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## INFORMATION BULLETIN No. 143

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### **Maritime Labour Convention, 2006 (MLC 2006) Guidelines for Flag State Inspection and Certification**

#### **Guidance and Instructions for Bahamas Recognised Organisations, Bahamas Approved Nautical Inspectors, Ship Owners, Managers and Masters**

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#### **1. Purpose**

- 1.1. This Bulletin is intended to support the ILO "*Guidelines for Flag State Inspections*" and provide Bahamas Recognised Organisations (RO) with supplementary information concerning MLC inspections to be carried out.
- 1.2. ROs have full authority to inspect and certify ships in accordance with established agreements. RO's inspectors have full authority to carry out duties described under Standard A5.1.4.7.

#### **2. Application**

- 2.1. The ILO *guidelines for Flag State Inspections* provide comprehensive framework for inspecting vessels registered with The Bahamas. The guidelines must therefore be referred to by RO inspectors who are engaged on inspection and certification of Bahamian flagged vessels to which the Convention applies.

#### **3. Non-certificated ships**

- 3.1. Vessels which are not required to be certificated under the MLC 2006 may be issued with an appropriate Statement of Voluntary Compliance, where requested by a shipowner. In such cases a ship must maintain a voluntary DMLC Part II and be inspected at the prescribed intervals in order to maintain valid certification, in accordance with MLC 2006 Regulation 5.1.3.2.

#### **4. Inspections – purpose, scope and procedure**

- 4.1. It is to be verified that the conditions for seafarers on ships relating to working and living conditions as set out in the DMLC, where applicable, are being followed and that the requirements of the Convention are met. Where an RO identifies an apparent gap in the regulatory requirements, the RO should request clarification from the BMA.
- 4.2. The scope of inspection for initial, interim or renewal of the Maritime Labour Certificate must include the 14 items referred to in Appendix A5-I of MLC 2006.
- 4.3. The ILO *Guidelines for Flag State Inspections* expand upon the requirements for inspection to include in addition to the 14 items:
  - i. Entitlement to Leave (regulation 2.4)
  - ii. Repatriation (Regulation 2.5)
  - iii. Shipowners' Liability (Regulation 4.2)
  - iv. Social Security (Regulation 4.5)
  - v. General Principles – Certification (Standard A5.1.1)
- 4.4. Entitlement to leave and repatriation are items which may be inspected during examination of the seafarer's employment agreement. Shipowners liability and social security may also be easily verified where they form a part of the seafarer's employment agreement.
- 4.5. When inspecting for social security provisions, the inspector's primary concern should be to confirm that the complementary protection by shipowners, as provided for under Regulations 4.1 on medical care and 4.2 on shipowner's liability, is in place.
- 4.6. Expansion of the inspection beyond the 14 items listed in Appendix A5-I and the additional items listed above may be carried out according to the inspectors professional judgement, taking into account findings from the inspection carried out.
- 4.7. When performing the shipboard inspection, all reasonable efforts are to be made to avoid a ship being unreasonably detained or delayed.
- 4.8. Other inspection duties may include:
  - i. Addressing the rectification of deficiencies found or reported, regarding seafarers working or living conditions;
  - ii. Carrying out inspections at the request of a Port State;

- iii. Attending a ship to report upon items under MLC 2006 relating to receipt of a complaint, when requested to do so by the BMA;
  - iv. Carrying out additional inspections, where deemed necessary by the BMA or RO. Additional inspections must be advised to BMA before they are carried out;
  - v. Forwarding promptly to BMA any seafarer complaints received.
- 4.9. MLC 2006 inspection reports shall be sent to BMA, preferably by electronic means. Notification of certificates issued is also required.

## **5. Certification**

- 5.1. The BMA will issue the DMLC Part I to all applicable ships. The shipowner shall submit a written request to the BMA including the following information:
- i. Name of ship
  - ii. IMO Number
  - iii. Name and contact details of shipowner
  - iv. Details of any requested exemption or equivalencies with reference to the applicable MLC 2006 regulation, reason/justification and any supporting documentation
  - v. Initial Fee of US\$150. Owners should note that an additional fee of US\$150 per hour will be required for the review of any requested exemption or equivalency
- 5.2. Certification duties performed by RO include the following:
- i. Issuance of full term and interim Maritime Labour Certificates;
  - ii. Review of DMLC Part II and endorsement after satisfactory completion of inspection. The full information on national requirements, including substantial equivalency and exemption, will be provided in the DMLC Part I and relevant BMA Information bulletins.

## **6. Actions to be taken when deficiencies are identified**

- 6.1. An RO, or other authorised inspector, 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.
- 6.2. Where there are deficiencies that constitute a serious breach of the MLC 2006 (including seafarers' rights), or represent a significant danger to

seafarers' safety, health or security (major deficiencies), an inspector shall, with the authorisation of the BMA, prohibit a ship from leaving port until the necessary corrective actions are taken.

- 6.3. Steps that are to be completed after a major deficiency has been identified:
- i. Immediate and adequate correction must be initiated by the shipowner or the master to rectify the deficiency and to remove the serious violation against seafarers' safety, health or security.
  - ii. If the corrective action is acceptable to the inspector, a major deficiency may be downgraded to a deficiency.
  - iii. The shipowner shall carry out an evaluation of major deficiencies and, based on these results, implement both immediate corrective actions to address the deficiencies and preventative measures to avoid reoccurrence of the same deficiencies in future.
  - iv. Depending on the number and/or nature of major deficiencies and other deficiencies found, the inspector shall decide on the extent, type and time period for an additional follow-up inspection.
  - v. During the additional follow-up inspection, objective evidence shall be provided that effective actions have been taken and implemented effectively to avoid recurrence.
- 6.4. A Maritime Labour Certificate shall not be issued, endorsed or renewed unless all major deficiencies have been either:
- i. downgraded, i.e. successfully dealt with by implementing immediate rectification to remove the serious breach of the requirements of the Convention (or the significant danger to seafarers' safety, health or security); or
  - ii. closed out, i.e. fully rectified by the shipowner and this being verified by the inspector.
- 6.5. A Maritime Labour Certificate or Interim Maritime Labour Certificate shall be withdrawn by the RO or the BMA (where appropriate) if there is evidence that a ship does not comply with the requirements of the MLC, 2006 and that the required corrective action has not been taken. When considering the withdrawal of a Maritime Labour Certificate, the seriousness and frequency of the deficiencies shall be considered.
- 6.6. 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 RO or authorised inspector shall have the

discretion to give advice instead of instituting or recommending withdrawal of a Maritime Labour Certificate.

- 6.7. In determining whether an identified deficiency relating to hours of rest should be recorded, the inspector should verify if an exception has been allowed under the provisions of the International Convention for Standard of Training, Certification and Watchkeeping of Seafarers 1978, as amended (STCW) or MLC 2006 collective bargaining agreement as outlined in BMA Information Bulletin no 144.

## **7. Categorisation of deficiencies**

- 7.1. There is a degree of subjectivity regarding whether or not a deficiency or deficiencies are of a sufficiently serious character to merit follow-up inspection or detention of a vessel. Cases for additional action may include manning which is not at a sufficient level, or where hours of work or rest requirements are repeatedly violated over a significant period of time.
- 7.2. Chapter 4 of the ILO Guidelines for Flag State Inspection should be taken into account when deciding on enforcement action.

## **8. Interviews with the crew**

- 8.1. Private interviews are an essential part of the inspection process but should not be recorded in the inspection report. Much information can be gathered to support or invalidate findings from a physical inspection of documentation. It is therefore important for inspectors to be open and approachable to crew members in order to establish a rapport with them.
- 8.2. It is important that the seafarer's confidentiality is maintained at all times. Crew members must be advised of the confidential nature of a private interview and the process for handling complaints
- 8.3. The interviews will likely have to be planned with the Master to ensure availability of a representative demographic of the crew, with minimal disruption to the ships working pattern. Careful consideration should be given in determining the location where interviews are to be carried out.

- 8.4. It is recognised that there may be language difficulties between the inspector and crew member. The inspector may need to modify his questions or crew selection accordingly.

## **9. Handling of complaints**

- 9.1. If the BMA receives a complaint that is not manifestly unfounded, or obtains evidence that a Bahamas registered ship does not conform to the requirements of the MLC 2006, or that there are serious deficiencies in the implementation of measures set out in the DMLC, the BMA shall undertake to investigate the matter and ensure that action is taken to remedy the deficiencies found.
- 9.2. When complaints are received during an inspection, the activities of the inspector may be restricted to the following:
- i. Examination to verify that the on-board complaint procedure has been utilised for the complaint;
  - ii. Assessment of the effectiveness of the on-board complaint procedure, if it has been utilised;
  - iii. Ensuring that corrective action is carried out, where a deficiency is found;
  - iv. Passing on the complaint to the BMA at the earliest opportunity;
  - v. The inspector must include sufficient detail on the findings on board.
- 9.3. In straightforward cases which are easily resolved by the inspector, such as by clarification of requirements or provision of relevant information to any party, the inspector may exercise limited intervention, according to professional judgement, in order to bring the matter to a prompt conclusion.
- 9.4. When a complaint is received by an RO from a third party, such complaints should be brought to the attention of the Inspections & Surveys department of the BMA London office. In the case of a complaint being passed on and requiring action from a port State, ROs are required to attend and handle the complaint in the same way as if it were received by an inspector on board.

## **10. Reporting by RO**

- 10.1. Regardless of whether the ship is certificated under the MLC 2006, or not, after conducting an MLC 2006 inspection the attending inspector shall provide an inspection report to BMA.

- 10.2. The shipowner should also receive a copy of the report.
- 10.3. Inspection documents (report, deficiency notes, observations, certificates, etc.) are to be maintained for a reasonable time on-board the ship. As a minimum, documentation pertaining to the last scheduled inspection (and any additional inspection in the intervening period) shall be retained onboard for reference purposes.

## **11. Revision History**

Rev.0 (28 August 2012) – First issue