



BERMUDA

**GOVERNMENT OF BERMUDA
BERMUDA SHIPPING AND MARITIME AUTHORITY**



**Bermuda Merchant Shipping Guidance Note
BMGN 2017-01**

Guidance on implementation of 2014 Amendments to MLC 2006 on Bermuda Ships

Notice to all Bermuda shipowners, managers, operators, crewing agents, masters, officers and crew

Summary

1. Bermuda became a Party to the ILO- Maritime Labor Convention, 2006 (MLC 2006) on extension of the above Convention to Bermuda by the Government of the United Kingdom;
2. The MLC 2006 was amended in 2014, following the approval of the 2014 amendments to the ML 2006 by the ILO Conference, at its 103rd Session held in Geneva, on 11th June 2014;
3. The Special Tripartite Committee established under the MLC 2006 also adopted a Resolution in April 2014 on the *Transitional Measures relating to the entry into force of the amendments to the Maritime Labour Convention, 2006*,
4. The date for coming into force of the 2014 amendments to MLC 2006 was adopted as 18th January 2017;
5. The Bermuda Merchant shipping Act 2002, in conjunction with the relevant Merchant Shipping (Maritime Labor Convention) Regulations gave effect to the provisions of the MLC 2006 on the Bermuda ships;
6. Bermuda Administration had implemented the above 2014 Amendments to MLC 2006 by adopting the early implementation process of the relevant ILO Resolution,
7. The following Bermuda Instruments are relevant with regards to implementation of the 2014 amendments:
 - Merchant Shipping Act, 2002, as amended
 - Merchant Shipping (Repatriation) Regulations, 2013
 - Merchant Shipping (Seafarer's Employment) Regulations, 2013
 - Bermuda Declaration of Maritime Labour Convention Part I (DMLC Part I)
 - Bermuda Declaration of Maritime Labour Convention Part II (DMLC Part II)

The 2014 Amendments to the MLC 2006 became effective on all ships to which the Convention applies from 18th January 2017.

These amendments are concerned with two specific matters:

- Repatriation requirements for seafarers under Regulation 2.5 and the relevant Standards of the Code to the Convention,
 - Shipowners' liability under Regulation 4.2 and the relevant Standards of the Code to the Convention.
1. With regards to repatriation requirements under Regulation 2.5, the 2014 amendments require each member State to ensure the availability of an expeditious and effective financial security system implemented by the ship owner to assist seafarers in the event of their abandonment on board MLC compliant vessels;

(For the purposes of repatriation, a seafarer shall be deemed to have been abandoned where, in violation of the requirements of the MLC 2006 or the terms of the seafarers' employment agreement, the shipowner:

- (a) *fails to cover the cost of the seafarer's repatriation; or*
- (b) *has left the seafarer without the necessary maintenance and support; or*
- (c) *has otherwise unilaterally severed their ties with the seafarer including failure to pay contractual wages for a period of at least two months.)*

2. With regards to shipowner' s liability under Regulation 4.2, the 2014 Amendments require each member State to enact National laws and regulations to ensure availability of a financial security system to assure compensation for contractual claims of seafarers .

(i.e. any claim which relates to death, or long-term disability of seafarers due to an occupational injury, illness or hazard as set out in the national law, the seafarer's employment agreement or collective agreement).

The financial security system mentioned above may be in the form of a social security scheme or insurance or national fund or other similar arrangements.

The details of implementation of the above requirements including the format for the 'Certificate or other documentary evidence' of financial security are given in the "Text of the amendments of 2014 to the Maritime Labour Convention, 2006" published by the International Labour Organization (ILO).

In order to comply with the above requirements, each member State shall require the ships that fly its flag to which above requirements apply, to carry on board each vessel a certificate or other documentary evidence of financial security, issued by a financial security provider. A copy shall be posted in a conspicuous place on board where it is available to the seafarers. Where more than one financial security provider provides cover, the document provided by each provider shall be carried on board.

Implementation

1. The ILO, MLC 2006 Special Tripartite Committee adopted in April 2014, ***a Resolution, on the transitional measures relating to entry into force of the 2014 Amendments to the Maritime Labour Convention, 2006.***
2. This Resolution explains that the main purpose of the 2014 amendments to the MLC 2006 is to ensure that shipowners provide an expeditious and effective **financial security system** in relation to abandonment of seafarers, and the ship owners' liability for compensation for contractual claims of seafarers;
3. In order to give effect to the above amendments, changes are necessary to the existing National laws and regulations, DMLC Part I, DMLC Part II and the Maritime Labour Certificate. In recognizing the additional time that may be necessary for ships to comply with these matters, the above mentioned transitional measures provide for such ships to comply with those requirements, no later than the date of first renewal inspection following entry into force of the 2014 amendments;

4. However, it must be noted the above transitional measures do not apply to the requirements for providing the financial security, and carrying onboard a ship a certificate or other documentary evidence of financial security issued by a financial security provider;
5. The requirements for a ship to have a financial security system established on board, having a certificate or documentary evidence to that effect come into force from 18th January 2017;
6. The above MLC requirements will be subject to Port State Control procedures.

Procedure for compliance on Bermuda ships

The implementation of the 2014 Amendments to the Maritime Labour Convention 2006 on Bermuda ships will involve;

- Introduction of National Laws (Bermuda) for giving effect to the amendments;
- Reviewing, amending and reissuing of DMLC Part I (by Bermuda Administration);
- Reviewing, amending and resubmit DMLC Part II to Bermuda Maritime Administration for approval (by Shipowners)

Please be aware that the Bermuda Administration had taken steps for **early implementation** of the provisions of 2014 Amendments to MLC 2006, by including those provisions in Bermuda's Merchant Shipping legislation that gave effect to MLC 2006, as follows:

(a). MLC 2006 -TITLE 2. (Conditions of Employment) - Regulation 2.5 – Repatriation

Relevant Bermuda Legislation:

- **The Merchant Shipping Act, 2002**, as amended – Section 38 – Employment of Seafarers;
- **The Merchant Shipping (Repatriation) Regulations, 2013** (BR 108 /2013)
 - *Regulation 4 - Financial security, Regulation 9A - Penalty*
- **Bermuda DMLC Part I** – Section (4) – ‘Seafarer’s Employment Agreements’
Bullet points 12 and 13 - *Repatriation and Financial Security respectively*
- **Bermuda DMLC Part II** (Ship owner's declaration);

(b). MLC 2006 -TITLE 4 - (Health protection, Medical care, Welfare and Social security protection) - Regulation 4.2 – shipowner's Liability

Relevant Bermuda Legislation:

- **The Merchant Shipping Act, 2002**, as amended – Section 58 – Medical care onboard and shipowner' liability
- **The Merchant Shipping (Seafarer’s Employment) Regulations, 2013** (BR 107 /2013)
 - *Regulation 15 – Ship owners Liability,*
 - *Regulation 15. (2) Financial security*
- **Bermuda DMLC Part I** – Section (12) – Onboard medical care
 - *Bullet points 12 and 13,*
- **Bermuda DMLC Part II** (shipowner's declaration)

Conclusion

1. The existing Bermuda MLC 2006 legislation which are mentioned above, along with the Bermuda DMLC Part I, and DMLC Part II provide the necessary legal standing for the Bermuda shipowners to fully implement the 2014 Amendments to MLC 2006;
2. Bermuda Insurance Providers and Protection and Indemnity Clubs (P&I Clubs) are fully aware of the date coming into force of the 2014 Amendments to MLC 2006, and are already providing the necessary Financial Security coverage required under MLC Reg.2.5 and Reg.4.2 by issuing Insurance Certificates in the format recommended in the above amendments;
3. It is noted that a substantial proportion of the Bermuda shipowners are in compliance with the requirements of the above 2014 Amendments and their ships are carrying the Insurance Certificates as evidence of compliance, under the existing Bermuda MLC legislation;
4. From 18th January 2017, the date from which the 2014 Amendments come into force, all Bermuda shipowners shall comply with the requirement for providing:
 - (a) A Financial Security system meeting the standards required under the 2014 Amendments on their ships, and
 - (b) Documentary Evidence on board each of their ships to confirm the availability of a Financial Security System for seafarers as required under Reg. 2.5 and 4.2 of the Convention;
5. It must also be noted there is no requirement for ships to carry any flag State issued documents similar to those issued under the Bunker Convention or the Wreck Removal Conventions (CLCs), in respect of the 2014 Amendments to MLC 2006;
6. Under the provisions of the Resolution adopted by the MLC 2006 Tripartite Committee on 4th April 2014, on Transitional Measures relating to entry into force of the 2014 Amendments to the Maritime Labour Convention 2006, the existing Maritime Labour Certificate, the DMLC Part I and the DMLC Part II shall remain valid until no later than the date of first renewal inspection, following entry into force of the 2014 amendments;
7. However, it is important to note that the Transitional Measures mentioned above do not apply in respect to the strict requirements for providing the financial security and the documentary evidence on board each vessel, after 18th January 2017, as stated in the 2014 amendments to the MLC 2006.

More Information

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