The Maritime Labour Convention (MLC) 2006

CIRCULAR 01/13
TO ALL MEMBERS
9th January 2013

On 20th August 2012 the International Labour Organisation received the 30th ratification of the MLC 2006. This was the final requirement for the Convention to begin its one year timetable for entry into force. The Convention will now come into force in all ratifying countries on 20th August 2013. Lists of those states that have currently ratified the Convention are attached in Appendix 1. Now that the Convention is due to enter into force a number of further ratifications are expected from states keen to establish uniformity in application.

In light of the developments with the Convention, and in response to recent questions from Members and brokers on the subject, we have prepared the below updated FAQs, which we hope are of assistance. If there are any further issues or concerns in respect of the Convention liabilities and requirements and how it will impact on your P&I cover, please do not hesitate to contact the managers.

FREQUENTLY ASKED QUESTIONS

(A) Where can I find the full text of the Convention and Guidance Notes on its implementation?

The dedicated ILO website [Link] contains the full text of the convention as well as helpful guidance documents on its implementation by flag states and Port State Control authorities. All of the resources are available in a variety of languages. A useful video providing an overview of the background to and contents of the Convention has also been made available for information and training purposes and is available here [Link].

(B) Which vessels will be affected by the Convention?

The Convention states that it will apply to “... all ships, whether publicly or privately owned, ordinarily engaged in commercial activities, other than ships engaged in fishing or in similar pursuits, and ships of traditional build such as dhows and junks. This Convention does not apply to warships or naval auxiliaries”.

The requirement for ships to carry and maintain a maritime labour certificate and maintain a declaration of maritime labour compliance (Regulation 5.1.3 of the Convention) applies only to ships of 500 GT or over, engaged in international voyages, or operating from a port not within the territory of the vessel’s flag state.

(C) What is the definition of a Ship?

The definition of ‘ship’ provided in the Convention is “a ship other than one which navigates exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply”. This provides a further exclusion for inland and harbour craft. Whether or not other vessels (like accommodation units) are considered a ship within the meaning of the Convention will depend on the definition of a ship under national law.

There is provision for authorities to exempt particular categories of vessels under 200 GT if they do not trade internationally, but this would need to be done by way of specific national legislation.

(D) Is a yacht a ship ‘engaged in commercial activities’?

There is no definition of ‘commercial activities’ in the Convention and it will be for individual authorities to decide what this term means. However, if the vessel is generally chartered for profit the answer will likely be yes. If used exclusively or
almost exclusively for owners’ / owners’ friends’ leisure purposes then the answer is likely to be no.

(E) What is the position for vessels trading in non-ratifying states?

Countries like the UK, India and Brazil have not yet ratified the Convention. When the Convention enters into force vessels trading in those countries will only be affected if their flag state is a ratifying country.

(F) What are the compulsory insurance requirements under the Convention?

In contrast to many conventions the MLC does not contain any requirements for compulsory insurance. It does not require Blue Cards to be issued in line with other international Conventions. However in respect of compensation due in the event of the death or long term disability of a seafarer due to an occupational injury, illness or hazard as set out in national law, the shipowner must provide ‘financial security’ to ensure such claims will be paid.

(G) In what form should this financial security be?

It is not detailed within the Convention as to the form this security must take and ultimately it will be up to each authority to decide what they require as evidence of acceptable insurance. Evidence of an acceptable insurance policy being in place or production of a bond in an appropriate sum are expected to be the principal forms of financial security. A P&I certificate of entry from an International Group Club should be accepted in this regard unless states make specific requirements in their national legislation which go beyond the normal scope of P&I cover. There is not currently any indication that any contracting states will make such specific demands.

(H) Are there any provisions to the MLC that potentially invalidate my Rules P&I Cover

Most of the provisions of the MLC convention in relation to ship owners’ liability to crewmembers are uncontroversial, and a Rules P&I entry in an International Group Club would cover them in any case. However one point of concern is the requirement for financial security encompassing the costs of repatriation of seafarers in the case of abandonment due to Members’ insolvency, the seaman’s refusal to go on board a ship bound for a war zone and on termination of employment. The Clubs do not currently cover such claims, although in common with other IG Clubs we have agreed that P&I cover will extend in respect of costs of repatriation in these circumstances in order to ensure, as far as possible, that the a vessel’s P&I Certificate of Entry is accepted as financial security under MLC 2006.

A Rule change will be brought into the 2013 Club Rules to reflect the above change in cover. In order to minimise potential objections from authorities the new Rule also provides for the Club to meet the cost of such claims, as an agent only, in the event that a Certificate of Entry has been provided but the Members’ cover has been cancelled due to non-payment of calls (Rule 47). In this instance the Club would seek to recover any payments made from Members or co-assureds.
APPENDIX 1: COUNTRIES WHICH HAVE RATIFIED THE MLC 2006 *

Ratified (30)
- Antigua and Barbuda
- Australia
- Bahamas
- Benin
- Bosnia and Herzegovina
- Bulgaria
- Canada
- Croatia
- Cyprus
- Denmark
- Kiribati
- Latvia
- Liberia
- Luxembourg
- Marshall Islands
- Netherlands
- Norway
- Palau
- Panama
- Philippines
- Poland
- Russian Federation
- Saint Kitts and Nevis
- Saint Vincent and the Grenadines
- Singapore
- Spain
- Sweden
- Switzerland
- Togo
- Tuvalu

Ratification Pending - Instrument of Ratification Received (2)
- Gabon
- Morocco

* Position as at 1 January 2013