

MLC update



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Reviewing the MLC six months on.

The Maritime Labour Convention 2006 (MLC) came into force on 20 August 2013 and members have previously been advised as to how their P&I cover is impacted and what the club has done to assist. Following the six-month anniversary of the ratification date, the article below considers what the MLC has meant in practice and what issues lie ahead.

Background

The MLC brought together 68 other instruments to create a single, unified global convention and, to date, 56 Flag States representing 80% of the world fleet by gross tonnage have ratified it. However, as with any endeavour of such magnitude, there are issues in the drafting that have become more readily apparent only when put into practice. In this respect, certain definitions within the MLC have allowed wide interpretation by Flag States:

- Concerns were raised by ship managers as to the definition of 'shipowner' under the MLC and whilst the ILO sought to clarify this, there remains a degree of uncertainty as to exactly who has assumed the responsibilities of the convention

- Some Flag States already have diametrically opposing views on who constitutes a 'seafarer'; for example, the UK considers a cadet to be a seafarer, while Panama does not
- The definition of 'ship' is another example, with certain Flag States exempting both MODU and MOPU units in the offshore sector, with others exempting only one of them and others exempting neither.

These examples illustrate some of the current issues, but as more Flag States ratify and implement the MLC, the laudable goal of a 'level playing field' may remain a distant prospect.

Enforcement

The most recently available figures for Port State Control (PSC) detentions come from the Paris MOU (press release 14 October 2013), which indicated that four port states have detained seven individual ships from five different Flag States. The first detention occurred only three weeks after the MLC came into force and, to date, detentions have ranged from hours to as much as 24 days, indicating the extent of risk that owners face for delays caused by non-compliance. No doubt other PSC detentions will have occurred since this report and in other MOU areas.

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Ongoing issues

Abandonment of seafarers has also now been seen in the MLC context, with one case leading to the Gibraltar Ship Registry repatriating crew from three ships after the owners fell into financial and commercial problems, and another where the ITF assisted crew and is now pursuing the Panamanian Ship Registry for the costs.

It is evident therefore that differences in terms of interpretation and implementation of the MLC are occurring between Flag States, as recognised by the EU producing a directive to try and standardise implementation by EU member states. In addition, the MLC is itself evolving, with the next round of talks due in April 2014. These talks are between a tripartite committee of ILO member governments, the ISF and ITWF, and will discuss and possibly agree the ILO Principles regarding abandonment and liability for contractual crew claims. Among issues to be discussed are the definition of abandonment of a seafarer, a provision for direct action

against the provider of financial security, the right of a seafarer to claim outstanding wages up to four months and associated entitlements following repatriation through insolvency, a requirement for documentary evidence of financial security in respect of contractual crew claims, and notification to the Flag State of cancellation of financial security and a requirement that Flag States ensure prior notification of the same and immediate notification if it is not to be renewed. If adopted, the ILO Principles will need to be implemented by Flag States and could become effective within two years. Flag States ratifying the MLC after adoption of the Principles will have to incorporate them into an amended MLC.

International Group

The IG continues to work with the ISF to support members' interests and to try to ensure that their P&I insurance covers the liabilities they face under the MLC (such that they do not need additional third-party insurance) and certificates of entry continue to be accepted as evidence of financial security. The club continues to recommend that members engage with their Flag State to ensure they comply with the MLC, regardless of whether it compulsorily applies, and also to engage with their national associations to communicate their views on the ILO Principles.