

THE ILO MARITIME LABOUR CONVENTION, 2006

GUIDANCE FOR SHIP OPERATORS ON PORT STATE CONTROL
AS FROM 20 AUGUST 2013



INTERNATIONAL SHIPPING FEDERATION



INTERNATIONAL CHAMBER OF SHIPPING

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INTRODUCTION

The International Shipping Federation (ISF) is the identity used by the International Chamber of Shipping (ICS) when acting as the international employers' organisation for ship operators. ISF co-ordinates the representation of shipowners at the International Labour Organization (ILO) in the development of maritime labour standards.

As an official Social Partner under the tripartite ILO process, ISF was responsible for negotiating the text of the ILO MLC with governments and seafarers' trade unions. ISF therefore has a very special interest in wanting to ensure the Convention's smooth implementation.

The membership of ISF and ICS comprises national shipowners' associations from 36 nations representing 80% of the world merchant fleet.



While the advice given in this guide has been developed using the best information currently available, it is intended purely as guidance to be used at the user's own risk. No responsibility is accepted by Maritime International Secretariat Services Limited or by the International Chamber of Shipping Limited or by any person, firm, corporation or organisation who or which has been in any way concerned with the furnishing of information or data, the compilation, publication or any translation, supply or sale of this guide, for the accuracy of any information or advice given herein or for any omission herefrom or from any consequences whatsoever resulting directly or indirectly from compliance with or adoption of guidance contained herein even if caused by a failure to exercise reasonable care.

On 20 August 2013, the ILO Maritime Labour Convention (MLC) will enter into force and ship operators will need to be ready.

At the 2006 Diplomatic Conference which adopted the MLC, ILO also adopted a Resolution which recommends that Port State Control (PSC) should not commence until 12 months after entry into force, i.e. August 2014. However, some port states, if they have ratified the MLC, may still decide to subject ships to PSC inspections to check compliance with the MLC from 20 August 2013.*

The following advice is intended to help ship operators avoid potential PSC problems.

The ILO MLC addresses a wide range of matters including shipping companies' obligations regarding seafarers' contractual arrangements, oversight of manning agencies, working hours, health and safety, crew accommodation, catering standards, and seafarers' welfare.

Provided that they put in the effort, the vast majority of companies should not have any difficulty complying with the substance of the Convention, which in large part is derived from existing ILO maritime standards and accepted good employment practice.

However, the enforcement mechanism is new. Shipping companies therefore must get to grips with the certification process in order to avoid port state control problems, and take appropriate measures in the event that flag states have not issued required documentation or guidance.

* EU Member States, in conformity with an EU Directive, are required to implement ILO MLC standards from 20 August 2013. In theory this could involve PSC inspection of ships registered with other EU Member States, even if the port state has not ratified the MLC.

PSC INSPECTION OF MLC CERTIFICATION

OVERVIEW

An important aspect of the MLC's enforcement will be inspection of the **Maritime Labour Certificate** which should be issued to the ship by the flag state.

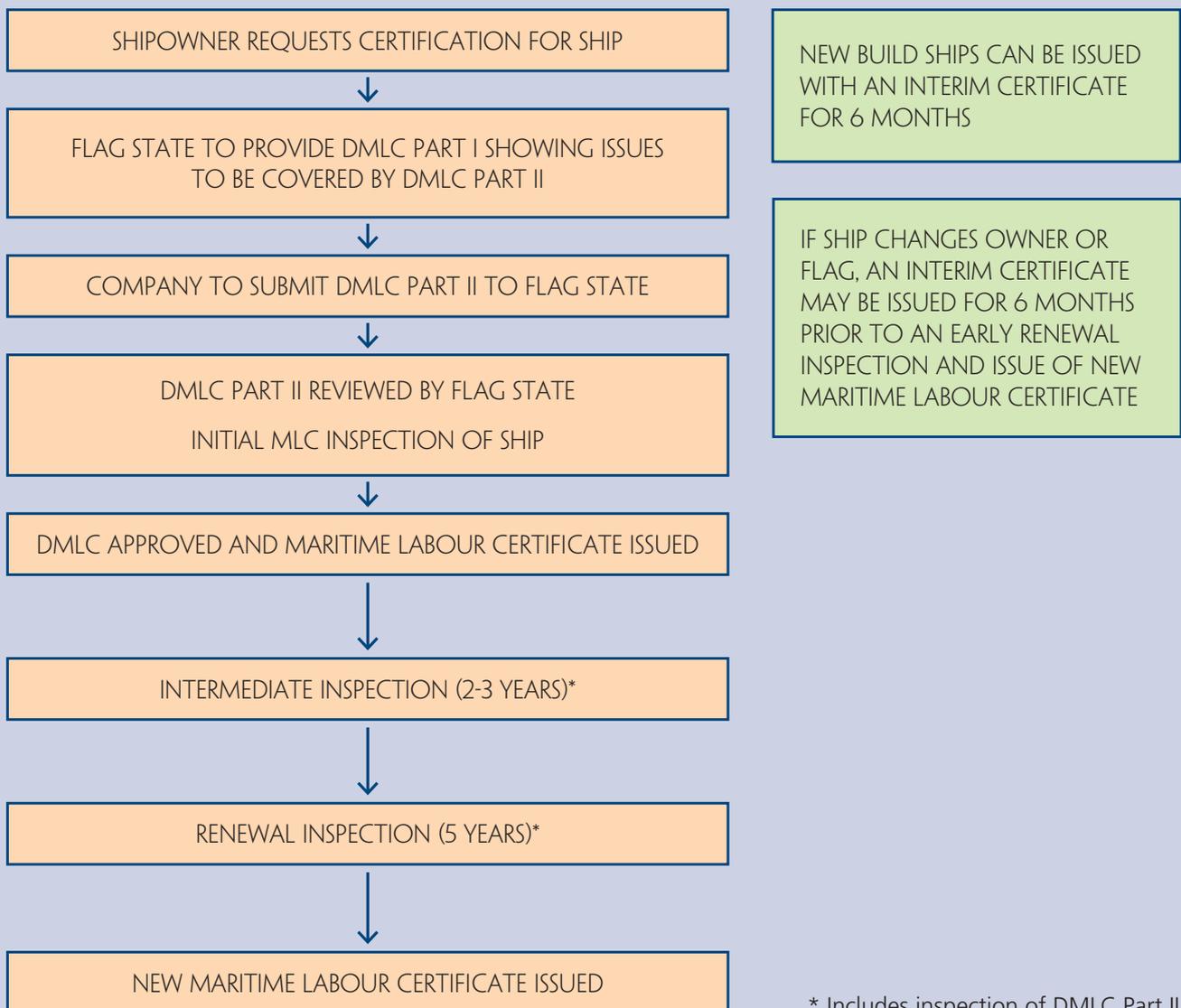
In addition, there is a separate MLC requirement for ships to prepare and maintain a **Declaration of Maritime Labour Compliance (DMLC)** which will be subject to PSC inspection.

However, even when the Convention has entered into force, a port state will only be legally entitled to conduct PSC inspections for compliance with MLC provisions if it ratified the MLC at least 12 months before the date of the inspection taking place.

Moreover, at least until August 2014, the MLC permits a flag state to issue certification within 12 months of the date when it ratified the Convention. In practice, this means that flag states which ratified after August 2012 may legitimately not have completed inspections and the issuance of certificates until after August 2013. Therefore, even if a port state decides to exercise PSC, it should not treat any lack of MLC certification as a deficiency before 20 August 2014.

The above notwithstanding (and especially if the flag state ratified the MLC before 20 August 2012) it will nevertheless be sensible for ships to take the precautions recommended by this brochure as from **August 2013**, in order to minimise potential port state control problems.

MLC CERTIFICATION PROCEDURE



MARITIME LABOUR CERTIFICATE

The Maritime Labour Certificate is issued to the ship rather than the company, and is thus similar to the Safety Management Certificate issued to ships under the IMO International Safety Management (ISM) Code. During a PSC inspection, the Certificate is *prima facie* evidence that a ship complies with the ILO Convention standards to the extent set out in the DMLC. Certificates will normally be issued for five years, with an intermediate inspection between two and three years after the first flag state inspection.

If a ship has not yet been issued with a Maritime Labour Certificate, the company should contact the flag state (even if it has not yet ratified the MLC) requesting an immediate inspection, and maintain copies of subsequent correspondence on board the ship.

Some flag states may decide to issue 'temporary' or 'provisional' certificates in advance of a flag state inspection for MLC compliance being completed. It is therefore recommended that ship operators that might not be in possession of MLC certification before 20 August 2013 explore this possibility with their flag states. (This may also be relevant to flag states that have still not yet ratified the MLC prior to August 2013, given that widespread PSC enforcement is expected to commence in August 2014, although there is no guarantee that such documents will be accepted by port states.)

DECLARATION OF MARITIME LABOUR COMPLIANCE (DMLC)

Notwithstanding the advice above, it is strongly recommended that all ships prepare a DMLC Part II before 20 August 2013 in order to avoid difficulties during PSC inspections.

The purpose of the DMLC is to demonstrate ongoing compliance with the MLC standards, and to help PSC inspectors to check that relevant **national** requirements are being properly implemented.

The DMLC should set out national requirements implementing the Convention for working and living conditions on board the ship. It should be issued by the flag state as an attachment to the Maritime Labour Certificate and be comprised of two parts. **Part II must be completed by the shipping company.**

Part I of the Declaration should be prepared by the flag state to identify matters for flag state inspection.

Part II of the Declaration should be drawn up and maintained by the company for every ship. This should identify the measures adopted by the company to ensure compliance between inspections.

When preparing the DMLC Part II, it is essential for companies to follow instructions from individual flag states which will differ from country to country.

Flag states should therefore be providing ships with a DMLC Part I and should be issuing detailed advice to shipowners about preparing the DMLC Part II and the particular national format and content which may be required.

If the flag state has not issued the ship with a DMLC Part I by August 2013, has not issued specific advice about its national requirements, or has not provided the ship with the national format required for preparation of the DMLC Part II, ISF recommends that the ship:

- Carries a copy of a letter to the flag state requesting the DMLC Part I;
- Prepares a DMLC Part II following the model suggested in the 'ISF Guidelines on the Application of the ILO MLC' (which may then have to be adjusted once national guidance has been issued); and
- Has the means to demonstrate that the ship meets all the standards set out in the Convention, taking account of the checklist and advice contained in the 'ISF Guidelines on the Application of the ILO MLC'.

[EXAMPLE]

Declaration of Maritime Labour Compliance (Part II) Measures adopted to ensure ongoing compliance between inspections

Name of Ship:	MV Marisc	Flag State:	Ruritania
IMO Number:	1234567	Gross Tonnage:	101,000

The following measures have been drawn up by the shipowner, named in the Maritime Labour Certificate to which this Declaration is attached, to ensure ongoing compliance between inspections:

Title 1

Minimum Age ILO MLC Regulation 1.1 and Ruritania Maritime Act 2010

A list of any seafarers under the age of 18 is provided by the Company and maintained as part of the Safety Management System (SMS). A comment concerning the age of any such seafarers is entered into the ISF Watchkeeper work/rest hour software used on board the ship.

In accordance with standing orders, upon arrival on board, the Master or designated officer checks the passport and/or Seafarer's Identity Document of seafarers to confirm that no person working on board is below the age of 16 and that any seafarers under 18 years old are identified.

Standing orders prohibit seafarers below the age of 18 from work that may jeopardise their safety or health and night work (as defined by national regulations) except during an emergency or, with respect to night work, as part of their professional development, in which case such work is recorded with a comment on the seafarer's work/rest hour record (which is signed by the seafarer) as well as being recorded in the ship's log.

Any questions that arise concerning the age of seafarers are communicated to the Designated Person Ashore (DPA).

Medical Certification ILO MLC Regulation 1.2 and Ruritania Maritime Act 2010

Upon arrival on board, the Master or designated officer checks the validity of the seafarers' medical certificates and, where relevant, colour blindness certificates.

The SMS establishes the criteria for checking the validity of medical certificates, and procedures with respect to certificates that may become out of date during the voyage.

The ISF Guidelines on the Application of the ILO MLC include a sample DMLC Part II as might be prepared by a shipping company, in a manner intended to be concise but comprehensive

PORT STATE CONTROL

Notwithstanding the ILO Conference Resolution recommending that the PSC enforcement of the MLC should be delayed until August 2014 - and the fact that any lack of certification should not, for an interim period, be regarded as a PSC deficiency – port states that have ratified the Convention at least 12 months beforehand are legally entitled to inspect visiting ships for compliance with MLC standards, even if the flag state of the ship has not ratified the Convention.

Additional advice on port state control inspections is provided in the 'ISF Guidelines on the Application of the ILO Maritime Labour Convention'.

In the absence of MLC certification, which is meant to provide *prima facie* evidence that a ship complies with ILO Convention standards, it is unclear how PSC officers might inspect for MLC compliance unless there are 'clear grounds' for suggesting that living and working conditions are seriously sub-standard. **However, the early preparation by the company of the DMLC Part II, using the model provided in the ISF Guidelines, should help the ship to demonstrate compliance if questions are asked.**

In practice, many of the MLC standards are similar to those already required by the ILO Merchant Shipping (Minimum Standards) Convention (ILO 147) which is already enforced by some port state control authorities.

It should be noted that the new accommodation requirements in the MLC only apply to ships constructed after August 2013, although all other new requirements will need to be met.

However, one new requirement, which might be examined by PSC, is the establishment of a 'complaints procedure'. It is therefore recommended that documentation explaining the complaints procedure is maintained on board the ship. Advice can be found in the 'ISF Guidelines'.

Port state control inspectors are also expected to give special attention to compliance with seafarers' work/rest hour limits as specified by the MLC, including the requirement to maintain individual records, since these requirements are already in force under the IMO STCW Convention.

IN THE EVENT OF PSC DIFFICULTIES AFTER AUGUST 2013

In the event of PSC difficulties, the ship might check:

- Whether the port state is aware of the ILO Resolution recommending PSC be deferred until August 2014? See <http://bit.ly/186a7GV>, Resolution XVII (page 12).
- Whether the port state ratified the Convention at least 12 months before the inspection (otherwise it is not entitled to exercise PSC)? See <http://bit.ly/QHRuQa>, and Article VIII, Paragraph 4 of the Convention.
- Whether the port state is aware that even if a flag state has ratified the MLC it is not required to issue certification until 12 months after entry into force? See <http://bit.ly/QHRuQa>, and Article VIII, Paragraph 4 of the Convention.

WHEN CAN PORT STATES EXERCISE PSC?

NATIONS
ENTITLED TO EXERCISE PSC
FROM 20 AUGUST 2013
(notwithstanding
ILO Recommendation)

Antigua and Barbuda, Australia, Bahamas, Benin, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, Denmark, Gabon, Kiribati, Latvia, Liberia, Luxembourg, Marshall Islands, Netherlands, Norway, Palau, Panama, Philippines, Poland, Russian Federation, Saint Kitts and Nevis, Saint Vincent & the Grenadines, Singapore, Spain, Sweden, Switzerland, Togo, Tuvalu.

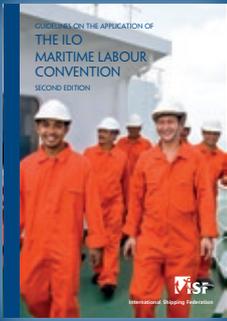
NATIONS
ENTITLED TO BEGIN
EXERCISING PSC BETWEEN
20 AUGUST 2013 AND
20 AUGUST 2014

Barbados, Fiji, Finland, France, Greece, Lebanon, Malta, Morocco, Nigeria, Serbia, South Africa, Viet Nam.

Exact dates of ratification (with PSC being permitted 12 months later) can be found at <http://bit.ly/QHRuQa>.

NATIONS
THAT HAVE NOT YET
RATIFIED THE ILO MLC*

These states are not permitted to enforce PSC until 12 months after the date of ratification – See Article VIII, Paragraph 4 of the Convention.

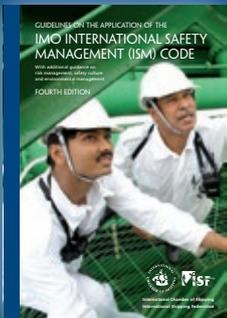


In December 2012, to assist employers, ISF published extensive *Guidelines on the Application of the ILO Maritime Labour Convention*. In addition to a detailed example of Part II of the DMLC as it might be prepared by a shipping company, these Guidelines include a checklist to help shipowners in preparation for port state control inspections.



The ILO MLC (and the IMO STCW Convention) requires ships to maintain detailed reports of work/rest hours in order to demonstrate compliance with ILO (and IMO) regulations. These records can be inspected by port state control.

The *ISF Watchkeeper* software enables ship operators to comply with the individual work/rest hour requirements and produce compliant tables of shipboard working arrangements. For a free trial visit www.isfwatchkeeper.com.



Several provisions within the MLC are also covered by the requirements of the IMO Safety Management System (ISM) Code. Therefore, documentation relating to compliance with some MLC requirements should be covered by ISM.

For more information on the IMO ISM Code and Safety Management Systems see the *ICS/ISF Guidelines on the Application of the IMO ISM Code*.

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