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Maritime Labour Notice (MLN) – 033

This MLN supersedes MLN 032

To: Ship Owners, Operators, Masters, Officers and Classification Societies

MLC Title 5.1.3 & 5.1.4 – Certification, Inspection & Enforcement

This MLN provides guidance on compliance with Gibraltar regulations which give effect to MLC 2006 Title 5.1.3 & 5.1.4. Implementation of these guidelines will be taken as evidence of compliance with the Gibraltar regulations.

Documents referred to in this notice:

Maritime Labour Convention 2006 (MLC);

Gibraltar Merchant Shipping (Maritime Labour Convention) Regulations 2013, as amended.

ILO Guidelines for flag state inspections and port state control officers;

Most regulations and notices are available on the Gibraltar website: www.gibraltarship.com

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1. Application

1. The MLC 2006 applies to all ships (including yachts) engaged in commercial activities (MLC ships). This means that MLC ships will be subject to inspection for compliance with Gibraltar regulations and guidelines implementing the MLC 2006.

2. Ships required to carry and maintain a maritime labour certificate and declaration of maritime labour compliance

1. The Gibraltar Merchant Shipping (Maritime Labour Convention) Regulations 2013 and Parts I, III, IV, V and Annex I of these guidelines apply to MLC ships of 500 gross tonnage (GT) or over, engaged in international voyages and/or operating from a port or between ports in another country.
2. The Gibraltar Merchant Shipping (Maritime Labour Convention) Regulations 2013 and Parts I, III, IV, V and Annex I of these guidelines can also apply to MLC ships and yachts of less than 500GT operating outside British Gibraltar Territorial waters. The ship owner's, upon written request to the Gibraltar Maritime Administration, may request MLC certification, in this case, ships and yachts of less than 500GT will be required to carry and maintain a DMLC Part I and Part II.

Part I

Ships required to carry and maintain a maritime labour certificate and declaration of maritime labour compliance

1. Inspection for issue of a maritime labour certificate

1. The Gibraltar Maritime Administration or **Recognised Organisation (RO)** will carry out an inspection of the working and living conditions of seafarers on board ships before a maritime labour certificate can be issued or endorsed.
2. The policy of the Gibraltar Maritime Administration will be to carry out all the inspection of the working and living conditions on Gibraltar registered ships. It will only be in exceptional circumstances will the Recognised Organisation be authorised to carry out these inspection and issue a maritime labour certificate. This will be on a case by case basis and only after application by the DPA for the company operating the ship

3. The following matters may be inspected for compliance with Gibraltar MLC regulations and any Maritime Labour Notices (MLN) which contain guidance on evidence of compliance with the regulations:
 - a. minimum age;
 - b. medical certification;
 - c. qualifications of seafarers;
 - d. seafarers' employment agreements;
 - e. use of any licensed or certified or regulated private recruitment and placement services;
 - f. hours of work or rest;
 - g. manning levels for the ship ;
 - h. accommodation;
 - i. onboard recreational facilities;
 - j. food and catering
 - k. health and safety and accident prevention;
 - l. onboard medical care;
 - m. onboard complaint procedures; and
 - n. payment of wages.
 - o. documentary evidence of financial security and Shipowners liability.

2. Validity of a maritime labour certificate and intermediate inspections

1. A maritime labour certificate will be issued for a period not exceeding 5 years after the successful completion of an initial inspection.
2. When issued for the maximum period the maritime labour certificate will be subject to at least one intermediate inspection by the Gibraltar Maritime Administration to ensure ongoing compliance with Gibraltar regulations.
3. When only one intermediate inspection is carried out this will be between the 2nd and 3rd anniversary dates of the certificate.

The anniversary dates are calculated from the expiry date of the certificate.

4. On successful completion of an intermediate inspection the maritime labour certificate will be endorsed.

3. Inspection for the renewal of a maritime labour certificate

1. When a renewal inspection is successfully completed within 3 months of the expiry date of the existing certificate, then the new certificate will be valid for a maximum period of 5 years from the expiry date of the existing certificate.

2. If a renewal inspection is successfully completed more than 3 months before the expiry date of the existing certificate, then the new certificate will be valid for a maximum period of 5 years from the renewal inspection date.

4. Validity and inspection for the issue of an interim maritime labour certificate

1. There are only three circumstances where an interim maritime labour certificate may be issued by the Gibraltar Maritime Administration, and then only for a period not exceeding 6 months:
 - a. to new ships on delivery;
 - b. when a ship changes flag; or
 - c. when a ship-owner assumes responsibility for the operation of a ship which is new to that ship-owner.

2. The issue of an interim maritime labour certificate also requires the Gibraltar Maritime Administration to verify that the ship has been inspected as far as “reasonable and practicable” for the matters listed in paragraph 2 taking into account, verification that:

(The Gibraltar Maritime Administration has determined that the term “reasonable and practicable” in this context refers to the availability on board the ship of procedures, records and information taking into account 4.1(a), (b) and (c).)

- a. the ship-owner must be able to demonstrate to the Gibraltar Maritime Administration that there are adequate procedures in place on board the ship to comply with the requirements of the MLC 2006; which means the requirements of the Articles, Regulations and Part A (Standards) of the MLC 2006, rather than the Gibraltar MLC requirements;

(Please note: for interim certification this is the requirements of MLC 2006 rather than Gibraltar regulations and guidelines implementing MLC 2006)
 - b. the Master is familiar with the requirements of the MLC 2006 and the responsibilities for implementation; and
 - c. the ship-owner has sent the Gibraltar Maritime Administration information which would allow the production of a DMLC, (although this is not required to be issued during the interim certification period).
3. Under no circumstances will the Gibraltar Maritime Administration be able to extend or issue a new interim certificate after the initial interim certification period of 6 months referred to in paragraph 4.1 has expired.
 4. The ship-owner must ensure that the ship is available for a full inspection in accordance with Part 1 – 1 - 1 of this part before the expiry date of the interim certificate. On successful completion of the inspection a full term maritime labour certificate will be issued.

5. Declaration of maritime labour compliance (DMLC)

1. The declaration of maritime labour compliance is made up of 2 parts and must be attached to the maritime labour certificate. Part I is drawn up by the Gibraltar Maritime Administration and Part II is drawn up by the ship-owner.

DMLC Part I

2. The Gibraltar Maritime Administration completes Part I of the declaration of maritime labour compliance, which :
 - a. identifies the list of items that must be inspected, which is the same list as contained in paragraph 1 of this part;
 - b. specifies the Gibraltar MLC regulations which implement the inspection items and to the extent necessary concise information on the regulations;
 - c. includes any ship-type specific requirements under Gibraltar regulations;
 - d. records any substantially equivalent provisions which have been extended to the Gibraltar Maritime Administration, such as the Large Yacht Code Edition 3 (LY3) for accommodation on commercial yachts;
 - e. indicates any exemptions which have been granted by the Gibraltar Maritime Administration and are allowed by the MLC 2006.

DMLC Part II

3. The ship-owner's completes Part II of the declaration of maritime labour compliance and:
 - a. must identify the ship-owner's measures adopted to ensure compliance with Gibraltar MLC regulations, ongoing compliance between inspections and the measures proposed to ensure continuous improvement;
 - b. indicate the occasions on which ongoing compliance will be verified, the persons responsible, the records to be made/kept and the procedures to be followed where non-compliance with Gibraltar MLC regulations is noted;
 - c. may reference other documentation detailing the ship-owner's policies and procedures, such as the ship-owner's Safety Management System complying with the International Safety Management (ISM) Code;
 - d. must be drafted in English and in clear terms designed to help all persons concerned, including authorised officers in port states and seafarers, to check that the requirements are being properly implemented.
4. The Gibraltar Maritime Administration will review the information provided by the ship-owner in the DMLC Part II and following a successful inspection of the ship, where measures adopted to ensure initial and ongoing compliance with the Gibraltar Maritime Administration DMLC Part I have been verified, will certify (stamp, date and sign) the DMLC Part II.
5. The declaration of maritime labour compliance will then be issued to the ship.
6. The date of completion of the review of the DMLC Part II should be reflected within the MLC Certificate.

6. Maritime labour certificates cease to be valid

1. A maritime labour certificate or interim maritime labour certificate will no longer be valid in the following circumstances:
 - a. when inspections are not completed within the periods specified in these guidelines in paragraphs 1 to 4 of this part;
 - b. when the maritime labour certificate is not endorsed for intermediate inspection as specified in this part in paragraph 2;
 - c. when the ship changes flag;
 - d. when the ship-owner ceases to assume responsibility for the operation of a ship; and
 - e. when substantial alterations have been made to the structure and equipment of the ship's accommodation as detailed in Gibraltar MLC regulations and guidelines implementing Title 3.1 of MLC 2006.

7. Re-issue of a maritime labour certificate

1. When a maritime labour certificate ceases to be valid in the circumstances referred to in paragraphs 6.1 (c) to (e), a new certificate will only be issued when the ship has been inspected in accordance with paragraph 1 of this part, and the Gibraltar Maritime Administration is fully satisfied that the ship complies with Gibraltar regulations and guidelines (MLN) implementing MLC 2006.

Part II

Inspection for the issue of an MLC Certificate for ships and commercial yachts of less than 500GT

Any references to "ship" in this document shall be taken to include commercial yachts.

1. Application of Part II of these guidelines

1. The guidelines in this part of the MLN apply to any ship/yacht of under 500GT, which operates commercially outside British Gibraltar Territorial waters, and at the ship-owners request require certification.

2. Inspection for the issue of an MLC Certificate

1. The Gibraltar Maritime Administration will carry out an inspection of the working and living conditions of seafarers on board ships before an MLC Certificate can be issued or endorsed.
2. The policy of the Gibraltar Maritime Administration will be to carry out all the inspection of the working and living conditions on Gibraltar registered ships. It will only be in exceptional circumstances will the Recognised Organisation be authorised to carry out these inspection and issue a maritime labour certificate. This will be on a case by case basis and only after application by the DPA for the company operating the ship.
3. The following matters will be inspected for compliance with Gibraltar MLC regulations and any Maritime Labour Notices (MLN) which contain guidance on evidence of compliance with the regulations:
 - (a) minimum age;
 - (b) medical certification;
 - (c) qualifications of seafarers;
 - (d) seafarers' employment agreements;
 - (e) use of any licensed or certified or regulated private recruitment and placement services;
 - (f) hours of work or rest;
 - (g) manning levels for the ship ;
 - (h) accommodation;
 - (i) onboard recreational facilities;
 - (j) food and catering;
 - (k) health and safety and accident prevention;
 - (l) onboard medical care;
 - (m) onboard complaint procedures; and
 - (n) payment of wages.
 - (o) documentary evidence of financial security and Shipowners liability.

3. Validity of an MLC Certificate and intermediate inspections

1. An MLC Certificate will be issued for a period not exceeding 5 years after the successful completion of an initial inspection.
2. When issued for the maximum period the MLC will be subject to at least one intermediate inspection by the Gibraltar Maritime Administration to ensure ongoing compliance with Gibraltar regulations.
3. When only one intermediate inspection is carried out this will be between the 2nd and 3rd anniversary dates of the MLC.

The anniversary dates are calculated from the **expiry** date of the MLC.

4. On successful completion of an intermediate inspection the MLC will be endorsed.

4. Inspection for the renewal of an MLC Certificate

1. When a renewal inspection is successfully completed within 3 months of the expiry date of the existing MLC, then the new MLC will be valid for a maximum period of 5 years from the expiry date of the existing declaration.
2. If a renewal inspection is successfully completed more than 3 months before the expiry date of the existing MLC, then the new MLC will be valid for a maximum period of 5 years from the renewal inspection date.

5. Interim inspection

1. When a ship changes flag, for new ships on delivery or when a ship-owner assumes responsibility for the operation of a ship which is new to that ship-owner, the ship will be subject to an interim inspection which will include as far as reasonable and practicable, inspection of the matters specified in paragraph 2, taking into account verification that:
 - a. the ship-owner must be able to demonstrate to the Gibraltar Maritime Administration or RO that there are adequate procedures in place on board the ship to comply with the requirements of the MLC 2006; which means the requirements of the Articles, Regulations and Part A (Standards) of the MLC 2006; rather than the Gibraltar MLC requirements;
(Please note: for interim certification this is the requirements of MLC 2006 rather than Gibraltar regulations and guidelines implementing MLC 2006)
 - b. the Master is familiar with the requirements of the MLC 2006 and the responsibilities for implementation; and
 - c. the ship-owner has sent the Gibraltar Maritime Administration or RO information which would allow the production of a declaration of maritime labour compliance, although this is not required to be issued for a period of up to 6 months from the date of the interim inspection.
2. A full inspection of the matters specified in paragraph 3 above of this part must be carried out within 6 months of the date of the interim inspection to enable the issue of an MLC Certificate.

6. DMLC

1. The DMLC is made up of 2 parts. Part I is drawn up by the Gibraltar Maritime Administration and Part II is drawn up by the ship-owner.

DMLC Part I

2. The Gibraltar Maritime Administration completes Part I of the DMLC which:
 - (a) identifies the list of items that must be inspected, which is the same list as contained in paragraph 4 of these guidelines;
 - (b) specifies the Gibraltar MLC regulations which implement the inspection items and to the extent necessary concise information on the regulations;
 - (c) includes any ship-type specific requirements under Gibraltar regulations;
 - (d) records any substantially equivalent provisions which have been extended to the Gibraltar Maritime Administration, such as the Large Yacht Code Edition 3 (LY3) for accommodation on commercial yachts;
 - (e) indicates any exemptions which have been granted by the Gibraltar Maritime Administration and are allowed by the MLC 2006.

DMLC Part II

3. The ship owner's complete Part II of the DMLC and:
 - (a) must identify the ship owner's measures adopted to ensure compliance with Gibraltar MLC regulations, ongoing compliance between inspections and the measures proposed to ensure continuous improvement;
 - (b) indicate the occasions on which ongoing compliance will be verified, the persons responsible, the records to be taken and the procedures to be followed where non-compliance with Gibraltar MLC regulations is noted;
 - (c) may make reference other documentation detailing the ship owner's policies and procedures;
 - (d) must be drafted in the English language, in clear terms designed to help all persons concerned, including authorised officers in port states and seafarers to check that the requirements are being properly implemented.
4. The Gibraltar Maritime Administration will review the information provided by the ship-owner in the DMLC Part II and following a successful inspection of the ship, where measures adopted to ensure initial and ongoing compliance with the Gibraltar Maritime Administration DMLC Part I have been verified, will certify (stamp, date and sign) the DMLC Part II.
5. The date of completion of the review of the DMLC Part II should be reflected within the MLC Certificate.

7. MLC Certificate ceases to be valid

1. An MLC Certificate will no longer be valid in the following circumstances:
 - a. when inspections are not completed within the periods specified in these guidelines in paragraphs 3 to 6;
 - b. when the MLC Certificate is not endorsed for intermediate inspection as specified in these guidelines in paragraph 5;
 - c. when the ship changes flag;
 - d. when the shipowner ceases to assume responsibility for the operation of a ship; and
 - e. when substantial alterations have been made to the structure and equipment of the ships accommodation as detailed in Gibraltar MLC regulations and guidelines implementing Title 3.1 of MLC 2006.
3. When an MLC Certificate ceases to be valid in the circumstances referred to in paragraphs 7.1 (c) to (e). A new MLC Certificate will only be issued when the ship has been inspected in accordance with paragraph 2 of this part, and the Gibraltar Maritime Administration are fully satisfied that the ship complies with Gibraltar regulations and guidelines (MLN) implementing MLC 2006.

Part III

1. Prescribed format of the DMLC

The Gibraltar Maritime Administration has created a DMLC Part I, which is available on the website at www.gibraltarship.com

1. The Gibraltar Maritime Administration has also created a web-based DMLC Part II form in a prescribed format where the ship-owner can enter the measures adopted to ensure initial and ongoing compliance with the Gibraltar Maritime Administration Part I. The form is also available on the website at www.gibraltarship.com.

Part IV

1. Records of inspection, deficiency, critical deficiency, detention, removal of certificate or declaration, corrective actions and rectification plans

1. The Gibraltar Maritime Administration will record the results of any inspection or other verification and any significant deficiencies, together with the date when the deficiencies were found to have been rectified. The inspection report and details of any deficiencies will be provided to the shipowner and/or Master.
2. The Gibraltar Maritime Administration inspection report must be carried on the ship and a copy posted in a conspicuous place where it is available to seafarers and upon request sent to their representatives.
3. If the Gibraltar Maritime Administration receives a complaint which it considers not to be manifestly unfounded or obtains evidence that a ship is not complying with Gibraltar regulations and guidelines implementing MLC 2006 or that there are serious deficiencies in the implementation of the DMLC, the Gibraltar Maritime Administration will investigate and require that corrective actions are taken to remedy any deficiencies found.
4. This means that the Gibraltar Maritime Administration can issue a deficiency notice for non compliance with Gibraltar regulations and guidelines or where the DMLC Part II complies with Gibraltar regulations and guidelines but is not being implemented on board.
5. Where an additional inspection is carried out due to a complaint alleging a danger or deficiency in relation to seafarers working and living conditions the Gibraltar Maritime Administration will treat the source of the complaint as confidential. The Gibraltar Maritime Administration will not inform the shipowner, shipowner's representative or the operator of the ship that an inspection was carried out due to the alleged complaint.
6. If the Gibraltar Maritime Administration find deficiencies which amount to a serious breach of the Gibraltar regulations and guidelines implementing the MLC 2006, including seafarers' rights, or represent a significant danger to the safety, health or security of seafarers, the Gibraltar Maritime Administration will issue a critical deficiency notice.
7. The Gibraltar Maritime Administration can withdraw a maritime labour certificate or DMLC when there is evidence that the ship does not comply with Gibraltar regulations and guidelines implementing the MLC 2006 **and** any corrective actions to clear any deficiencies have not been taken.
8. The Gibraltar Maritime Administration will take into account the seriousness or frequency of deficiencies before considering whether to withdraw the maritime labour certificate and DMLC Part II.
9. If a Gibraltar Maritime Administration inspector finds critical deficiencies as described in the deficiency notice issued under paragraph 1.4 above, the Gibraltar Maritime Administration inspector may detain the ship by issuing a detention notice until corrective action or a rectification plan have been proposed and accepted by the Gibraltar Maritime Administration.

10. Where inspections are carried out or measures are taken as described in paragraph 3, 4, 5, 6, 7 and 8 above, the Gibraltar Maritime Administration will take all reasonable efforts to avoid a ship from being unreasonably detained or delayed.
11. The Gibraltar Maritime Administration will take the following into account when reaching a decision on whether or not to accept a rectification plan or to detain a ship and/or to withdraw the maritime labour certificate and DMLC Part II:
 - (a) whether or not the deficiencies can be rapidly remedied in the port of inspection;
 - (b) whether the deficiencies constitute a significant danger to the seafarers' safety, health or security;
 - (c) the seriousness of the breach of the requirements of the Gibraltar regulations and guidelines implementing MLC 2006 (including seafarers' rights);
 - (d) length and nature of the intended voyage or service;
 - (e) size and type of ship and equipment provided;
 - (f) whether the appropriate rest period for seafarers is being observed;
 - (g) nature of the cargo;
 - (h) prior history of similar deficiencies;
 - (i) number of deficiencies identified on the inspection;
 - (j) safe manning requirements;
 - (k) prior history with respect to rectifications.
12. **Annex I** to these guidelines on pages 16 and 17 contains procedural flow charts illustrating MLC inspections – deficiencies, critical deficiencies, withdrawal of certificate or declaration, detentions, corrective actions and follow up.

Part V

1. ILO guidelines for flag state inspections and port state control officers

1. *The purpose of this section is to provide examples, and examples only, of the circumstances which may warrant a decision to prevent a ship from leaving port either because deficiencies are repeated (occurring several times on a voyage or recurring after a previous voyage in which the same deficiency was noted) or because of the seriousness of the deficiency.*
2. Examples of circumstances that may require detention of a ship:
 - (a) the presence of any seafarer on board under the age of 16;
 - (b) the employment of any seafarer under the age of 18 in work likely to jeopardise their health or safety; or night work where this is not part of an established training programme, or the specific nature of the duty or a recognised training programme requires that the young seafarer concerned perform duties at night;
 - (c) insufficient manning including that caused by the removal of underage seafarers;
 - (d) any other deficiencies constituting a violation of fundamental rights and principles, or seafarers' employment and social rights in Articles III and IV of MLC 2006;

- (e) anything applied in a way that violates those fundamental rights (for example, the attribution of sub-standard accommodation based on the race or gender or trade union activity of the seafarers concerned);
- (f) repeated cases of seafarers without valid certificates confirming medical fitness for duties;
- (g) seafarers on board the same ship repeatedly not in possession of valid seafarers' employment agreements (SEAs) or seafarers with SEA's containing clauses constituting a denial of seafarers' rights;
- (h) seafarers repeatedly working beyond maximum hours of work or having less than the minimum hours of rest;
- (i) ventilation and/or air conditioning or heating that is not working adequately;
- (j) accommodation, including catering and sanitary facilities, that is unhygienic or where equipment is missing or not functioning;
- (k) quality and quantity of food and drinking water not suitable for the intended voyage;
- (l) medical guide, medical chest or medical equipment, as required, not on board;
- (m) no medical doctor for passenger ships engaged in international voyages of more than 3 days, carrying 100 persons or more, or no seafarer in charge of medical care on board for ships not required to carry a medical doctor;
- (n) repeated cases of non-payment of wages, the non-payment of wages over a significant period, or the falsification of wage accounts or the existence of more than one set of wage accounts.

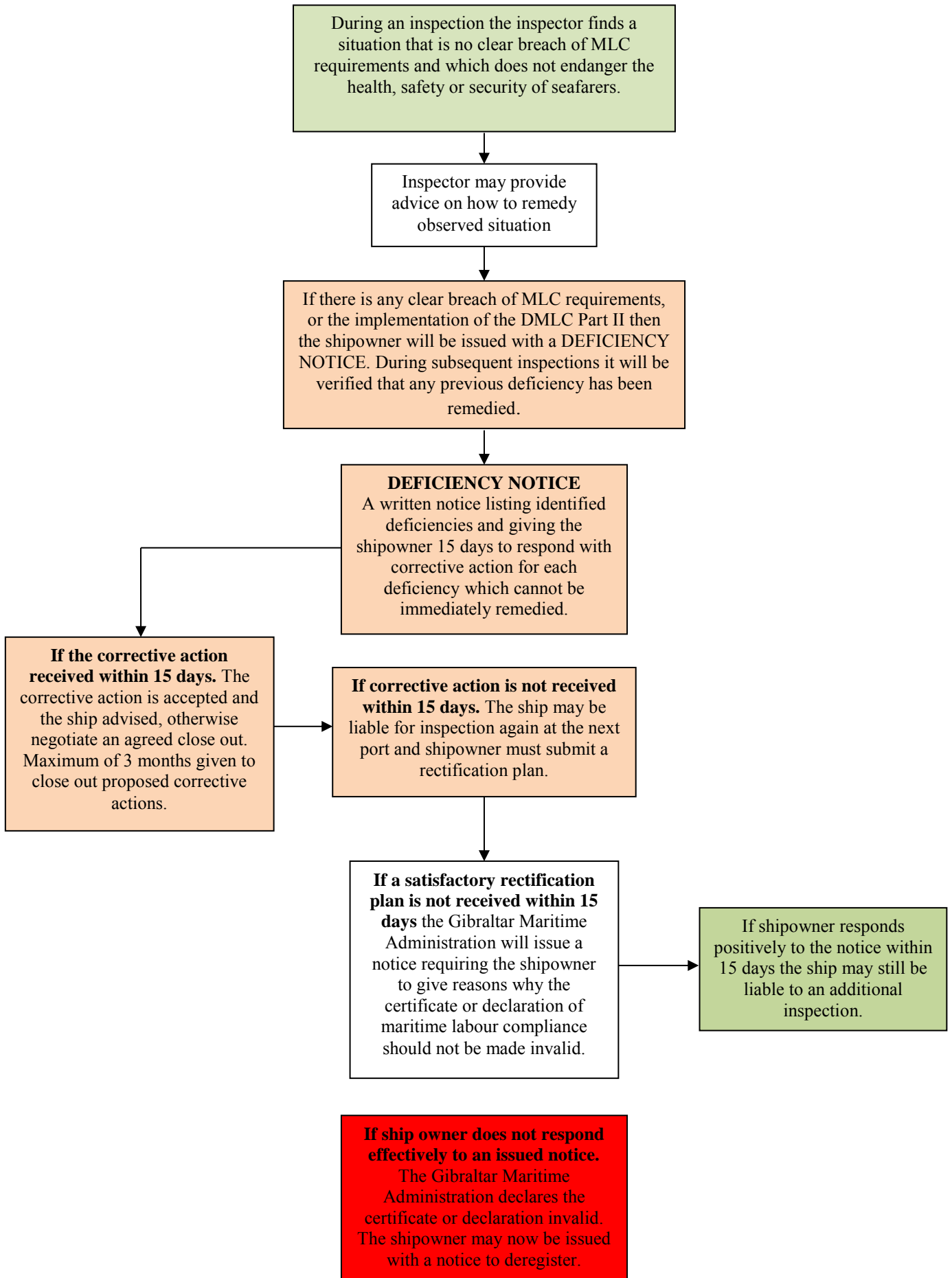
Richard Montado
Maritime Administrator

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All notices are available through www.gibraltarship.com

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Annex 1

MLC inspections – deficiencies, corrective actions and follow up



MLC inspections
Critical deficiencies – withdrawal of certification and detentions.

