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17 September 2013

To : Shipowners, Ship Managers and Recognized Organizations

Maritime Labour Convention, 2006

Frequently Asked Questions

Further to our general letter of 20 March 2013 regarding the issue of 'Statement of Compliance (SoC)', this Department received a number of enquiries on the compliance with the HK-DMLC-Part I issued on 15 March 2013. They can be divided into 2 categories:

1. Procedures on the application of SoC during the voluntary compliance period.
2. Issues that require to be clarified during the preparation of the DMLC-Part II by shipowners and ship managers.

The answers on questions to these two categories can be found in the Annex for your appropriate action.

Multi-lateral Policy Division
Hong Kong Marine Department

Encl.

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Annex

1. Procedures on the application of SoC during this voluntary compliance period.

The General Letter dated 20.3.2013 with the HK-DMLC-Part I and the Guidelines on the compliance were issued to HK shipowners, ship managers and ROs on the application of 'Statement of Compliance' prior to the enactment of the HK local legislation on MLC, 2006 and the application of the Convention in Hong Kong. The HK-DMLC-Part I as attached to the General Letter is regarded as the DMLC-Part I issued to a Hong Kong ship from this Administration during the voluntary compliance period.

Shipowners as defined under the MLC, 2006 are required to complete the DMLC-Parts I (ship's name, IMO no. and the Gross Tonnage) & II (measures drawn up by the shipowner for the compliance) and **directly approach one of our ROs** for verification inspection and the subsequent issuance of 'Statement of Compliance'. The completed DMLC-Part I is not required to be submitted to this Administration for endorsement. There is no restriction on the selection of a RO for the issuance of 'Statement of Compliance' provided that the RO is one of the nine ROs authorized by this Administration. However, the RO carrying out the vetting of the DMLC-Part II **must** be the same one for carrying out the verification inspection and the subsequent issuance of the SoC.

2. Issues that require to be clarified during the preparation of the DMLC-Part II by shipowners and ship managers.

A. MLC Articles

I. Definition of shipowner

According to the definition of 'shipowner' under the MLC (as extracted below), the 'owner of the ship' or 'the ISM 3.1 manager plus MLC responsibilities' can be regarded as the 'shipowner'.

"shipowner - means the owner of the ship or another organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with this Convention, regardless of whether any other organization or persons fulfil certain of the duties or responsibilities on behalf of the shipowner."

The signature on the DMLC-Part II is either the Owner of the ship or the ISM 3.1 Manager who agrees to take over the duties and responsibilities imposed on shipowners in accordance with the MLC, 2006. The details of whom can be found on the 'Statement of Compliance'.

If another person supplying a seafarer to the ship may have concluded an employment contract with that seafarer and be responsible for implementing that contract (e.g. payment of wages), the shipowner still has the overall responsibility to the seafarer. Such an employer could sign the Seafarer Employment Agreement (SEA) as a representative of the shipowner only when the employer has obtained a signed power of attorney or similar document from the shipowner.

II. Definition of seafarer

"Seafarer" means a person who works on board a ship in any capacity on the business of the ship, but does not include a person specified below:

- a) licensed pilot who works as a pilot in the ship;
- b) the owner who has assumed the responsibility for the operation of the ship or a person (except the master) representing the owner;
- c) an officer of law enforcement agencies carrying out law enforcement duties;
- d) a person who works on board the ship solely within a port or at a port facility; or
- e) person employed in a ship solely in connection with the construction, alteration, repair or testing of the ship, its machinery or equipment, and not directly in connection with the normal manning of the ship within the deck, engine room or catering department. These persons are Auditors, Ship Superintendent, Surveyors and Temporary Riding Crew.

A cadet either deck or engineer is a seafarer when he/she works onboard Hong Kong ships. Armed guards onboard a Hong Kong ship for anti-piracy purposes are also regarded as seafarers.

B. MLC Title 1. Minimum requirements for seafarers to work on a ship

I. Format of the Medical Fitness Certificate

- (a) According to MLC Standard A1.2, a medical certificate issued in the form of STCW by a duly qualified medical practitioner confirming that it is issued to meet the requirements of both the STCW Convention, 1978, as amended, and the MLC, 2006 can comply with the MLC irrespective of the seafarers whether they are covered by STCW or not.
- (b) The existing (old) format of medical certificates used by

seafarers can still be accepted under the voluntary compliance period. Below is the arrangement on the acceptance of medical certificates in the non-MLC format.

During the voluntary compliance period (i.e. between now and the time when MLC applies to Hong Kong): -

(i) Crew members serving onboard HK ships can still use their non-MLC medical certificates; and

(ii) If an existing non-MLC medical certificate expires within the voluntary compliance period, the seafarer is required to be re-examined by a medical practitioner and issued with a medical certificate conforming to the MLC medical certificate format.

Shipowners / ship managers should consider to arrange the renewal of old format of medical certificates to the MLC medical certificate format for their seafarers to avoid possible queries by port State control inspectors. RO may raise this issue as an observation on the Statement of Compliance.

II. Private Recruitment and Placement Services (PRPS)

PRPS is not located in the State Party to the MLC:

- (a) Shipowners employing seafarers from countries that have not ratified the Convention shall ensure that the PRPS located in these countries in supplying these seafarers are in compliance with the Convention (A1.4 of MLC). To ensure compliance, proper assessments shall be made. Shipowners shall establish a proper system for verifying that the PRPS conforms to A1.4 of MLC. Such system may be a part of their own quality system or may be in the form of certification issued by organizations recognized by State Parties to the MLC confirming their compliance with A1.4 of the MLC.
- (b) Shipowner must provide evidence to MD to show that the PRPS has the insurance in place as per A.1.4.5(c)(vi).

PRPS is located in the State Party to the MLC:

- (c) Shipowners employing seafarers from PRPS in a State Party to the MLC have to ensure that those PRPS are recognised by the Administrations of the State Party. Shipowners are not required to provide evidence to MD to show that the PRPS has the financial security.

C. MLC Title 2. Conditions of employment

I. Financial Security Arrangement under Reg. 2.5 and 4.2

Regarding the financial security required under Regulations 2.5 (Repatriation) and 4.2 (Shipowners' Liability) of the MLC, Hong Kong accepts a valid Certificate of Entry provided by a P&I Club under the International Group as proof of compliance with the Convention in respect of the above 2 regulations.

II. Early termination of crew agreement

- (a) According to MLC A2.5.3, the Administration shall prohibit shipowners from requiring that seafarers make an advance payment towards the cost of repatriation at the beginning of their employment, and also from recovering the cost of repatriation from seafarers' wages or other entitlements except where the seafarer has been found, in accordance with the regulations or other measures, to be in serious default of the seafarer's employment obligations.
- (b) Also according to MLC A2.5.1 and Guidelines B2.5.1, shipowners must repatriate seafarers when the employment agreement expires or is terminated by the shipowners, or by the seafarers, for justified reasons. Apart from the above, the shipowner must repatriate a seafarer where it is impossible for the seafarer to continue to carry out his/her duties on board. These include illness or injury of the seafarers, shipwreck, sale of ships, ship is bound for a war zone when seafarers do not want to go, etc.
- (c) In item 4.10 of the Guidelines issued on 15-3-2013, shipowners must allow seafarers to terminate the crew agreement at shorter notice without penalty on compassionate or other urgent reason. Shipowners are advised to specify the grounds for early termination in crew agreements
- (d) The employer is not obliged to pay the cost to repatriate under all circumstances. There are situations where the employer might be able to recover the repatriation costs from the seafarers e.g. when the engagement is terminated at the request of the seafarer before the date stipulated in the contract; or as a result of serious misconduct committed by the seafarer in breach of the employment contract.

D. MLC Title 3. Accommodation, recreational facilities, food and catering

I. Crew Accommodation Survey on ILO 92 and 133

As a proof of compliance for a ship built before the Convention, a full survey report of a RO must be produced to show that the ship complies with the requirements of ILO 92 and ILO 133. Statement of Compliance on accommodation without the above survey report is not acceptable to MD. Please note that crew accommodation certificate is not required to be issued to Hong Kong ships.

II. Ship's cook qualification

Cooks from non-party States to the MLC, 2006 will also be accepted if they possess cookery certificate issued by countries which have ratified MLC, 2006 or ILO C69. For cooks of non-party States with cookery certificates issued by institutions of non-party States to MLC, 2006 or ILO C69, these certificates are only accepted when they are recognised by the relevant State's maritime authority and certified by a RO of MD that the cookery training provided to the certificate holder is in compliance with the MLC's requirements.

If the non-party State to the MLC, 2006 or ILO C69 is a member of the ILO, this Administration will accept the cooks trained and certified by institutions approved by the maritime authority of that non-party State. It is not necessary for these institutions to be certified by ROs of MD.

Before the enactment of the law in Hong Kong, Statement of Compliance is issued on a voluntary basis. If it is difficult for a ship to comply with the requirement to have a qualified cook on board, MD considers that it can be raised by RO as an observation on the Statement of Compliance with an action to be rectified by the shipowners.

E. MLC Title 4. Health protection, medical care, welfare and social protection

I. Reference books on the preparation of the medical training for seafarers

The ILO/IMO document "*Document for Guidance – An International Maritime Training Guide*" is out of print and is superseded by the 2010 STCW Amendments as advised by IMO. HK's DMLC-Part I (table form dated 15 March 2013) in item 12.3 for this publication has allowed for updates. Shipowners when preparing DMLC-Part II may make reference to 2010 STCW Amendments directly.