



## Instruction to RO

### No. 22 Maritime Labour Convention 2006

*Date entry into force: 01 September 2017*

#### 1. Introduction

The purpose of this Instruction to RO is to provide guidance on implementing the requirements of the Maritime Labor Convention, 2006 (MLC), including the inspection and certification of ships.

The Maritime Administration of Curaçao (MAC) (in their role as competent authority, hereinafter referred to as “the Administration”) is responsible for the inspection and certification of the working and living conditions of the seafarers on ships flying the flag of the Kingdom of the Netherlands registered in Curaçao. The Administration decided to delegate all certification services of the MLC to the Recognized Organizations. This instruction describes the elements as pertained in Regulation 5.1.2.

The National requirements, including the interpretation on relevant articles of the legislation and the (conditions/possibilities for) exemptions, are published on the MAC website and in the MLC bulletin no. 1 of the year 2014.

#### 2. Application

##### 2.1 General

Except as expressly provided otherwise, the MLC, 2006 applies to all ships, whether publicly or privately owned, primarily engaged in commercial activities, other than ships engaged in fishing or in similar pursuits (e.g. shellfish dredgers, drifters and trap-setters). The MLC, 2006 does not apply to warships, naval auxiliaries and ships with no mechanical means of propulsion not carrying persons (e.g. pontoons).

The following ships shall be inspected and certified to be in compliance with the requirements of the Convention and carry and maintain a Maritime Labor Certificate (ML Certificate) and the Declaration of Maritime Labor Compliance (DMLC) Parts I and II issued in English:

- i. Ships of 500 gross tonnage or over, engaged in international voyages
- ii. Ships of 500 gross tonnage or over, operating from a port, or between ports, in another country; and
- iii. Other ships, as may be voluntarily requested by a ship-owner.

All ships to which the MLC, 2006 applies, but which are not required to be certified (under 500 gross tons, or not engaged in international voyages, or not operating from a port, or between ports, in another country, or voluntary certified), shall still be required to comply with the same requirements as for certified ships (with the exception of the requirement to be provided with a DMLC an ML Certificate). These vessels will be subject to an inspection by the Administration (flag State Control) at least every three years. A positive outcome of the inspection (e.g. noted on the inspection report) shall be evidence of compliance with the MLC 2006. The



Administration encourages ship-owners to certify these ships voluntarily to avoid difficulties when inspected by a port State.

## 2.2 Seafarer

A seafarer is any person who is employed or engaged or works in any capacity on board a ship to which the MLC applies.

The Administration, taking into account the criteria provided in Resolution VII, considers that the following persons will not be considered as seafarers for the purpose of the MLC 2006:

- i. passengers;
- ii. relatives and family of seafarers, not engaged in any activity related to the regular operations on board the ship;
- iii. military personnel, surveyors, inspectors and pilots, as mentioned in article 1, part b of the Netherlands Pilots Act;
- iv. persons on board ships in a port or port facility, as mentioned in article 1, sub f respectively c, of the Port Security Act;
- v. other persons whose occupations are not part of the regular activities on board the ship. In case of doubt, these cases might be determined by the procedure as referred to below.

At the request of the ship-owner or person (to be) employed on board a ship, the Administration may determine after consultation with the committee of ship-owners and “seafarers” organizations (criteria set out in Resolution VII of the MLC 2006 and the Annex to the DMLC – part I) if a certain category of persons (shipboard position or function) is not defined as “seafarer”. The decision of the Administration will be published on the website of the MAC and formalized in the Decree on Maritime Labour.

## 2.3 Ship-owner

The ship-owner is defined as the owner or operator of a ship or bareboat charterer of a ship, or a manager as mentioned in Decree on Maritime Labour (see the Annex to the DMLC-part I), to which the owner has transferred the responsibility for the exploitation of the ship.

In most cases it is not possible to close seafarers’ employment agreement if the Master is also the employer (e.g. if the Master is also the ship-owner). The Master/Ship-owner shall demonstrate the specific legal structure through its ISM system and/or other relevant documentation.

## 2.4 Seafarers employment agreements

In derogation of Standard A2.1, paragraph 1 (a), of the Convention, Curaçao allows seafarers employment agreements to be signed not only by the ship-owner or a representative of the ship-owner, but these may also be signed by an employer other than the ship-owner or his representative (substantial equivalent).

There are three specific groups of other employers that may be accepted directly by the RO:

- 1) An employer that has employees work on a part of the ship, that is rented by this employer from the ship-owner;
- 2) An employer that has employees work on a ship that has been chartered by the by the employer for specified work;
- 3) Other employer,



- a) where it is clear from a contract that the work performed is in connection with delivered goods or an accomplished activity. This may be a specific work, related to the maintenance of the ship or it may be the work related to fulfilling a guarantee;
- b) where it is clear from a contract between the ship-owner and a different ship-owner that this assistance is rendered without financial profit.  
The seafarers must be employed by the different ship-owner. The different ship-owner must be clearly identified as a ship-owner;
- c) where it is clear that an enterprise has allocated the work related to manning to a specific entity in the enterprise. The ship-owner must show that the Manning Department forms a full part of the enterprise;
- d) if the ship-owner is of the opinion that none of the above options apply, he will contact the MAC for further guidance. In this case the ship-owner shall provide the Administration with documentary evidence that the other employer is not a temporary employment agency through a contract between the ship-owner and the other employer specifying the kind of work concerned, and stipulating the duration of the contract. If approved, the Administration will then issue a “letter of acceptance” that should be attached to the DMLC-Part II.

The fourth possibility is that the other employer is a temporary employment agency, in this case additional requirements are in place (reference is made to the Annex to DMLC- part I) and confirming compliance is required as described in paragraph 2.5 of this instruction.

#### 2.5 Verification of Recruitment and Placement services and temporary employment agencies

For the use of confirming compliance of the Recruitment and Placement R&P services with Regulation 1.4 – Recruitment and placement and temporary employment agencies under Regulation 2.1 and as indicated in paragraph 2.4 of this instruction, the RO shall verify if:

- 1) the R&P service/temporary employment agency has been audited with a positive result, by one of the seven RO’s authorized by the MAC; or
- 2) the R&P service/temporary employment agency is located in and has been approved by a country that is a Member to the Maritime Labor Convention, 2006; or
- 3) the ship-owner shows proof that the R&P service/temporary employment agency complies with the stipulated regulations.

### 3. Scope of the authorization

The Administration authorizes the Recognized Organization (RO), in accordance with MLC, Regulation 5.1.2, and IMO Resolution A.739(18), as amended, “Guidelines for the Authorization of Recognized Organizations Acting on behalf of the Administrations”, the Authority for verifying compliance with the MLC, including the requirements pertaining to the DMLC - Parts I, II and required certification services. The issuance of the (Interim) Maritime Labor Certificate on behalf of the Administration, is arranged by the “Decree on Maritime Labor” and Authorization of certification of sea-going ships. The RO is authorized to undersign the DMLC – Part II.

The RO is authorized to carry out any examination, test or inspection considered necessary to determine that the standards of the MLC 2006 (including relevant national requirements) are complied with.

Furthermore, the RO is authorized to require the rectification of deficiencies that it identifies related to the items addressed in chapter 3 of the Guidelines for flag State inspections (reference



is made to paragraph 5.1 of this Instruction) and to carry out inspections on behalf of the Administration in this regard at the request of a port State. An overview of authorization is specified in Appendix 1.

#### 4. Exemptions and substantial equivalents

##### 4.1 General

The Convention allows for flexibility in implementation by providing for national determinations, substantial equivalencies, and exemptions and variations under certain provisions. The approval and determination of such deviation of the requirements is the prerogative of the Administration.

To become eligible for an exemption (reference is made to the procedure below) or substantial equivalent, the ship-owner shall submit a request to the Administration, together with the application for the DMLC – Part I. The Administration will enter the exemption(s) and substantial equivalent(s) in the DMLC, part 1.

##### 4.2 Procedure for the issuance of exemptions

###### **Exemption(s) for existing vessels**

For existing<sup>1</sup> vessels under Kingdoms' flag and registered in Curaçao, no further verification of compliance of the configuration (construction) of the accommodation and recreational facilities with Title 3 of the MLC (DMLC – Part I, items 8 and 9) is needed. This may be documented by a Certificate for the Accommodation issued by the MAC or an approved accommodation plan on board.

For the existing vessels flagging in to the registry of Curaçao with a keel laying date before entry into force of the MLC 2006, the Administration will deal with verification of compliance of the configuration of the accommodation and recreational facilities with ILO 147. Vessels flagging in, with a keel laying date after entry into force of the MLC 2006, should be considered as new-building.

For all existing ships the procedural requirements as described in article 3.13, 3.18, 3.20, 3.21 and 4.4 of the Regulation Seafarers should still be verified by the RO.

For existing ships delivered after the date of entry into force of the MLC 2006 (keel laid or similar stage of construction before this date), MAC will issue a declaration of compliance for items 8 and 9 of the DMLC – Part I.

###### **Exemption(s) for new-building or major conversion**

Exemptions should be requested by the ship-owner before the actual start of the new building, conversion or modification related to the requirements for the accommodation and facilities. The ship-owner should seek consent with the social partners, if agreed and the requested exemption is in compliance with all relevant requirements and conditions, the MAC can agree. The MAC will consider the request and decide if an exemption will be granted.

The RO shall verify the configuration of the approved exemption on board the vessel, as included in the DMLC – Part I, before issuance of the ML Certificate.

<sup>1</sup> A ship when its keel is laid or when it is at a similar stage of construction, before the date that MLC enters into force.



## 5. Inspections

### 5.1 General

All inspections shall be carried out in accordance with the ILO document, *Guidelines for Flag State Inspections under the Maritime Labor Convention, 2006*.

The RO shall make all reasonable efforts to avoid a ship being unreasonably detained or delayed.

The initial, intermediate, interim and renewal inspections, should be carried out given the guidance in article 3.2 of the Guidelines for flag State inspections under the MLC, 2006 (“how to check the basic requirements”).

### 5.2 Initial Inspections

Initial inspections shall be conducted to ensure compliance with the national requirements implementing the MLC, 2006.

All existing ships required to be certified shall undergo an initial inspection prior to the date upon which the MLC, 2006 enters into force, based on the requirements stated in DMLC Part I.

When DMLC Part II has been verified to be in compliance with DMLC Part I with respect to the ship, the ship-owner and the operations is in compliance with the MLC, a Maritime Labor Certificate shall be issued on behalf of the Government of Curaçao.

See paragraph 6.2 with regards of the scope for the issuance of an Interim Maritime Labor Certificate.

### 5.3 Intermediate Inspections

Intermediate inspections shall be conducted to ensure continuing compliance with the national requirements implementing the MLC, 2006. An intermediate inspection shall be conducted between the second and third anniversary dates<sup>2</sup> of the ML Certificate.

The scope and depth of the intermediate inspection shall be equal to an inspection for renewal of the certificate.

The ML Certificate shall be endorsed by the RO following satisfactory completion of the intermediate inspection.

### 5.4 Renewal Inspections

Renewal inspections shall encompass inspections for all requirements (scope and depth of an initial inspection) and be completed as follows:

- When the renewal inspection is completed within three (3) months before the expiry of the existing ML Certificate, the new ML Certificate shall be valid from the date of completion of the renewal inspection for a period not exceeding five (5) years from the date of expiry of the existing ML Certificate.

<sup>2</sup> Anniversary date means the day and month of each year which will correspond to the date of expiry of the ML Certificate.



- When the renewal inspection is completed more than three (3) months before the expiry date of the existing ML Certificate, the new ML Certificate shall be valid for a period not exceeding five (5) years starting from the date of completion of the renewal inspection.

#### 5.5 Restore Inspection

In case a required inspection has not been carried out or has been carried out outside the “window” (overdue), a restore inspection is mandatory and the Administration should be informed. The scope and the depth of the inspection is to be decided by the Administration and may include an additional ISM audit for which the scope will be provided. After the inspection has been carried out to the satisfaction of the Administration or RO, the certificate shall be provided with the following note:

*“at the request of MAC a more thorough and stringent inspection has been carried out, after which the validity of this certificate has been restored”.*

#### 5.6 Additional Inspections

An additional Maritime Labour inspection may be carried out by the authorized RO:

- i. if the Administration receives a complaint which it does not consider manifestly unfounded or obtains evidence that a ship does not conform to the requirements of this Convention or that there are serious deficiencies in the implementation of the measures set out in the DMLC – Part II;
- ii. if after a more detailed inspection by an authorized officer of a port State, the ship is prohibited from proceeding to sea until any conditions on board that are clearly hazardous to the safety, health or security of seafarers; or the deficiency that constitutes a serious or repeated breach of the requirements of this Convention have been rectified, or a plan of action to rectify such deficiencies has been accepted by the authorized officer, and is satisfied that the plan will be implemented in an expeditious manner;
- iii. if after a more detailed inspection by an authorized officer of a port State or flag State deficiencies are raised, requiring additional verification;
- iv. when changes have been made to DMLC – Part I or the measures in DMLC – Part II;
- v. when a substantial alteration has been made to the seafarer accommodation or other structural changes affecting the living conditions (indication by the Administration);
- vi. other occasions as may be deemed appropriate by the Administration.

### 6. Certification

#### 6.1 Maritime Labour Certificate (ML Certificate)

The DMLC – Part I shall be drawn up by the MAC and identifies the list of 14 matters to be inspected, the relevant national requirements, ship-type specific requirements under national legislation, any substantially equivalent provisions, and any exemption granted.



The DMLC – Part II shall be drawn up by the ship-owner/operator and it shall be signed and stamped, following a successful on-board inspection, to confirm compliance by the relevant RO prior to issuance of the ML Certificate to the ship-owner/operator.

The ML Certificate, issued by the RO, affirms that seafarer working and living conditions aboard a ship meets all the laws and regulations of Curaçao that govern the implementation of the MLC, 2006

### 6.2 Interim Maritime Labour Certificate (IMLC)

An IMLC may be issued;

- i. to new build ships on delivery;
- ii. when a ship changes to the flag of the Kingdom of the Netherlands and is registered in Curaçao;
- iii. when a ship-owner assumes responsibility for the operation of a ship which is new to that ship-owner; or
- iv. in duly justified cases (after consultation with the Administration), if the initial inspection carried out before entry into force of the MLC, 2006 does not result in a ML-certificate.

An IMLC may only be issued following verification that:

the ship has been inspected, as far as reasonable and practicable, with satisfactory results, taken into account the conditions stated below:

- o the ship-owner has submitted a preliminary draft of the DMLC –Part II to the RO which outlines the measures that the ship-owner proposes to demonstrate compliance with the MLC, 2006, taking into account the requirements of Curaçao available on the website of the MAC;
- o the ship-owner has demonstrated to the RO that the ship has adequate procedures adopted in the draft of the DMLC – Part II to comply with the requirements of the Convention and national requirements;
- o the Master is familiar with the requirements and the responsibilities for implementation;
- o the ship-owner has submitted to the Administration, the relevant information to produce a DMLC – Part I.

### 6.3 Changes

#### **DMLC – Part I**

In case of changes in ships name, Gross Tonnage or type of ship, an amended DMLC – Part I will be issued. Furthermore, only affected pages in the DMLC – Part II, if any, must be submitted to the RO which certified the DMLC – Part II and issued the ML Certificate. An amended ML Certificate with the new issue date and the same validity dates as the original ML Certificate will be issued by the RO. The endorsement for the intermediate inspection, if carried out, shall be transferred to the new certificate, with date and location. The endorsement shall be stamped, dated and signed.

The Administration will inform RO's and ship-owners of regulatory changes to the DMLC – Part I. Depending on the nature of the changes to the DMLC – Part I, the Administration will provide instructions with regard to the procedures to be followed for specific amendments. Intended changes of the regulatory framework will be communicated in the regular liaison meetings as referred to in article 6.6 of the Agreement.



Editorial changes (non-substantial) to the DMLC – Part I will be collected and processed at the next substantial change (see below).

In case of substantial (indicated by the Administration) changes to the DMLC – Part I, requiring updating of the DMLC – Part II, a new DMLC –Part I will be issued to each ship. An additional Maritime Labor inspection may be required to verify the new measures of the ship-owner and a new DMLC – Part II may be reviewed to confirm compliance.

If necessary, an amended ML Certificate with the new issue date, DMLC issue date, and the same validity date as the previous ML Certificate will be issued by the RO. The endorsement for the intermediate inspection, if carried out, shall be transferred to the new certificate, with date and location. The endorsement shall be stamped, dated and signed.

In general, changes to the DMLC – Part I should be implemented within three months after entering into force of the amendments of the regulatory framework. Furthermore, the Administration will indicate the timeframe that a ML inspection should be carried out, if necessary. Usually this would be the first inspection scheduled (intermediate or renewal).

#### **DMLC – Part II**

The ship-owner shall inform the RO of changes to the DMLC – Part II.

- In case of editorial changes to the DMLC – Part II (e.g. name, contact information of the ship-owner) not leading to updating of other parts of the DMLC – Part II, only the amended pages of the DMLC – Part II shall be submitted to the RO for review and acceptance. If it affects the contents of the ML Certificate (the particulars), a new certificate may need to be issued (endorsements to be transferred), keeping the current expiration date.
- In case of any change, other than editorial, to the measures in DMLC – Part II, a new DMLC – Part II must be reviewed to confirm compliance.

An amended ML Certificate with the new issue date, DMLC issue date, and the same validity date as the previous ML Certificate will be issued by the RO. The endorsement for the intermediate inspection, if carried out, shall be transferred to the new certificate, with date and location. The endorsement shall be stamped, dated and signed.

#### 7. Deficiencies

Any deficiencies identified during the inspection shall be recorded.

A ML Certificate shall not be issued, endorsed or renewed, until deficiencies related to approved measures in the DMLC – Part II are rectified or a corrective action plan has been provided by the ship-owner. This plan shall be accepted by the RO to rectify the deficiencies within a specified time-frame, not exceeding three (3) months, to implement the necessary corrective actions.

Where there is no clear ground of non-compliance that endangers the safety, health or security of the seafarers and where there is no prior history of similar deviations, an RO shall have the discretion to instruct the ship-owner instead of starting procedures for withdrawal of the ML certificate.





When a corrective action plan to rectify the (serious<sup>3</sup>) deficiencies has been accepted by the RO, an additional Maritime Labor inspection is always required in case of serious deficiencies. For deficiencies, carrying out an additional inspection to verify the implementation of the corrective action plan will be up to the discretion of the RO.

Where an additional Maritime Labor inspection is not deemed necessary, evidence of implementation of the corrective action shall be submitted within the agreed time-frame and verification of the implementation of the corrective actions will be carried out at the next scheduled inspection.

If (part of) the deficiencies to be rectified involve another RO (authorized for the certification services related to other Conventions<sup>4</sup>) or department within the organization of the RO, the RO authorized for the MLC shall inform the RO or other department concerned and establish if appropriate action has been taken to resolution of the deficiencies within an acceptable time-frame. Prime responsibility to verify the resolve of the deficiency related to the other Conventions, lies with the RO (or department) authorized for the deficiency (e.g. in the field of safety construction, ISM, class rules, etc.).

## 8. Complaints

Where complaint cannot be resolved on board or with ship-owner, a seafarer may lodge a complaint with the MAC (or directly if the seafarer deems it necessary). From the date of entry into force of the Maritime Labor Convention, 2006, complaints to the Administration shall be lodged through the dedicated email addresses:

[management@maritimecuracao.org](mailto:management@maritimecuracao.org)

[Manningshipr@maritimecuracao.org](mailto:Manningshipr@maritimecuracao.org)

[expertise@maritimecuracao.org](mailto:expertise@maritimecuracao.org)

If the MAC receives a complaint that obtains evidence that a ship that flies the flag of the Kingdom of the Netherlands and is registered in Curaçao does not comply with the requirements of the MLC, 2006 or that there are serious deficiencies in the implementation of measures set out in the DMLC, the Administration may instruct (including detailed scope) the RO to carry out an additional inspection. However, the responsibility for resolution of a complaint remains with the MAC.

## 9. Reporting

### 9.1 Reporting

The Administration shall be granted (if possible electronic) access to all relevant information, such as Rules and Interpretations, instructions for surveyors, all plans and documents, including reports on inspections on the basis of which certificates are issued or endorsed by RO and certificates issued regarding ships registered in Curaçao. Furthermore, all information as mentioned in article 96 (Central Register) of the Manning Decree of Curaçao.

<sup>3</sup> Serious deficiencies are defined as deficiencies that require the detention of a ship, as referred to in paragraph 5.2 of the Guidelines for Port State Control. In case of any doubt, the Administration should be contacted.

<sup>4</sup> SOLAS, MARPOL, Load Line or Tonnage Measurement.



The Administration shall, at the request of the RO, provide all necessary documentation in the English language for the purpose of RO's provision of inspection of existing ships, and the declaration of compliance (reference is made to item 4.2 of this Instruction) with items 8 (Accommodation) and 9 (Recreational facilities) of the DMLC – Part I.

#### 9.2 Reporting serious deficiencies

The RO shall immediately report any serious deficiencies which affect the safety of the ship, or represent a significant danger to the safety, health or security of seafarers, or constitute a serious breach of the requirements of this Convention (including seafarers' rights), to the Administration. The RO will confirm that the ship-owner has determined and initiated appropriate corrective action to correct the deficiencies or to correct the causes of the deficiencies before the ship departs port.

In the case of any serious deficiencies which represent a significant danger or constitute a serious breach of the requirements of this Convention (including seafarers' rights), the RO shall, after consultation with the Administration, withdraw or refuse to issue the ML Certificate, unless the deficiencies are rectified or a corrective action plan to rectify the deficiencies has been accepted by the RO.

Further reference is made to the instructions prescribed in Instruction to RO. 15 of the Kingdom of the Netherlands on- Reporting and procedure for non-compliance.

#### 10. Additional information

In case this Instruction to RO is not found sufficient for the verification of compliance of the MLC or it does not provide proper guidance in any specific case, the Administration shall be consulted for further instructions.