



Antigua and Barbuda

Maritime Administration

ILO Circular
No. 2016 – 001
Rev 1
19 April 2021

SUBJECT: Maritime Labour Convention 2006 Guidance

REFERENCE:

- a) *Antigua and Barbuda Merchant Shipping Act (MSA) 2006 and adhering Regulations (Statutory Instruments, Directives and Circulars, as applicable)*
- b) *Maritime Labour Convention 2006, as amended*
- c) [Miscellaneous Circular 2021-004](#) *Evidence of Financial Liability Cover under Various Conventions*
- d) [ILO Circular 2018-003](#) *Maritime Labour Convention (2006) Seafarer's Employment Agreements (SEA)*
- e) [ILO Circular 2020-007](#) *Able Body (AB) Seafarers' Basic Wages: differences between the International Labour Organisation (ILO) and the International Bargaining Forum (IBF).*

TO: Ship-owners, operators, masters and officers of Antigua and Barbuda flagged ships, and recognized organizations.

1. PURPOSE

This Circular provides guidance in respect of the Maritime Labour Convention 2006.

2. APPLICATION

This Circular applies to all Antigua and Barbuda flagged Ships and it supersedes Circular 2014-003.

3. BACKGROUND

Antigua and Barbuda ratified the Maritime Labour Convention (MLC) 2006 in August 2011 and completed the Merchant Shipping (Maritime Labour Convention 2006) Regulations 2012 to give effect to it.

The MLC received its full total of ratifications to bring it into force in August 2012 and therefore it came into force internationally on 20 August 2013.

The MLC is fully open to Port State Control (PSC). The flag State's legislation is required to interpret and give effect to the requirements of the MLC. Therefore, the Declarations of Maritime Labour Compliance Parts I and II are of critical importance as they provide the standards against which inspections are carried out.

Part I states in simple form the requirements of national law, Part II states the measures that the shipowner has adopted on board to give them effect. It is effectively these two documents that form the basic inspection standard for the issuance of a Maritime Labour Certificate or for any PSC or other inspection.

4. OBLIGATIONS AND GUIDANCE/RESPONSIBILITIES

1. Application

1. The MLC applies to all seafarers (Article II.2 MLC), and to all ships, whether publicly or privately owned, ordinarily engaged in commercial activities (other than fishing vessels and similar and primitive vessels) (Art II.4 MLC.). That means that the MLC is applicable to vessels of under 500 GT as well as to larger vessels and it applies to, for example, cargo ships under 500 GT certificated under the Code of Safety for Caribbean Cargo Ships (CCSS Code) and to vessels certified under the Code of Safety for Small Commercial Vessels Operating in the Caribbean (SCV Code). There are no exceptions.

2. Legislation changes

1. The Antigua and Barbuda Merchant Shipping (Maritime Labour Convention 2006) regulations 2012 were made on 2 August, 2012. These regulations are available on the [ADOMS website](#).
2. The regulations do not make any substantive changes to the requirements in the Convention; instead they expand on the detailed requirements of the Convention.
3. The 2012 regulations also include a number of substantial equivalences that have been agreed as allowed by Article VI of the Convention. These are also included in the text of the DMLC Part I and therefore will not be required to be completed separately on the certificate.
4. The Merchant Shipping Act 2006 has been amended to remove the requirements for Crew Articles and other prescriptive elements that do not follow the MLC standards. Ships that comply with the Merchant Shipping (Maritime Labour Convention 2006) Regulations will not have to carry and use a crew agreement as the Seafarer Employment Agreement required by the MLC superseded this system.
5. Miscellaneous Circular 2021-004 provides more detail on the implementation of the 2014 amendments to the Maritime Labour Convention (2006) which entered into force on 18 January 2017

3. Certification for the MLC

1. The MLC requires all ships of 500 GT or more to carry a Maritime Labour Certificate. Carriage of a certificate is not mandatory for vessels of less than 500 GT but such a certificate can be issued on a voluntary basis if requested.
2. Whether certificated or not, all commercial ships trading internationally must comply with the MLC.
3. ADOMS therefore recommends that operators of vessels of less than 500 GT should apply voluntarily for a certificate of compliance as soon as they have made arrangements to comply in order to reduce the potential for problems with PSC.
4. For vessels of less than 200 GT not engaged in international voyages (in other words, operating only in domestic waters) the MLC allows the flag State to adopt a different approach and ADOMS has issued a Marine Notice to advise local

operators of the relaxations that can be allowed. The Code of Safety for small commercial vessels (SCV Code) also addresses some relevant issues with this type of vessel.

4. Maritime Labour Certificate (is in three parts)

1. The actual certificate

1. It looks very similar to any standard ship's statutory certificate and states the ship's details, the fact that the ship complies, and the dates of inspections and validity. It will normally be valid for 5 years.

2. The Declaration of Maritime Labour Compliance Part I. (DMLC Part I)

1. This is an integral part of the Maritime Labour Certificate and must be attached to it. It is prepared by the flag State and states in simple terms the content of the flag State's laws that give effect to the Convention. It is the reference source for inspectors both for certification and for inspection.

3. The Declaration of Maritime Labour Compliance Part II. (DMLC Part II)

1. This is issued in blank form by the flag State and completed by the shipowner for each ship. Like the Part I it is an integral part of the certificate and must be attached to it. It states in brief detail the measures that are in place in that ship and within that company, to give effect to the key measures of the Convention set out in the DMLC Part I.
2. In completing the DMLC Part II shipowners should be guided by the sample in Appendix B5-1 to the MLC where illustrations showing how it should be completed are given. It is important that this document gives sufficient details of measures taken: it may refer to other specific documents for more detail, but if so it should also describe briefly what those documents cover and measures which should be in place to ensure adequate control and verification by the shipowner of such documents. If the shipowner (as per MLC Certificate) is not named on the Financial Security Certificate, then the link between the shipowner specified on the certificate and that on the MLC certificate must be clear in the DMLC Part II.

5. Definition of "Seafarer"

1. The MLC defines the term seafarer to include:
"Any person who is employed or engaged or works in any capacity on board a ship".
2. This definition, unlike some previous legislation on crewing matters, includes the ship's master. It is recognised, however, that some persons working on board, such as pilots cannot readily be covered by the requirements of the Convention given the nature of their work on board. Accordingly, the ILO adopted Resolution VII which gives some guidance on interpretation.

3. Using this guidance, for Antigua and Barbuda ships, the term seafarer in the regulations should be taken to include the master and everyone working on board including shopkeepers, resident entertainers, hairdressers and similar persons BUT: “Seafarer“ does **NOT APPLY** to persons whose work is not part of the routine business of the ship and whose principal place of business is ashore, for example, marine professionals such as harbour pilots, deep sea pilots, inspectors, superintendents, scientists, researchers, divers, specialist offshore technicians, supercargoes, industrial personnel and some special purposes personnel.
4. **NOT INCLUDED** in the definition of seafarer are those persons working on a ship on an occasional and short-term basis such as specialist fitters, guest lecturers, repair technicians, surveyors, and port workers. Security personnel carried on a temporary basis are also not considered as seafarers.
5. It is important that the carriage of any non-seafarers does not adversely affect the conditions of seafarers on board.
6. In case of doubt as to whether a particular person is a “Seafarer “in terms of the MLC regulations the final determination will be made by ADOMS

6. Cadets

1. German students undertaking their shipboard training and sea service period and who are enrolled at a German maritime training university and on board purely for the period of shipboard service necessary to achieve their first certificate of competency may be regarded as Not Seafarers. This agreement covers only those students covered by the German law on this subject, who are not paid a salary by the shipowner and who have a training contract with the maritime university.
2. Similarly, German school pupils, who are occasionally carried on a ship for a short work familiarisation period as defined by German law, may be regarded as Not Seafarers.
3. Other than the specific German cases which are covered by German national law, cadets, in accordance with ILO policy are generally regarded as seafarers.

7. Medical certification

1. The MLC specifies a minimum standard for seafarer medical certificates. Previously the standard required for these was either the one defined in ILO 73 or one which meets the STCW medical certificate standards. Medical certificates are valid for a maximum of 2 years.

8. Definition of Shipowner

1. The MLC defines the shipowner as the:

“Owner of the ship or another organisation 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 organisation or persons fulfil certain duties or responsibilities on behalf of the shipowner.”

2. The term “employer” is not used in the Convention and it is clear from this definition that the person or company who “has assumed the responsibility for the operation of the ship” is the shipowner for the purposes of the MLC including the signing of seafarer employment agreements.
3. However, from the last sentence of the definition, it is also clear that certain duties can be delegated – “on behalf of the shipowner”. Therefore, a crewing agent can sign seafarer employment agreements on behalf of the shipowner if they have been contracted by the shipowner to do so. However even if this is the case, the agreement shall still effectively be between the shipowner and the seafarer, and the responsibility for ensuring the MLC is complied with remains with the shipowner. Thus, the shipowner must be named on the seafarer employment agreements. The names of crewing agents that the shipowner utilises and monitors should be readily apparent to an inspector or seafarer.
4. The shipowner is also the person who must be named on the DMLC Part II and who must sign that document. There must be only one “shipowner” and even if some of the responsibilities are delegated to a manager or an agent, the shipowner is still the person who must prepare and sign the DMLC Part II explaining how he has arranged for all the requirements of the MLC to be met. If he has legally delegated certain duties, then that arrangement is required to be spelt out in the DMLC Part II.
5. It is envisaged that in most cases the MLC Shipowner will be the same entity as the ISM DOC Holder. If this is not the case the relationship between the two in carrying out their responsibilities under MLC shall be clearly specified in the DMLC Part II.

9. Completing the DMLC Part II

1. The amount of detail to be included in the DMLC Part II may vary depending on the processes that are adopted by each shipowner to give effect to the requirements. Where the requirements are given effect in the ship’s Safety Management System or in another Quality Management System for example, then a brief description (e.g., section headings) and cross references to the detailed requirements in those systems will suffice. Where the methods of meeting the requirements are not set out elsewhere, then a more complete entry for the DMLC Part II will be needed. The Appendix to the Convention gives guidance on the type of information needed. Whichever way it is approached, the requirement is that an auditor and the seafarers on board should be able to easily understand and verify the arrangements in place to give effect to all the requirements stated in the Part I.

2. The implementation of the MLC is closer to the process for ISM than to the process of certification for IMO Conventions and there are many areas where the regulations do not give precise instructions or exact requirements. For example, Title 3 of the MLC which deals with seafarer accommodation specifies that:

“Appropriate seafarers’ recreational facilities, amenities, and services, as adapted to meet the special needs of seafarers who must live and work on ships, shall be provided on board for the benefit of all seafarers, taking into account Regulation 4.3 and the associated code provisions on health and safety protection and accident prevention.”

3. The non-mandatory Part B of the Convention provides more detail on this subject and indicates that recreational facilities should be reviewed regularly and include as a minimum a bookcase, and facilities for reading and writing and, where practicable, playing games. It also suggests that consideration should be given to a range of other facilities, “where practicable”. The Antigua and Barbuda regulations incorporate Part B of the MLC for this area.
4. ADOMS has not, at this time, developed a precise set of prescriptive requirements for these aspects believing that the principles of the MLC are clear and that it is for each shipowner to set out his approach to meeting the requirements in his DMLC Part II and for the inspector making the assessment to ascertain if they adequately meet the requirements and the intent of the Convention. ADOMS is of the view that a prescriptive set of regulatory requirements on standards such as these for A&B ships at this time would not be helpful.
5. However, the Administration will support Unified Interpretations to facilitate owners and develop standards in line with internationally agreed standards when they emerge.
6. To fulfil the requirements for annual leave and public holiday entitlement, the maximum length of any single employment period on board should be 327 days.
7. Where minor changes to the DMLC Part II occur, such as: a change of address, then the changes should be made with a note made at the foot of the document of what and when the change is in effect and the updated copy sent to the appropriate RO for their records and any necessary reissuance of certification. A full review of the DMLC Part II will not be necessary in these circumstances so the original review date can remain on the DMLC Part II even if the issuance date of certification is at a later date.

10. Arrangements for inspection and certification

1. In common with the IMO Conventions, the Recognized Organizations (ROs) normally recognised by Antigua and Barbuda are authorised to carry out the inspections and certification for the MLC. The Convention requires that the Administration assess the capability of each RO who is delegated to fulfil the

MLC requirements and this process is complete with an ongoing monitoring system in place.

2. As with surveys for other statutory certificates, shipowners should contact their Classification Society for MLC certification. Policy advice and interpretations will be provided by the ADOMS St. John's office.
3. Copies of the standard DMLC Part I have been sent to each Recognized Organization to be used as a reference when contacted for inspection and certification.

11. Process for certification

1. The shipowner should examine the Convention, the Antigua and Barbuda Regulations and the generic DMLC Part I and assess the degree of compliance for the ship with these requirements.
2. The shipowner should introduce any changes in procedures or systems necessary to ensure compliance and then complete the DMLC Part II.
3. The shipowner should request the issue of a formal DMLC Part I from ADOMS for each ship.
4. The shipowner should request an inspection from the RO appointed for the issue of statutory certificates for the ship.
5. Although it is, in theory, possible to make the full review and inspection on board at a single visit, it is expected that, except in rare cases, the RO, on receiving a request for inspection, will require a copy of the DMLC Part I, the shipowner's completed DMLC Part II and any necessary supporting documentation such as complaints procedures and crew employment contracts for review and assessment at their offices ashore in advance of the on-board inspection.
6. Once the Part II and the supporting documentation have been reviewed, and any questions clarified and non-conformities addressed, the RO will be able to complete the on-board inspection to verify the ship's compliance with the arrangements before issuing certification.

12. Annual Report

1. ADOMS will publish an annual report as required by MLC Standard A5.1.4/13. This report will be based on data from a calendar year and will consolidate relevant data from all ADOMS offices and ROs.

13. Seafarer accommodation

1. The 2012 regulations clarify the application of Director's Directive 01-2008 which applies the two ILO Conventions on accommodation – ILO 92 and ILO 133. This Directive is now replaced by Directive 002-2013. The 2013 Directive also applies the ILO 92 and ILO 133 Conventions and requires that all existing ships carry a

Certificate of Compliance or a similar document issued by an RO to state that the crew accommodation complies with the standards of the two ILO Conventions. The Directive also makes clear the fact that ships which have their keels laid after 20 August 2013 should comply with the crew accommodation standards in Title 3 of the MLC, not ILO 92 and 133.

2. A vessel joining the registry with a valid MLC Certificate will normally be considered to have met the requirements of the Convention with respect to seafarer accommodation.
3. With respect to such issues as noise and vibration, we would encourage both existing and new vessels to comply with guidance such as that contained in GL Guidelines for Compliance with MLC 2006 Noise and Vibration Requirements and also the IMO Code on Noise Onboard Ships (Resolution MSC.337(91)) which is mandatory with respect to ships of 1600 GT and over for which the building contract was placed on or after 1 July 2014 or in the absence of a building contract, the keels of which are laid, or which are at a similar stage of construction on or after 1 January 2015 or the delivery of which is on or after 1 July 2018, in accordance with SOLAS II-1 regulation 3-12.
4. The Directive includes a general exemption from the ILO 92 requirement for separate mess rooms for Antigua and Barbuda ships. RO's will be able to quote from this exemption when issuing certificates of compliance for crew accommodation.

14. Electronic documents

1. Electronic systems may be used to record and manage seafarers' rest periods and are included in the Antigua and Barbuda regulations as a substantial equivalence. Any electronic system should be able to provide the bare requirements stated in the regulations which are:
 1. Ready access to his record for each seafarer,
 2. Availability of a printed copy at any reasonable time,
 3. Records are endorsed electronically by the seafarer and the Master, or a person authorised by him,
 4. Records, once endorsed are protected against tampering and accessible to PSC officers and to Antigua and Barbuda inspectors,
 5. Records are retained for at least 3 years, and
 6. Maintained in a format recognisable like that in the IMO/ILO Guidelines.
2. Separate approval of such systems by ADOMS is not required, but the effectiveness of any system may be checked by a RO or by a flag State inspector, and of course is subject to Port State Control examination.

15. Exemptions

1. The MLC allows very limited options for exemption from Title 3 and none from the other parts. However, exemptions must be agreed in consultation with the seafarer and shipowner's representatives or agreed through the Special Tripartite Committee at the ILO. Both processes are lengthy and uncertain, and it is recommended that shipowners arrange for full compliance without seeking to rely on exemptions. It is considered very unlikely that ADOMS will be able to consider exemptions. In any case where an exemption is the only solution, the matter will be referred to the ADOMS headquarters at St. John's for consideration.

16. Administration contact

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