



Circular N^o CH 43-0

To: All Shipowners of Swiss flagged Vessels, Masters, Shipboard Safety Committee, Recognized Organizations and approved Inspectors

Sub.: Guidelines to the Maritime Labour Convention, 2006
Inspection and Certification Programme

- Ref.**
- a) Maritime Labour Convention, 2006 (hereafter "MLC")
 - b) Guidelines for Flag State Inspections under the MLC, 2006 (ILO, 2009)
 - c) Guideline for Port State Control Officers carrying out inspections under the MLC 2006 (ILO, 2009)

PURPOSE:

The Swiss Federal Council ratified the Maritime Labour Convention, 2006 (MLC), in February 2011. The present Circular establishes the Swiss Maritime Navigation Office (the "Administration") Inspection and Certification Programme to implement the MLC, which governs maritime labour conditions and sets minimum standards for the working and living conditions of seafarers aboard ships as applicable.

This Inspection and Certification Programme authorizes certain Recognized Organisations (RO's), as established under separate written agreement, to carry out inspections and issue certificates under the MLC on behalf of the Swiss Maritime Administration.

APPLICABILITY:

This Circular is valid for all ships and their seafarers including Masters, to which the MLC applies in accordance with Article II of the MLC upon its entry into force.

It is expected that the necessary numbers of ratifications of the Convention could be reached by 2012, which means that the Convention would be fully in force in 2013.

Shipowners and operators are encouraged to give effect to this Circular on a voluntary basis before it comes into force, in order to establish the necessary measures for verifying compliance in anticipation of the entry into force of the MLC (see 14.4 below)

REQUIREMENTS

1. Background

At a Conference in Geneva on 23rd February 2006, the MLC was adopted by the International Labour Organization (ILO), composed of Representatives of Governments, Employers Associations and the International Transportworkers' Federation, as a single international instrument setting forth a basic set of requirements governing the working and living conditions for seafarers. It is referred to as the "Bill of Rights" for seafarers, and is considered the "fourth pillar" of international maritime regulations alongside the SOLAS, MARPOL, and STCW Conventions of the IMO.

The MLC embodies 37 existing maritime ILO Conventions and 33 Recommendations with the intention of updating standards where necessary.

- 1.1. Some novel features of the MLC relate to its structure and provisions within the Articles, being similar to the lay-out of the STCW Convention of IMO. The main point relates to the “no more favourable treatment” clause (Article V, paragraph 7), which ensures that all ships will be subject to the same stringent requirements of the Convention irrespective of whether or not the Flag State has ratified the MLC.

2. General Application of the MLC

- 2.1. The MLC applies to all merchant ships sailing under the Swiss Flag engaged in commercial activity.
- 2.2. The Administration does not extend the application of the MLC to fishing vessels which are subject to ILO Convention 188, or to ships which navigate in inland waters.
- 2.3. All ships of 500 gross tons or over to which the MLC applies must be certified for compliance with 14 mandatory items of the MLC which are subject to mandatory inspection. The 14 areas are set out in Appendix A5-1 of the MLC, and further details regarding certification are provided under Pt 10.2.3 below.
- 2.4. All Swiss flagged ships between 200 and 500 GT, regardless of whether they are required to carry a ML Certificate, shall meet the requirements specified in DMLC Part I and shall be subject to Flag and Port State inspection verifying that this requirement is met.
- 2.5. Ships under Pt 2.4, to which the MLC does not apply, may request voluntary certification subject to submission of a completed DMLC Part II and the satisfactory completion of all inspection requirements necessary for certification.

3. Seafarers

- 3.1. The MLC applies to all seafarers (any person who is employed or engaged or works in any capacity) on all ships to which the MLC applies.
- 3.2. The Administration recognizes that there may be doubts whether a particular category of persons who may perform work on board a ship should be regarded as seafarers. Persons who might not be determined to be seafarers include Harbour Pilots and Port workers, as well as certain specialist staff such as ship inspectors, superintendents and repair technicians.
- 3.3. In the event of doubt, the question shall be determined by the Administration in consultation with the shipowners' and seafarers' organizations. Further Reference is made to Resolution VII to the MLC “Resolution concerning information on occupational groups”.

4. Recognized Organizations (RO's)

- 4.1. The Administration may delegate inspection and certification functions under the MLC to specified RO's (Circular N° CH 36).

Other Classification Societies may be appointed upon request from the shipowners.

5. Inspections

- 5.1. All inspections shall be carried out in accordance with the ILO document “Guidelines for Flag State Inspections under the MLC”.

When an inspection is conducted or when measures are taken under the MLC, the authorized Inspector or the RO shall make all reasonable efforts to avoid a ship to be unreasonably detained or delayed.

- 5.2. An Inspector is authorized to carry out any examination, test or inquiry considered necessary to determine whether the standards of the MLC are being strictly observed.

- 5.3. All persons inspecting a ship under the MLC shall have appropriate knowledge of ship operations, including:
- Minimum requirements for seafarers to work on a ship;
 - Conditions of employment;
 - Accommodation;
 - Recreation facilities;
 - Food and catering
 - Accident prevention
 - Health protection
 - Medical care
 - Welfare and social security protection

6. Initial Inspections

- 6.1. Initial inspections shall be conducted to ensure initial compliance with the National requirements implementing the MLC. All ships under the Swiss Flag must undergo an initial inspection and receive a Maritime Labour (ML) Certificate within one year of the date upon which the MLC enters into force. For validity of the ML Certificate, see Pt 14 below.
- 6.2. To verify that the national requirements are being complied with and that the shipowner's measures have been correctly implemented and are being followed, an inspector shall perform the following actions:
- .1 inspecting the relevant areas of the ship;
 - .2 examining further documentation such as passports or other official documents, medical certificates, training records, crew lists and payroll records, seafarer employment agreements, safe manning document and work and rest schedules;
 - .3 interviewing, in private, a representative number of seafarers, taking account of the need to preserve confidentiality and of the seafarers' work and rest schedules.

7. Intermediate Inspection

- 7.1. Intermediate Inspections shall be conducted to ensure continuing compliance with the national requirements for the implementation of the MLC. An intermediate inspection shall be conducted between the second and third anniversary dates of the ML Certificate.
- 7.2. The scope and depth of the intermediate inspection shall be equal to an inspection for renewal of the ML Certificate.
- 7.3. The ML Certificate shall be endorsed by an Administration Inspector or by the RO following satisfactory intermediate inspection.

8. Renewal Inspection

- 8.1. Renewal Inspections shall encompass inspections for all requirements (as per Initial Inspection) and be completed as follows:
- 8.2. When the renewal inspection is completed within three months before the expiry of the existing ML Certificate, the new ML Certificate shall be valid from the date of completion of the renewal inspection for a period not exceeding five years from the date of expiry of the existing ML Certificate.
- 8.3. When the renewal inspection is completed more than three months before the expiry date of the existing ML Certificate, the new ML Certificate shall be valid for a period not exceeding five years starting from the date of completion of the renewal inspection.

9. Inspection by Port State

Vessels calling at foreign ports may be subject to MLC inspections by recognized Port State Inspectors ensuring compliance with the requirements of the Convention. Masters and ship-owners are requested and required to give full assistance to these Inspectors (Guideline to Port State Inspections).

10. Certification

The following documents are forming part of the Maritime Labour Convention, 2006, certification, and must be kept aboard each Swiss Flag vessel to which the MLC applies.

10.1 Maritime Labour Certificate (ML Certificate)

The Maritime Labour Certificate as described in Appendix A5-II of MLC, 2006, issued by or on behalf of the Administration, attests that seafarers' working and living conditions aboard a ship meet all the Swiss Laws and regulations that govern the implementation of the MLC.

An authorized Inspector shall issue or renew an ML Certificate to a Swiss flag ship after verifying, upon inspection, that the fourteen mandatory requirements for working and living conditions meet national standards for implementing the MLC as detailed in the Declaration of Maritime Labour Compliance DMLC, Part I Annex 1.

10.2. Declaration of Maritime Labour Compliance, Part I

10.3. Declaration of Maritime Labour Compliance, Part II

10.4. Interim Maritime Labour Certificate

10.5. A copy of the Maritime Labour Convention, 2006, in English shall be kept on board and available to seafarers.

10.6. A ML Certificate endorsed by the Inspector or by the RO must have attached to it a Declaration of Maritime Labour Compliance (DMLC Part I and Part II) as well as any record of inspection as detailed under Pt.11 below.

11. Declaration of Maritime Labour Compliance (DMLC)

11.1 This document outlines the national laws or provisions that give effect to the 14 mandatory inspection items required for certification and the measures put in place by the shipowner/operator to ensure compliance with these inspection items.

11.2 The DMLC consists of two parts:

.1 DMLC Part I:

The statement drawn up by the Administration refers to or describes the national laws, regulations, collective agreements or provisions with respect to the 14 mandatory inspection items required for certification. The DMLC Part I will also record any flexibility, substantial equivalencies or exemptions which may have been applied to the relevant ship. The original of this Document is stamped and signed by the Administration.

The fourteen items contained in the DMLC Part I are:

- .1 Minimum age
- .2 Medical certification
- .3 Qualification of seafarers
- .4 Seafarers' employment agreements
- .5 Use of any licensed or certified or regulated private recruitment and placement service
- .6 Hours of work or rest
- .7 Manning level for the ship according to the Document of Safe Manning

- .8 Accommodation
- .9 On-board recreational facilities
- .10 Food and catering
- .11 Health and safety and accident prevention
- .12 On-board medical care
- .13 On-board complaint procedures
- .14 Payment of wages

Further details and the format with regard to the DMLC Part I are given in Annex 1 to this Circular.

11.3 DMLC Part II:

This Document must be drawn up by the shipowner/operator identifying the measures adopted by them to ensure ongoing compliance with the national requirements detailed in the DMLC Part I, and to enable continuous improvement between inspections. They will show to the inspector evidence of their instructions to their ships.

This Document forms the first step of a certification under the MLC, 2006; a copy must be submitted to the Administration for information of intention of certification of a ship, another copy to the RO appointed for the certification of a ship.

Part of this Document may be issued at the Office of the shipowner/operator (Points 1, 2, 3, 4, 5, 8, 11, 14), whereas all these Points must also be checked on board, partially in a private discussion between Seafarers and MLC Inspector (B5.1.4.8b).

The Annex 2 to this Circular is a Specimen of the DMLC Part II which must be issued by the Shipowner.

- 11.4 The DMLC Part II shall be certified as compliant by the relevant inspector or RO prior to issuance of the ML Certificate to the shipowner/operator.
- 11.5 In order to facilitate the work of the inspector and for easy reference shipowners/operators are obliged to prepare a dossier containing, besides the DMLC Part II, all such documents, fleet instructions or circular letters issued by the company to their masters. A dossier called "MLC 2006 DMLC Part II" must be available on each ship.

12. Interim ML Certificate (IMLC)

- 12.1 an IMLC may be issued:
 - .1 to new ships on delivery;
 - .2 when a ship changes her flag;
 - .3 when a shipowner assumes responsibility for the operation of a ship which is new to that ship owner.
- 12.2. An IMLC must conform to the model provided in the MLC (Annex IV), and may only be issued after verification that:
 - .1 the ship has been inspected, as far as reasonable and practicable, for items listed in section 10.2.3 above;
 - .2 the shipowner has demonstrated to the inspector or the RO that the ship has adequate procedures to comply with the MLC;
 - .3 the master is familiar with the MLC and his responsibilities for its implementation;
 - .4 relevant information has been submitted by the Administration to the RO to produce a DMLC;
- 12.3 For the period of validity of the IMLC (maximum 6 months), no DMLC need be issued.

12.4 An IMLC in the form as described in Appendix A5-II of the MLC must be endorsed by the Inspector or by the RO.

12.5 Prior to the expiry of an IMLC a full inspection for the issue of the Maritime Labour Certificate including the necessary DMLC Part I and II must be undertaken.

12.6 An IMLC may not be extended after its expiry date (MLC Art. A5.1.3.8).

13. Certification Formats

13.1. The Administration has developed templates for the ML Certificate and the DMLC Part I and Part II which conform to the model prescribed by the MLC.

13.2. A copy of these documents must be posted in a conspicuous place on board the ship to be available to the seafarers onboard.

13.3. The ML Certificate and the DMLC must be in English.

14. Certificate Validity

14.1. The ML Certificate shall remain valid for a period of five (5) years, and shall be subject to an intermediate inspection between the second and third years of validity.

14.2. The IMLC may be issued for a period not exceeding six (6) months. An inspection in accordance with section 10.2.2 above shall be carried out prior to the expiry of the IMLC so that the DMLC and the ML Certificate can be issued. No further IMLC may be issued following this initial period of six months.

14.3. Causes for Invalidation:

An ML Certificate or IMLC shall cease to be valid in any of the following cases:

- .1 the relevant inspections are not completed within the specified time periods;
- .2 the ML Certificate is not endorsed by the Inspector or RO;
- .3 when a ship changes her flag;
- .4 when a ship owner ceases to assume the responsibility for the operation of a ship;
- .5 when substantial changes have been made to the structure or equipment covered in Title 3 of the MLC (Accommodation, Recreational Facilities, Food and Catering).

14.4. Grandfathering:

ML Certificates issued during the voluntary period prior to the MLC coming into full force and effect shall be convertible to full MLC certificates when the MLC comes into force, subject to an inspection performed to the Administration's satisfaction which may also be carried out at the Shipowners' Office. The validity of such a Certificate will not extend beyond five years after the issuance of the voluntary Certificate.

15. Deficiencies and Certificate Withdrawal

15.1. An Inspector or an RO shall require the rectification of deficiencies in seafarers' working and living conditions that have been identified as the result of an inspection and shall carry out inspections in this regard at the request of a Port State.

15.2. Where there are grounds to believe that deficiencies constitute a serious breach of the MLC (including seafarers' rights), or represent a significant danger to seafarers' safety, health or security, an inspector shall, with the authorization of the Administration, prohibit a ship from leaving port until necessary corrective actions are taken. When an inspection is conducted or when measures are taken under the MLC, the authorized Inspector or the RO shall make all reasonable efforts to avoid a ship being unreasonably detained or delayed.

- 15.3. An ML Certificate or IMLC shall be withdrawn by the Administration or RO if there is evidence that a ship does not comply with the requirements of the MLC and that the required corrective action has not been taken. When considering the withdrawal of an ML Certificate, the seriousness and frequency of the deficiencies shall be considered.
- 15.4. Where there is no clear breach of the requirements that endangers the safety, health or security of the seafarers and where there is no prior history of similar breaches, an Inspector or RO shall have the discretion to give advice instead of insisting or recommending the withdrawal of an ML Certificate.
- 15.5. If the Administration receives a complaint that is not manifestly unfounded or obtains evidence that a ship that flies the Swiss Flag does not conform to the requirements of the MLC or that there are serious deficiencies in the implementation of measures set out in the DMLC, the Administration shall undertake to investigate the matter and ensure that action is taken to remedy the deficiencies found.

16. Record Keeping

16.1. ML Certificates:

The Administration or RO shall maintain records of ML Certificates issued.

RO or other Inspectors shall submit a report of each inspection to the Administration. A copy of the report is supplied to the Master of the ship in English. The ship's Master shall post a copy on the ship's notice board.

16.2. Inspection Records

A record of inspections shall be kept by the Master with any significant deficiencies found during the inspection noted and their date of remedy recorded. This record shall be appended to the DMLC so that it is available to seafarers, Flag State inspectors, authorized officers in Port States and shipowners' and seafarers' representatives in English.

16.3. Investigation Report

In the case of an investigation pursuant to a major incident, an RO or other authorized inspector shall submit a report to the Administration as soon as practicable, but no later than one month following the conclusion of the investigation.

16.4. Change of Flag

If a Swiss flagged ship changes her flag and both States concerned have ratified the MLC, the RO, on behalf of and upon notification of the Administration, shall transmit to the competent authority of the other State copies of the ML Certificate and DMLC carried by the ship before the change of flag and, if applicable, copies of the relevant inspection reports if the competent authority requests them within three months after the change of flag has taken place.

16.5. Annual Report

16.5.1. The Administration is obliged to maintain records of inspections and to make an annual report to the ILO on inspection activities within a reasonable time, not exceeding six months after the end of the year. The Annual Report shall contain:

- .1 A list of relevant laws and regulations, as amended, relevant to seafarers' working and living conditions;
- .2 Details of the Swiss system of inspection;
- .3 Statistics of ships subject to national laws and regulations;
- .4 Statistics on seafarers subject to national laws and regulations;
- .5 Statistics and information on violations of legislation, penalties imposed and cases of MLC detentions of ships;
- .6 Statistics on reported occupational injuries and diseases affecting seafarers.

16.5.2. The owners and RO's shall assist the Administration in meeting this requirement by providing statistics and other information required to produce this Annual Report.

17. Seafarer Complaints

17.1. Each ship owner or operator shall provide for on board procedures for a fair, effective and expeditious handling of seafarers' complaints alleging breaches of the requirements of the MLC, including seafarers' rights.

17.2. Reference is made to Circular CH 43/1 "Onboard Complaint Procedures".

18. Confidentiality

All inspectors shall treat as confidential the source of any grievance or complaint alleging a danger or deficiency in relation to seafarers' working and living conditions or a violation of laws and regulations and give no intimation to the shipowner, to the shipowner's representative or the operator of the ship that an inspection was made as a consequence of such a grievance or complaint.

19. Revision of MLC Circulars

Circulars N° CH 43 et seq. may be updated as necessary; such revisions will be designated with a revision number referring to the modified articles.

Annex 1 Specimen Document of DMLC Part I (Pt 11.2)

Annex 2 Specimen Document of DMLC Part II (Pt 11.3)

Swiss Maritime Navigation Office SMNO

p.p.



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