paragraph 1(b) save to the extent that such claim is in respect of liabilities, costs or expenses recoverable under rule 3.1.1.
3. There shall be no payment under paragraph 1(a) or paragraph 1(b) if and to the extent that the liability, cost or expense is recoverable under any social security scheme or fund, separate insurance or any other similar arrangement.
4. The club shall not discharge or pay any liabilities, costs or expenses under paragraph 1(a) or paragraph 1(b), irrespective of whether a contributory cause of the same being incurred was any neglect on the part of the member or the member's servants or agents, where such liabilities, costs or expenses were directly or indirectly caused by or contributed to by or arise from:
  - (a) Any chemical, biological, bio-chemical or electromagnetic weapon.
  - (b) The use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, computer virus or process or any other electronic system.

5.

- (a) This extension may be cancelled in respect of war risks by the club on 30 days' notice to the member (such cancellation becoming effective on the expiry of 30 days from midnight of the day on which notice of cancellation is issued).
- (b) Whether or not such notice of cancellation has been given this extension shall terminate automatically in respect of war risks:
  - (i) Upon the outbreak of war (whether there be a declaration of war or not) between any of the following: the UK, the USA, France, the Russian Federation, the People's Republic of China;
  - (ii) In respect of any ship, in connection with which cover is granted hereunder, in the event of such ship being requisitioned either for title or use.
- (c) This extension excludes loss, damage, liability or expense arising from:
  - (i) The outbreak of war (whether there be a declaration of war or not) between any of the following: the UK, the USA, France, the Russian Federation, the People's Republic of China;
  - (ii) Requisition for title or use.

6. This extension shall be subject to rules 4.4, 4.8, 6.22 and 17.2(5).

7. Without prejudice to paragraph 5, cover under this extension shall cease 30 days after notice of termination in accordance with either Regulation 2.5, Standard A2.5.2.11 or Regulation 4.2, Standard A4.2.12.

8. Any dispute arising out of or in connection with this extension shall be resolved in accordance with rule 25.

9. For the purpose of this extension:

"member" means any insured party who is liable for the payment of calls, contributions, premium or other sums due under the terms of entry.

"seafarer" shall have the same meaning as in MLC 2006.

"war risks" means the risks set out in rule 4.3.



## Annex 4

### MARITIME LABOUR CONVENTION 2006 AS AMENDED (MLC)

#### FINANCIAL SECURITY REQUIREMENTS

#### International Group FAQs for Members

**IMPORTANT NOTE:** The entry into force of the amendments to MLC raises a number of complex and novel questions. These FAQs are intended to provide guidance to assist Members and Clubs in the run up to entry into force of the amendments on 18 January 2017. 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. Further updates will be given as and when necessary. These FAQs should not be regarded as providing definitive legal advice and Members should also consult their flag state authorities.

#### CERTIFICATION

##### 1 What Certification is required?

From 18 January 2017, all ships which are subject to MLC will be 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), and

(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 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).

MLC Certificates are not required by ships registered in States which are not party to MLC and which will not call at States which are party to MLC.

### **3. Will all states apply the financial security requirements?**

The Amendments will apply in all States which are party to MLC. However, it is understood (although not confirmed) that some of these States will not be ready to implement the Amendments.

Members should proceed on the basis that the financial security requirements apply unless they have clear confirmation from their Flag State and the authorities of any MLC Port State that financial security Certificates are not required.

### **4. Which categories of ship does 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"<sup>1</sup>.

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"<sup>2</sup>.

MLC States Parties are able to determine that MLC does not apply to certain categories of ship, including ships of less than 200gt not engaged in international voyages. States Parties are obliged to notify the ILO of such determinations which are recorded in the ILO database against the individual state as "National determinations"<sup>3</sup>.

### **5. Will the first Certificates be valid until 20 February 2017 or 2018?**

Clubs may be able to issue MLC Certificates which are valid until 20 February 2018. However, Members who intend to change Clubs at the 20 February 2017 renewal should only obtain Certificates which are valid up to 20 February 2017, particularly if they intend to move to an insurer outside of the International Group.

Clubs supplying Certificates which are valid to 20 February 2018 will require an undertaking from their Members to renew with them or another IG Club at the February 2017 renewal.

### **6. 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. The wording of the Certificates has been developed by the International Group (IG) and shared with an informal Correspondence Group (CG) of States which has had the opportunity to comment. The wording is similar to the "blue cards" issued by Clubs under International Maritime Organisation (IMO) Conventions.

---

<sup>1</sup> MLC Article II.1(i)

<sup>2</sup> Article II.1.4

<sup>3</sup> Article II.5, 6 & 7.

## **7. 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 conspicuous place on board where they will be available to the seafarers<sup>4</sup>.

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.

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

It is anticipated that States will follow the practice for blue cards issued under IMO Conventions and recorded in the IMO Guidelines<sup>5</sup>. MLC Certificates issued by IG Clubs will then be accepted without the need for additional financial checks.

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

States Party to MLC are required to implement it in a way which ensures that ships flying the flag of a State which has not ratified MLC do not receive more favourable treatment<sup>6</sup>. States are also obliged to have effective port state control to ensure that ships entering its ports meet the requirements of the Convention<sup>7</sup>. The IG Clubs have concluded that the best way of ensuring compliance is to provide the same form of financial security to ships registered in MLC States and to ships registered in non-MLC States, providing they call at ports in MLC States.

## **10. 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 and relate to war, nuclear, bio-chem and cyber risks and sanctions.

## **INSURANCE**

### **11 Is the risk covered by the Rules?**

Liability for disability due to occupational injury 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 due to a shipowner's financial default.

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

---

<sup>4</sup> Standards A2.5.2.6 & A4.2.11

<sup>5</sup> See [IMO Circular Letter 3464 2 July 2014](#) with Guidelines for accepting insurance companies, financial security providers and IG P & I Clubs.

<sup>6</sup> Art V.7

<sup>7</sup> Regulation 5.2.1

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.

**13. 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 IG reinsurance programme.

**14. Have Clubs protected their position through reinsurance?**

Yes. Reinsurance is being arranged through the IG's brokers. Binding commitments have been given by reinsurers for USD 150m and the IG expect to achieve USD 190m per fleet in excess of USD 10 million per fleet. The combined total of USD 200 million per fleet will be sufficient for all Members, with the possible exception of a small number of fleets with exceptionally high crew numbers.

**15. Why is the cover limit "per fleet"?**

It is likely that abandonment will be caused by insolvency and will 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.

**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 a proportion of USD 10 million calculated on a pro rata basis. Clubs will need to cooperate if an event gives rise to claims which may exceed USD 10 million on a fleet basis.

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

The starting point should be that the insurers who provide owners with P&I cover for crew risks should also provide owners with MLC Certificates. If those 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.

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

No. Payments made to seafarers under certificates are not subject to deductibles. However, the cover provided by the Club to the owner remains subject to any deductibles, so after payment is made to seafarers the amount of any deductible is recoverable from the insured owner.

## **CREW MANAGERS**

### **19. What is the position for a shipowner whose crew managers fail to pay wages?**

Some shipowners outsource crew management to a crew manager. If a crew manager becomes insolvent and 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 the shipowner is also insolvent the loss will remain with the Club.

## **STATE SCHEMES**

### **20. Can MLC cover 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<sup>8</sup>. The Club financial security will respond to the extent that liabilities arise under the Certificates which are not included in the State scheme.

## **WAGES**

### **21. What is the liability for wages?**

The security required under Regulation 2.5.2 is for up to four months' owed contractual wages and entitlements. A claim may arise where the shipowner "has unilaterally severed their ties with the seafarer including failure to pay contractual wages for a period of at least two months", as described in Standard 2.5.2.2(c).

### **22. What is meant by "wages"**

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.

## **SEAFARERS**

### **23. Do seafarers have to be serving on board to claim under MLC Certificates?**

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

---

<sup>8</sup> Standards A2.5.2.3 & A4.2.2.2

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.

**24. 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 States 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"<sup>9</sup>.

**TERMINATION**

**25 Can liability under MLC Certificates be terminated?**

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<sup>10</sup>.

**INFORMATION**

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

*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.

*Period of validity of the financial security*

The period stated in the Certificates will commence on 18 January 2017 and end at noon GMT on either 20 February 2017 or 20 February 2018.

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

---

<sup>9</sup> Art II.3 & 7.

<sup>10</sup> Standards A2.5.211 & A4.2.12

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.