

INTERNATIONAL LABOUR ORGANIZATION

**International Labour Standards Department
Sectoral Activities Programme**

Proposal for

**Guidelines for flag State inspections
under the Maritime Labour
Convention, 2006**

Geneva, 2008



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**Meeting of Experts to adopt Guidelines
on Flag State Inspections under the
Maritime Labour Convention, 2006**

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Meeting of Experts to adopt Guidelines on Flag State Inspection under the Maritime Labour Convention, 2006

94th (Maritime) Session of the International Labour Conference

1. When the International Labour Conference adopted the Maritime Labour Convention, 2006 (MLC, 2006), it also adopted 17 resolutions intended to support the promotion, ratification and effective implementation of the Convention and the improvement of decent work conditions in the maritime sector.¹
2. With respect to the implementation of the Convention and in light of the strengthened compliance and enforcement obligations contained in the Articles and Title 5 of the new Convention, the Conference adopted two resolutions specifically intended to provide guidance to Members when implementing their responsibilities in connection with these provisions.
3. The two resolutions are the “Resolution concerning the development of guidelines for port State control” (resolution IV), and the “Resolution concerning the development of guidelines for flag State inspection” (resolution XIII).
4. Resolution XIII on developing guidelines for flag State inspection reads as follows:

Resolution concerning the development of guidelines for flag State inspection

The General Conference of the International Labour Organization,

Having adopted the Maritime Labour Convention, 2006,

Considering that this Convention aims to establish a new pillar of international legislation for the shipping industry,

Noting paragraphs 1, 2 and 3 of Article V, and Regulation 5.1.1, Standard A5.1.1, Guideline B5.1.1 of the above Convention, which provide for flag State responsibilities, inspection and certification of maritime labour conditions,

Noting that the success of the Convention will depend, among others, upon the uniform and harmonized implementation of flag State responsibilities in accordance with its relevant provisions,

Considering that, given the global nature of the shipping industry, it is important for flag State inspectors to receive proper guidelines for the performance of their duties;

Invites the Governing Body of the International Labour Office to request the Director-General to give due priority, through tripartite meetings of experts, to developing suitable guidance for flag State inspection.

5. Both resolutions IV and XIII envisage future tripartite meetings of experts to develop this guidance. However, during the preparation of what was to become resolution XIII, several Government representatives expressed doubts as to the need for international guidelines on flag State inspection or for an experts’ meeting on that subject. They considered that the various issues were sufficiently clear in the Convention, that there were multiple

¹ Adopted 22 February 2006, International Labour Conference, 94th (Maritime) Session, 2006, *Provisional Record* No. 16, p. 16/9.

approaches for flag States to implement the Convention and that a tripartite expert meeting on port State control was sufficient and would provide necessary guidance for flag States. However, other Government representatives as well as the Shipowner and Seafarer representatives pointed out that many countries needed assistance in this area and might be unable to ratify the Convention without it. Consensus was reached on the development of international guidelines for flag State inspections on the understanding that these guidelines would only be for States that found them useful. It was noted that priority should be given to the development of guidance for port State control officers.²

6. Although these two resolutions and the discussions in the Conference envisaged that priority would be given to the development of guidelines for port State control officers, in the period following the adoption of the Convention it became clear that in fact there was a need to develop the flag State guidelines in parallel with the guidelines for port State control, in order to provide the substantive content for the latter. Indeed, as pointed out in the discussions concerning the need for guidelines relating to port State responsibilities during the preparation of the Convention and, as is in fact suggested by the repetition of wording in Standard A5.1.4, paragraph 7(c), and Standard A5.2.1, paragraph 1, of the Convention as subsequently adopted, the role of port State control inspections is understood as complementary to that of flag State inspection and, accordingly, should not go further than the flag State inspection.³
7. At its 298th Session (March 2007), the Governing Body of the ILO approved the International Labour Office undertaking the work to prepare for tripartite expert meetings in 2008 in connection with both resolutions.

The development of the Office proposal

8. In the latter half of 2007, the Office began the work to develop draft text that could be used as a working basis by the tripartite meeting of experts that would be developing the guidance on flag State inspection. The Government of the United Kingdom agreed to lead a small informal working group of experts that would propose draft guidelines as a basis for the Office's submission to the expert meeting concerned. The informal working group was composed of experts from a small number of governments and the international organizations of shipowners and seafarers. The appendix to this document contains the Office's proposal for guidelines for flag State inspections, which is submitted to the tripartite expert meeting for its review and amendment. This proposal and the considerations in the paragraphs below are based on views expressed in the informal working group (which were provided without prejudice to any views that the experts might express in the September 2008 meeting). The proposal also takes account of guidance to flag States developed under the auspices of the International Maritime Organization (IMO).
9. In the light of the Conference's discussions, the guidelines proposed as a working basis in the Appendix below are designed with flag States in mind that need assistance in the area of inspection. They also take account of flag States wishing to harmonize their inspection procedures, but without recommending any particular approach to inspection or in any way diminishing the discretion that the Convention gives to each ratifying Member as to the way in which it will implement its responsibilities under Regulation 5.1 of the Convention.

² See International Labour Conference, 94th (Maritime) Session, 2006, *Provisional Record* No. 3-1(Rev.), paras 84 to 98.

³ Tripartite Intersessional Meeting on the Follow-up to the Preparatory Technical Maritime Conference, Report of the discussion, PTMC/2005/23, paras 138–149.

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10. In developing these guidelines a question that the Office needed to consider related to scope. What precisely was envisaged by the Conference when it called for the development of “suitable guidance for flag State inspection” in resolution XIII? In the light of this wording, it was concluded that the guidelines for flag States (unlike the guidelines under resolution IV which were to be directed to port State control *officers*) should be directed to *both* flag State inspectors and to flag States and their competent authorities and should provide guidance in connection both with carrying out an inspection and with the flag State inspection and certification system, including responding to complaints as provided for in Standard A5.1.4, paragraph 5.
 11. The proposal in the appendix below seeks to find an approach that would provide practical guidance to inspectors as to what to do – “how to check” for compliance – when carrying out a flag State inspection while, at the same time, remaining true to the text of the Convention. A particular concern was to develop an approach that would differentiate between the guidance to flag States with respect to national implementation responsibilities, where the detailed guidance in Part B of the Code of the MLC, 2006, must be given due consideration by parliaments, and the advice in these guidelines. The former is a matter that would fall under the purview of the ILO’s well-established supervisory system. Under the MLC, 2006, Members are not obliged to implement the requirements of the Convention in the manner set out in Part B of the Code. However, they are obliged to give these provisions due consideration (Article VI, paragraph 2). In this connection, it is suggested that the Explanatory note in the MLC, 2006, should be reproduced in the flag State guidelines to avoid paraphrasing it in a way that might be inconsistent with the delicate balances embodied in the Convention.
 12. At the same time, these guidelines must have some added value and should not simply reproduce the Convention text. The guidelines need to reflect a balance between practical “hands on” advice (such as *how* to check for compliance with the requirements of the Convention) that is not too lengthy, whilst also staying within the precise wording of the Convention and the agreements and understandings reflected in its provisions. It is also important that the potential role of any recognized organization (RO) that carries out tasks on behalf of flag States be clarified, especially with respect to the issue of responding to complaints or imposing any sanctions provided under national legislation.
 13. Consideration has also been given to the question how to distinguish between the guidance relating to the working and living conditions of seafarers that are subject – in 14 areas – to both inspection and certification, and the guidance concerning the other areas that are only subject to inspection under the Convention. While on practical grounds there may be an advantage in dealing with the two subjects separately, the proposed guidelines reflect the view that all the areas should be dealt with together in the same order as they appear in the Convention, thus avoiding the impression that areas subject to certification are more important than the others. In section 3.2 of the Office’s proposal, entitled “The MLC, 2006, requirements to be inspected and, where applicable, certified”, the areas subject to certification are distinguished with the label “**Inspected and certified**”.

Structure of the Office proposal

14. The guidelines for flag State inspection proposed in the appendix below as a working basis for the tripartite expert meeting comprise four chapters and have as their primary objective the provision of practical advice that can be adapted by national administrations, for flag State inspectors (or ROs delegated the task) verifying compliance of ships with the requirements of the MLC, 2006 (as implemented under the national law concerned). Chapter 2 addresses the wider question of inspection system responsibilities and provides information to flag States (and their competent authorities) regarding elements of the

inspection and certification system such as developing documentation, appointing inspectors and authorizing ROs.

Introduction to the Office proposal

15. The guidelines proposed in the appendix below have been designed with a view to being a “stand alone text” and self-explanatory in most respects. However, there are points that are useful to highlight.

National legislation and application

16. Although the ship inspection and certification system under the MLC, 2006, has some similarities with the certification system in connection with conventions developed under the auspices of the IMO, there are some significant differences. *First*, the onboard documentation and related flag State inspection and port State control inspections relate expressly to *national* legislation or other measures implementing the Convention. The Convention, as noted earlier, provides some flexibility as to the precise approach adopted by Members in implementation of the Convention. This means that the flag State or its competent authority must identify (in Part I of the Declaration of Maritime Labour Compliance (DMLC)), the national requirements that apply with respect to seafarers’ working and living conditions in each of the 14 areas that are subject to certification (Standard A51.3, paragraph 10(a)). *Second*, from the perspective of flag State inspections, the MLC, 2006, applies to all ships covered by the Convention, and is not confined to ships that are subject to mandatory certification. In addition, there are a number of requirements for seafarers’ working and living conditions that are not subject to certification but are still subject to flag State inspection. *Third*, the MLC, 2006, also includes provisions establishing requirements for a process whereby complaints may be made on board ship, to flag States and to authorized officers in foreign ports.

Adding value – Practical guidance and the Maritime Labour Convention, 2006

17. As mentioned above, one of the aims of these guidelines is to develop practical guidance for flag State inspectors that will provide added value by giving “hands on” advice beyond that already contained in the Convention text itself, but at the same time does not go beyond the requirements of the Convention. This is a challenge that is increased by the international context of the guidelines, which nevertheless have to take account of the fact that the details of the national requirements to be checked for compliance by inspectors may differ as between countries due to the special status of the Guidelines in Part B of the Code in the Convention and to the other flexibility provided in the Convention. This is particularly true in connection with Title 3 (requirements for accommodation, recreation facilities and food and catering) and Title 4 (requirements for health protection, medical care, welfare and social security protection) as these titles already contain significant details regarding practical implementation that must be given due consideration by Members implementing their obligations under the Convention. **The approach of the proposed guidelines is, therefore, to emphasize that the national laws or regulations or other measures implementing the Convention are the authoritative source in each flag State for the content of the requirements.** Any concern raised about the way in which a Member has implemented its legal obligations at a national level would be a matter to be addressed by the ILO’s supervisory system.

Role of Recognized Organizations (ROs)

18. An important aspect of the proposed guidelines is the clarification that is suggested with respect to the role of ROs that have been delegated authority to undertake some tasks on

behalf of the flag State. It became clear that the primary role of ROs should be to *verify* compliance with the national requirements. Responding to complaints or making determinations with respect to action to be taken once deficiencies or non-conformities are identified should remain a matter for the flag State or its competent authority. However, the proposed guidelines also recognize the practical reality in that very often the RO is the “front line” person on a ship and may be the recipient of a complaint or given information about a potential deficiency when carrying out an inspection.

Ships under construction and other scenarios

19. The MLC, 2006, does not address the wide range of practical matters and scenarios that may arise in connection with the process of inspection and certification of ships. Each flag State will already have developed an approach to these questions in connection with IMO conventions. These questions may include, for example, how to deal with inspection of ships that are under construction or the approach to take for ships newly coming into service, where there may not yet be seafarers on board. The proposed guidelines do not purport to cover all the details or all the potential scenarios, but they do offer suggestions as to an approach for the process for addressing some of these issues.

Complementarity between flag State inspections and port State control

20. In view of the complementary nature of port State control inspections, *vis-à-vis* flag State inspections, it is hoped that the guidelines on flag State inspections and the guidelines for port State control officers will be seen as a whole, although they will be developed at different tripartite expert meetings. For this reason, the two Office proposals have been structured in a similar way and a primary concern has been to aim at complementarity and consistency between the two sets of guidelines.
21. An example in which *complementarity* is particularly important concerns the Maritime Labour Certificate and the DMLC. This documentation, when properly established, is to be recognized by port State control officers (PSCOs) as constituting *prima facie* evidence of compliance by the ship concerned with the requirements of the Convention in the 14 areas that are subject to flag State certification (Appendix A5-I) and, in principle, also to port State control (Appendix A5-III). The guidance in the proposed guidelines for PSCOs concerning both the approach to inspecting those documents and the legal role of these documents, can usefully be complemented by the information in the proposed guidelines on flag State inspection concerning the requirements relating to the development and issuance of the Certificate (including interim certificates) and the DMLC.
22. The best example (but by no means the only one) where *consistency* between the two sets of guidelines is essential concerns section 3.2 (referred to above) of the proposed guidelines on flag State inspections, which provides concrete information summarizing the basic requirements to be met in the seafarers’ working and living conditions, suggesting ways of checking compliance with those requirements and giving examples of deficiencies. Since this guidance appears to be equally applicable – in nature – to the “more detailed inspection” by PSCOs (although the latter inspection will normally be less extensive and sometimes much less), the wording of the equivalent section of the proposed guidelines for PSCOs closely follows that of section 3.2, in so far as the items coming within the 14 areas subject to certification are concerned.

Status of the guidelines

23. Finally, it should be noted that the guidelines to be developed will not have the same legal status as the Guidelines found in Part B of the Code of the Maritime Labour Convention,

2006. In accordance with Article VI, paragraph 2, of the Convention, Part B of the Code must be given due consideration by Members when implementing their responsibilities, and any failure to give such consideration could be the subject of review by the ILO supervisory bodies. The guidelines are to be considered as advisory only for governments that may find them useful in such contexts as the drafting of national guidelines referred to in Standard A5.1.4, paragraph 7, and the training of inspectors.

Appendix

Proposal for guidelines for flag State inspections under the Maritime Labour Convention, 2006

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Chapter 1. Introduction

1.1. Explanation of the objectives and content of the guidelines

1. In accordance with resolution XIII adopted by the International Labour Conference at its 94th Session (94th Session of the ILC), these international guidelines have been developed to assist flag State administrations to effectively implement their responsibilities with respect to the ship inspection and certification duties under the Maritime Labour Convention, 2006 (MLC, 2006).
2. The guidelines are intended to provide supplementary practical information and guidance to flag States that can be adapted to specifically reflect their national laws and other measures implementing the MLC, 2006.
3. It must be emphasized that these guidelines are intended as a practical resource that can be used by any government that finds them helpful.
4. **In all cases, the relevant national laws or regulations or collective bargaining agreements or other measures implementing the MLC, 2006, in the flag State should be viewed as the authoritative statement of the requirements in the flag State.**
5. The remaining sections of Chapter 1 provide general information on the structure, key concepts and terminology used in the MLC, 2006.
6. Chapter 2 is divided into two sections. The first section provides an overview of the flag State inspection system obligations in the MLC, 2006, and contains information with respect to actions or determinations that flag States or the competent authority in the flag State may take for ship inspection and certification. The second section provides more specific guidance on the process of maritime labour inspection and certification under the MLC, 2006.
7. Chapter 3 addresses the requirements of the MLC, 2006, that are to be inspected and, if required, certified, on all ships covered by the MLC, 2006. It contains guidance as to what a flag State inspector (or a recognized organization (RO) that has been delegated this task by a flag State) would check in verifying compliance. It also provides some examples of deficiencies.
8. Chapter 4 outlines a range of actions that can be taken if deficiencies or non-conformities are identified by flag State inspectors (or reported to the flag State by ROs acting on its behalf).

1.2. Brief overview of the MLC, 2006 structure

9. The MLC, 2006, contains an explanatory note, which was adopted by the 94th Session of the ILC to assist governments with respect to their legislative obligations and to understanding the legal relationship between the different parts of the MLC, 2006. It also provides an outline of the overall structure of the MLC, 2006.

***Explanatory note to the Regulations and Code
of the Maritime Labour Convention, 2006***

1. This explanatory note, which does not form part of the Maritime Labour Convention, is intended as a general guide to the Convention.
2. The Convention comprises three different but related parts: the Articles, the Regulations and the Code.
3. The Articles and Regulations set out the core rights and principles and the basic obligations of Members ratifying the Convention. The Articles and Regulations can only be changed by the Conference in the framework of article 19 of the Constitution of the International Labour Organization (see Article XIV of the Convention).
4. The Code contains the details for the implementation of the Regulations. It comprises Part A (Mandatory standards) and Part B (Non-mandatory guidelines). The Code can be amended through the simplified procedure set out in Article XV of the Convention. Since the Code relates to detailed implementation, amendments to it must remain within the general scope of the Articles and Regulations.
5. The Regulations and the Code are organized into general areas under five Titles:
 - Title 1: Minimum requirements for seafarers to work on a ship;
 - Title 2: Conditions of employment;
 - Title 3: Accommodation, recreational facilities, food and catering;
 - Title 4: Health protection, medical care, welfare and social security protection;
 - Title 5: Compliance and enforcement.
6. Each Title contains groups of provisions relating to a particular right or principle (or enforcement measure in Title 5), with connected numbering. The first group in Title 1, for example, consists of Regulation 1.1, Standard A1.1 and Guideline B1.1 relating to minimum age.
7. The Convention has three underlying purposes:
 - (a) to lay down, in its Articles and Regulations, a firm set of rights and principles;
 - (b) to allow, through the Code, a considerable degree of flexibility in the way Members implement those rights and principles; and
 - (c) to ensure, through Title 5, that the rights and principles are properly complied with and enforced.
8. There are two main areas for flexibility in implementation: one is the possibility for a Member, where necessary (see Article VI, paragraph 3), to give effect to the detailed requirements of Part A of the Code through substantial equivalence (as defined in Article VI, paragraph 4).
9. The second area of flexibility in implementation is provided by formulating the mandatory requirements of many provisions in Part A in a more general way, thus leaving a wider scope for discretion as to the precise action to be provided for at the national level. In such cases, guidance on implementation is given in the non-mandatory Part B of the Code. In this way, Members which have ratified this Convention can ascertain the kind of action that might be expected of them under the corresponding general obligation in Part A, as well as action that would not necessarily be required. For example, Standard A4.1 requires all ships to provide prompt access to the necessary medicines for medical care on board ship (paragraph 1(b)) and to “carry a medicine chest” (paragraph 4(a)). The fulfilment in good faith of this latter obligation clearly means something more than simply having a medicine chest on board each ship. A more precise indication of what is involved is provided in the corresponding Guideline B4.1.1 (paragraph 4) so as to ensure that the contents of the chest are properly stored, used and maintained.
10. Members which have ratified this Convention are not bound by the guidance concerned and, as indicated in the provisions in Title 5 on port State control, inspections would deal

only with the relevant requirements of this Convention (Articles, Regulations and the Standards in Part A). However, Members are required under paragraph 2 of Article VI to give due consideration to implementing their responsibilities under Part A of the Code in the manner provided for in Part B. If, having duly considered the relevant Guidelines, a Member decides to provide for different arrangements which ensure the proper storage, use and maintenance of the contents of the medicine chest, to take the example given above, as required by the Standard in Part A, then that is acceptable. On the other hand, by following the guidance provided in Part B, the Member concerned, as well as the ILO bodies responsible for reviewing implementation of international labour Conventions, can be sure without further consideration that the arrangements the Member has provided for are adequate to implement the responsibilities under Part A to which the Guideline relates.

10. With particular reference to flag State inspection responsibilities and the ship certification system, as dealt with in these guidelines, it is important to take account of the four appendices located at the end of Title 5 of the MLC, 2006:

- Appendix A5-I: List of matters for flag State inspection;
- Appendix A5-III: List of areas that may be the subject of a more detailed inspection in a port State;
- Appendix A5-II: Model documents relating to the flag State inspection and certification system established in Title 5:
 - Maritime Labour Certificate;
 - Interim Maritime Labour Certificate;
 - Declaration of Maritime Labour Compliance (DMLC (two parts – Part I and Part II));
- Appendix B5-I: An example, to provide guidance as to the way both parts of the DMLC might be filled out by the flag State (Part I) and a shipowner (Part II).

1.3. Key concepts in the MLC, 2006

11. This section of Chapter 1 sets out some of the key concepts relating to the application of the MLC, 2006. Section 1.4, which follows, contains the definitions of terms that are found in the MLC, 2006.

1.3.1. Application

12. The MLC, 2006, applies to all seafarers on all ships covered by the MLC, 2006. A seafarer is any person who is employed or engaged or works in any capacity on board a ship to which the MLC, 2006, applies. All ships registered with a flag State, if covered by the MLC, 2006, are subject to an inspection for compliance with the requirements of the MLC, 2006. The terms “seafarer” and “ship” are defined in the MLC, 2006 (see section 1.4 below).

1.3.2. Seafarers’ rights

13. The MLC, 2006, is intended to help achieve decent work for all seafarers. It sets out the fundamental rights and principles that seafarers have with respect to their working and living conditions.

14. Article III of the MLC, 2006, relates to *fundamental rights and principles* requiring ILO member States to satisfy themselves that the provisions of their laws and regulations respect, in the context of this Convention, the fundamental rights to:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour; and
- (d) the elimination of discrimination in respect of employment and occupation.

15. Article IV relates to *seafarers' employment and social rights* and states:

1. Every seafarer has the right to a safe and secure workplace that complies with safety standards.
2. Every seafarer has a right to fair terms of employment.
3. Every seafarer has a right to decent working and living conditions on board ship.
4. Every seafarer has a right to health protection, medical care, welfare measures and other forms of social protection.
5. Each Member shall ensure, within the limits of its jurisdiction, that the seafarers' employment and social rights set out in the preceding paragraphs of this Article are fully implemented in accordance with the requirements of the Convention. Unless specified otherwise in the Convention, such implementation may be achieved through national laws or regulations, through applicable collective bargaining agreements or through other measures or in practice.

1.3.3. Ships

16. The MLC, 2006, applies to all ships, whether publicly or privately owned, ordinarily engaged in commercial activities. Subject to any national provisions to the contrary, the MLC, 2006, does not apply to:

- ships which navigate exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply;
- ships engaged in fishing or in similar pursuits and ships of traditional build such as dhows and junks;
- warships or naval auxiliaries.

1.3.4. Compliance and enforcement (ship inspection and certification)

17. The flag State must verify, through an effective and coordinated system of regular inspection, monitoring and other control measures, that ships comply with the requirements of the Convention as implemented in national laws or regulations, or collective bargaining agreements or other measures or practices implementing the requirements of the MLC, 2006. Generally, under Regulation 5.1.3, in addition to being inspected, ships must also be certified for compliance with the requirements for the 14 areas of seafarers' working and living conditions set out in Title 5, Appendix A5-I. A flag State must also verify that its ships meet all MLC, 2006, requirements, even if the requirement is not one that must be certified. For ships that do not have to be certified

(under 500 gross tonnage (gt), or ships not engaged in international voyages or operating from a port or between ports in another country) the flag State must still verify compliance for all the same requirements as a certified ship.

- 18.** The MLC, 2006, recognizes that ILO Members need some flexibility to address particular national situations, especially with respect to smaller ships and ships that do not go on international voyages or specific kinds of ships. It also recognizes that flag States may not always be in a position to implement the requirements of the MLC, 2006, in the manner set out in Part A of the Code and allows them to adopt measures which are “substantially equivalent” (see paragraph 36 below). The MLC, 2006, provides guidance primarily directed to national law-making bodies as to the ways in which this national flexibility can be exercised. For ships that are engaged in international voyages or operate from a port or between ports in another country these matters will be stated on the MLC, 2006, documents carried on ships for the information of flag State inspectors and authorized officers carrying out port State control inspections (PSCO).

Certified ships

- 19.** For ships of 500 gt or over that are engaged in international voyages or ships of 500 gt or over that fly the flag of one country and operate from a port or between ports in another country, the MLC, 2006, contains a list of 14 areas that are subject to a mandatory certification system (see MLC, 2006, Title 5, Appendix A5-I). Certification is mandatory only for some ships that are covered by the MLC, 2006; however, a shipowner can also request that a ship be certified even in cases where certification is not required.
- 20.** The documents that are issued by the flag State, or by an RO on its behalf, are the Maritime Labour Certificate and a DMLC. The DMLC has two parts. Part I is filled out by the flag State and refers to the relevant national requirements that are to be certified as having been complied with. Part II is prepared by the shipowner and outlines the procedures that the shipowner has, or will, put in place to ensure ongoing compliance on the ship with these flag State requirements.
- 21.** These two documents and, where warranted, also the conditions that they certify may be the subject of an inspection in foreign ports (PSCO). Models for the documents that must be carried on ships can be found in Appendix A5-II which is located at the end of Title 5 of the MLC, 2006.

Ships that are not certified

- 22.** Ships that are not certified are subject to inspection, at intervals not exceeding three years, against the same MLC, 2006, requirements (as implemented nationally) for certified ships. The only difference is that the Maritime Labour Certificate and the DMLC are not issued to these ships. The national requirements for the 14 areas that are referenced in Part I of a DMLC would also be relevant to flag State inspections of ships that are not certified.

1.4. Definitions

- 23.** The following definitions are found in Article II, paragraph 1, of the MLC, 2006:

- (a) “Competent authority” means the minister, government department or other authority having power to issue and enforce regulations, orders or other instructions having the force of law in respect of the subject matter of the provision concerned;
- (b) “Declaration of Maritime Labour Compliance” means the declaration referred to in Regulation 5.1.3;

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- (c) “Gross tonnage” means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I to the International Convention on Tonnage Measurement of Ships, 1969, or any successor Convention; for ships covered by the tonnage measurement interim scheme adopted by the International Maritime Organization, the gross tonnage is that which is included in the REMARKS column of the International Tonnage Certificate (1969);
 - (d) “Maritime Labour Certificate” means the certificate referred to in Regulation 5.1.3;
 - (e) “Requirements of this Convention” refers to the requirements in these Articles and in the Regulations and Part A of the Code of this Convention;
 - (f) “Seafarer” means any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies;
 - (g) “Seafarers’ employment agreement” includes both a contract of employment and articles of agreement;
 - (h) “Seafarer recruitment and placement service” means any person, company, institution, agency or other organization, in the public or the private sector, which is engaged in recruiting seafarers on behalf of shipowners or placing seafarers with shipowners;
 - (i) “Ship” means 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;
 - (j) “Shipowner” means the owner of the ship or another organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with this Convention, regardless of whether any other organizations or persons fulfil certain of the duties or responsibilities on behalf of the shipowner.

Chapter 2. The flag State inspection system

2.1. Overview of flag State responsibilities

2.1.1. General note

24. The majority of the provisions in the MLC, 2006, are directed to national lawmakers with respect to the elements of the national legal framework that are needed to implement the Convention. This includes information on situations where a State, or a “competent authority” in a State, can (or in some cases must) make determinations and take actions that are related to ensuring decent working and living conditions for seafarers and, in particular, for seafarers on ships that fly its flag.¹
25. Many of these national determinations relate to specific areas where flexibility can be exercised in the flag State, to respond to specific situations in the country. In most cases these refer to determinations that are to be made by the “competent authority” and require consultation with the seafarer and shipowner organizations concerned.² Although some general information is provided on this matter, the process of legal implementation by either the flag State (or a competent authority of the flag State) at the national level is outside the scope of these guidelines. The question of whether a country has properly implemented its obligations under the MLC, 2006, is a matter that is dealt with by the international supervisory system that is established under the Constitution of the International Labour Organization.
26. However, there are some specific actions that need to be taken at the more practical level to support implementation of the national requirements on ships. Of particular importance for these guidelines, which are concerned with flag State inspection responsibilities, are the:
- appointment of flag State inspectors (or ROs, if used by the flag State, to carry out some flag State tasks);
 - inspection, issuance and withdrawal of the Maritime Labour Certificate and for completing Part I of the DMLC;
 - responding to seafarer complaints;
 - responding to requests for information about its ships from port State control authorities;

¹ National practice may vary with respect to which department (or departments) of government is considered as the “competent authority” (as defined in Article II – see para. 23 above) for purposes of giving effect to national laws or regulations or other measures implementing the requirements of the MLC, 2006.

² In cases where representative organizations of shipowners or of seafarers do not exist within a Member, any derogation, exemption or other flexible application of the MLC, 2006, for which the Convention requires consultation with shipowners’ and seafarers’ organizations may only be decided by that Member through consultation with the special tripartite committee established by the Convention (Article VII).

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- taking enforcement action where ships are found not to be in compliance with the requirements of the Convention.

27. This section of these guidelines is intended to assist flag States by providing a summary of their responsibilities primarily in relation to the flag State inspection system. **In all cases, the national legal framework implementing the MLC, 2006, as well as the Convention itself, remain the primary sources of information and guidance as to specific responsibilities of the flag State (or competent authorities).**

2.1.2. Overview of the MLC, 2006, national flexibility (determinations/exemptions on application of the requirements)

28. As noted above the exercise of national flexibility and determinations regarding the application of the MLC, 2006, is a matter for national legal implementation and is outside the scope of these guidelines. The discussion in this section of the guidelines is intended only as a background summary for information purposes.

General application to ships and seafarers

29. In some cases, questions might arise with respect to whether a particular ship (or category of ships) is covered by the MLC, 2006, or whether a category of persons are seafarers within the meaning of the Convention or with respect to the extent to which the requirements of the Convention are to be applied to smaller ships that do not go on international voyages.
30. Determinations can be made by the competent authority on these matters (if authorized to do so under national law) either in, or in many cases, after, consultation with the shipowners' and seafarers' organizations concerned. In addition, any determinations that are made must be communicated to the Director-General of the International Labour Office (Article II, paragraph 7).
31. If there is doubt as to whether a category of persons are seafarers, then paragraph 3 of Article II should be considered. Additional guidance on this determination is provided in resolution VII adopted by the 94th Session of the ILC.³
32. Likewise, if there is doubt as to whether the MLC, 2006, applies to a ship or a particular category of ships, then paragraph 5 of Article II should be considered.
33. For ships of less than 200 gt that do not go on international voyages, paragraph 6 of Article II may need to be considered.

Specific application matters

34. There may also be decisions taken by flag States on other matters related to national implementation and application that are addressed in national laws or regulations or other measures, including substantial equivalences, determinations as to the application of, or exemptions from, some of the requirements under Regulation 3.1 and Standard A3.1 dealing with seafarer accommodation and recreational facilities for ships.

³ Resolution concerning information on occupational groups.

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- 35.** National equivalences, exemptions and variations as they pertain to the certified requirements of the MLC, 2006, will be stated in Part I of the DMLC. For other verified areas, specific national requirements would need to be consulted.

Substantial equivalence

- 36.** Where a flag State is not in a position to implement a particular requirement in Titles 1–4 of the Convention in the manner set out in Part A of the Code (the Standards), it is permitted, under Article VI, paragraph 3, of the MLC, 2006, to adopt a “substantially equivalent” provision in its national laws, regulations or other measures. Any substantially equivalent provisions that relate to matters that are subject to certification must be noted in Part I of the DMLC (see paragraph 21 above). In considering the adoption of substantially equivalent provisions, the flag State must take account of Article VI, paragraph 4, of the MLC, 2006.

Exemptions and application of Regulation 3.1 and Standard A3.1

- 37.** Regulation 3.1, Standard A3.1 and Guideline B3.1 relate to the requirements for seafarers’ accommodation and recreational facilities on ships. The purpose of those requirements (in the Regulation and the Standard) is to ensure that seafarers have decent accommodation and recreational facilities on board ship. In many cases, the requirements are directed specifically at matters affecting ship design and construction (e.g. cabin size, location, etc.) and equipment. The provisions in this part of the MLC, 2006, are very detailed and it was recognized that, in some cases, a strict application of these requirements may not be possible on ships that are already in existence or are below a certain size or on certain categories of ships. In addition, it was recognized that there is a need to take account, without discrimination, of the interests of seafarers with differing and distinctive religious and social practices. Exemptions or variations can only be granted after consultation with the shipowners’ and seafarers’ organizations concerned and must be noted in Part I of the DMLC.

Application to ships that exist at the time the MLC, 2006, enters into force for the flag State

- 38.** Regulation 3.1, paragraph 2, provides that the requirements in the Code that relate to ship construction and equipment apply only to ships constructed on or after the date when the MLC, 2006, comes into force for the flag State.
- 39.** For ships constructed before that date, the requirements relating to ship construction and equipment that are set out in earlier ILO Conventions apply to the extent that they were already applicable under the law or practice of the Member concerned (see paragraph 92 below).
- 40.** All other requirements in the MLC, 2006 (as implemented nationally), including those in Standard A3.1, that are not related to ship construction and equipment will still apply to these ships.

Application to smaller ships and specific categories of ships

- 41.** Standard A3.1, paragraphs 20 and 21, permits flag States, in specified circumstances, to exempt ships of less than 200 gt from some requirements in the Standard relating to accommodation and recreational facilities.
- 42.** Standard A3.1 also has specific provisions whereby the requirements can be modified for passenger and special purposes ships. In addition, ships less than 3,000 gt may be exempted from some requirements. National law or regulations or other measures

implementing the MLC, 2006, should be carefully reviewed by flag State inspectors to ascertain the requirements that have been adopted in the flag State.

Variations for differing religious and social practices

43. Variations are permitted on condition that they do not result in overall facilities less favourable than those which would result from the application of this Standard A3.1 (Standard A3.1, paragraph 19). In addition, evaluation of the quality and appropriateness of food provisions on the ship needs to take account of differing cultural and religious backgrounds (Regulation 3.2, paragraph 1).

Flag State inspectors would need to be aware of any national provisions as to application or exemptions or variations that have been made by the flag State under the MLC, 2006.

It is essential that this information is communicated to flag State inspectors and any ROs that have been authorized to carry out flag State inspection responsibilities.

2.1.3. Flag State inspection system responsibilities

44. The flag State is required to establish an effective system for inspection and certification of maritime labour conditions on ships that fly its flag (Regulation 5.1, paragraph 2). This involves a wide range of matters including:

- developing documents;
- proving a sufficient number of qualified inspectors (training and competence);
- developing rules or regulations providing for inspectors' powers, status and independence;
- guidelines regarding inspectors' tasks and confidentiality;
- identification (credentials);
- reporting responsibilities;
- delegation of some aspect of the inspection system to ROs (if an RO is used);
- establishing a process for receiving and responding to complaints or requests for information.

45. The purpose of the discussion below is to highlight some aspects of these areas of responsibility.

Developing documents

46. The flag State (or its competent authority) will need to develop a number of documents if they do not already exist. With respect to the ship certification system, a national form of the Maritime Labour Certificate and the two-part DMLC has to be drawn up.
47. In addition, other documents are required by the MLC, 2006, including: a standardized table for shipboard working arrangements (Standard A2.3, paragraphs 10 and 11); a standard medical certificate (Standard A1.2, paragraph 2); and a form for on-board medical reports (Standard A4.1, paragraph 2). A record-keeping system must also be maintained

for inspection reports (Standard A5.1.4, paragraph 13). Many of these other documents will already exist.

Certification system documents

48. A Maritime Labour Certificate accompanied by a DMLC must be carried on board ships of 500 gt or over that are engaged in international voyages or operate from a port or between ports in another country.
49. The Maritime Labour Certificate and DMLC (accompanied by an English translation if it is not in English) is to be posted in a conspicuous place on the ship where it is available to seafarers with a copy made available, on request, to seafarers, flag State inspectors, authorized officials in port States and shipowners' and seafarers' representatives (Standard A5.1.3, paragraph 12).
50. The requirements for the Certificate and the DMLC are set out in Regulation 5.1.3 and Standard A5.1.3. Model documents are set out in Title 5, Appendix A5-II, with examples of how they might be filled out shown in Title 5, Appendix B5-I. The documents must be in a form that corresponds to the model documents set out in Title 5, Appendix A5-II.

Maritime Labour Certificate (Regulation 5.1.3)

51. A Maritime Labour Certificate may be issued for a period not exceeding five years. It may be issued by the competent authority or by an authorized RO on its behalf, on completion of a satisfactory inspection of the national requirements for the 14 areas listed in Title 5, Appendix A5-I. A DMLC must be attached for it to be valid.

Interim Maritime Labour Certificate (Regulation 5.1.3)

52. Standard A5.1.3, paragraphs 5, 6 and 7, detail the circumstances when an interim Maritime Labour Certificate may be issued. Such a certificate may be issued only once with a maximum validity of six months. A DCML need not be issued for the period of validity of the interim certificate. An inspection must be carried out prior to expiry of the interim certificate to enable issuance of a Maritime Labour Certificate.

Declaration of Maritime Labour Compliance (DMLC) (Regulation 5.1.3)

53. DMLC, Part I – Part I is to be completed by the competent authority. It contains references to the relevant national requirements implementing of the MLC, 2006. In particular, it should clearly indicate where, if at all, the national requirements amplify the MLC, 2006, requirements. Any national substantial equivalences and any exemptions granted by the flag State must be specified in the DMLC, Part I. See Standard A5.1.3, paragraph 10, for the contents of Part I with additional guidance in Guideline B5.1.3, paragraph 1. An example of how it might be filled out is provided in Title 5, Appendix B5-I.
54. DMLC, Part II – Part II is to be completed by the shipowner and must identify the measures adopted to ensure ongoing compliance with the national requirements between inspections and the measures proposed to ensure that there is continuous improvement. Part II is subject to inspection before certification by the competent authority or an RO on its behalf. See Standard A5.1.3, paragraph 10, for the contents of Part II with additional guidance in Guideline B5.1.3, paragraphs 2, 3 and 4. See Title 5, Appendix B5-I, for an example of how it might be filled out.

Flag State inspectors

- 55.** Guidance on the appointment, powers, training, and the required credentials for flag State inspectors is contained in Standard A5.1.4. This can include appointment of ROs to carry out aspects of these responsibilities. In addition, competent authorities need to develop guidelines for inspectors regarding the tasks to be performed.

Authorization of recognized organizations

- 56.** Under Regulation 5.1.1, paragraph 3, public institutions or other organizations, recognized as competent and independent, may be authorized, in accordance with the MLC, 2006, by a flag State to carry out inspections or to issue certificates or do both on its behalf. They are called “recognized organizations” in the MLC, 2006.
- 57.** The role of the RO is described in paragraph 3 of Regulation 5.1.1 and paragraph 1 of Regulation 5.1.2. Standard A5.1.2 sets out requirements for flag States that may wish to appoint public institutions or other organizations to carry out inspections required by the MLC, 2006, in accordance with normal practice. An up to date list of any authorizations (and the scope of the authorization) for ROs must be provided to the International Labour Office for publication (Standard A5.1.2, paragraph 4).
- 58.** When an RO is appointed, the flag State (or its competent authority) needs to specify the scope of the RO’s role with respect to verification of national requirements. Although the attention of an RO carrying out a flag State inspection might be drawn to a possible deficiency on a ship by seafarers and reported to the flag State, the investigation of complaints that are made to the flag State regarding its ships (Standard A5.1.4, paragraph 5) or the enforcement of the national requirements implementing the MLC, 2006 (see Chapter 4 of these guidelines) should be dealt with by the competent authority in each flag State. Information as to the role of ROs and the scope of their authority should also be made available to seafarers in the event that they have a complaint.
- 59.** The flag State should also have in place an oversight system for ROs that it has authorized. This system should include procedures for communicating with the RO and provision of information on any national measures that differ from the MLC, 2006, provisions (Standard A5.1.2, paragraph 3). Guideline B5.1.2, paragraph 6, provides additional information about oversight procedures.

Annual reports

- 60.** The competent authority is to publish an annual report on inspection activities within six months of the end of each year. When compiling an annual report, the flag State should give due consideration to the contents of Guideline B5.1.4, paragraph 10.

Responding to requests for information

- 61.** It is the responsibility of the flag State to respond in a timely manner to requests for advice, information and assistance from a port State control authority in order to ensure that the ship in question is not unduly delayed by the port State authority.

Responding to complaints about maritime labour conditions on a ship

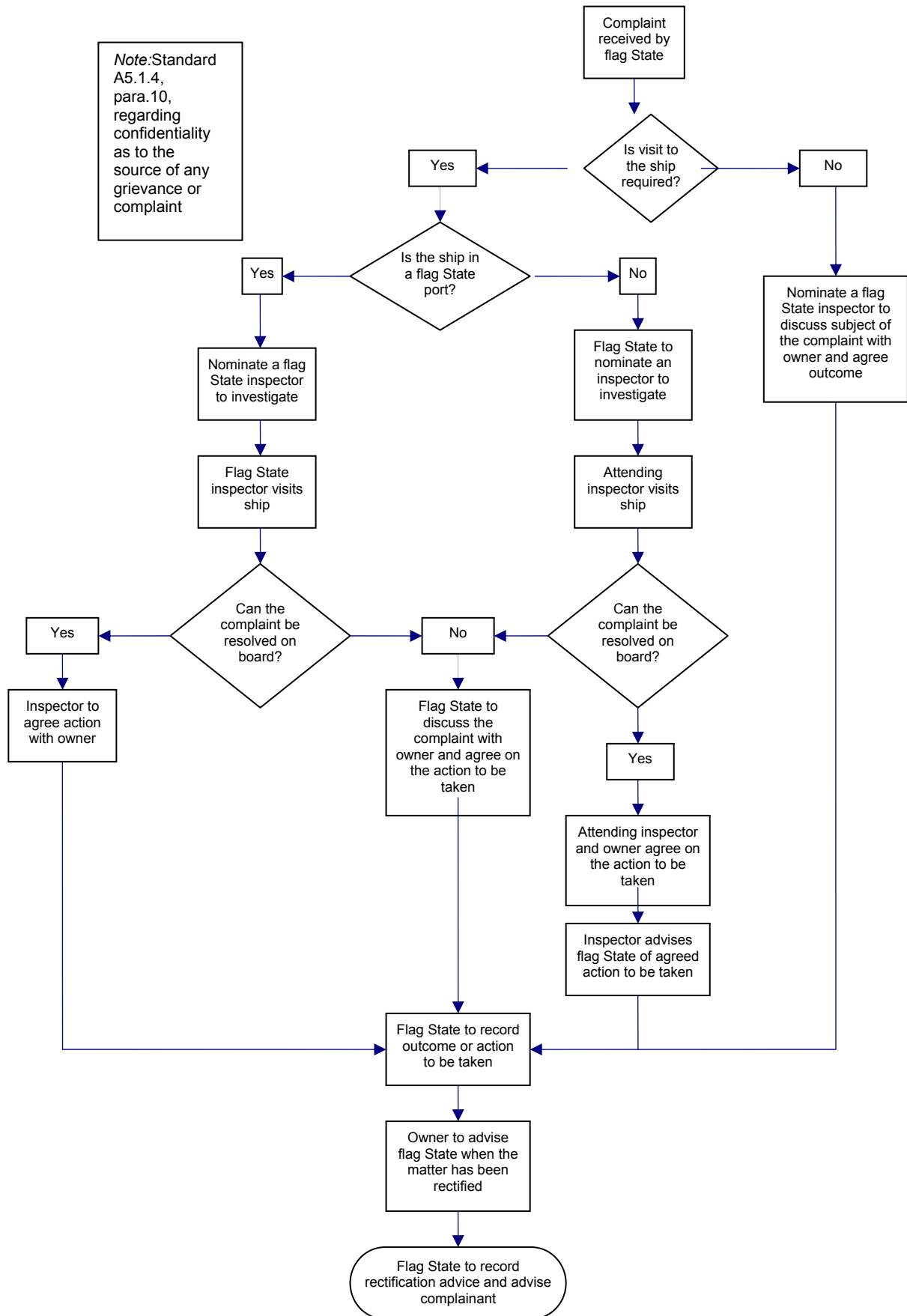
- 62.** Standard A5.1.4, paragraph 5, of the MLC, 2006, provides that:

If a Member receives a complaint which it does not consider manifestly unfounded or obtains evidence that a ship that flies its flag 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 declaration of maritime labour compliance, the Member shall take the steps necessary to investigate the matter and ensure that action is taken to remedy any deficiencies found.

63. Information about non-conformity or serious deficiencies in the conditions on a ship or the on-board implementation of Part II of the DMLC could come from a number of sources including from a concern raised with an RO by a seafarer during an inspection.
64. A flag State is expected to have in place a process for receiving and responding to such complaints.
65. **It is the responsibility of the flag State to receive complaints, investigate and take appropriate enforcement action.**
66. An RO may in some circumstances be specifically authorized to investigate a particular complaint by a flag State, but the responsibility for resolution of a complaint remains with the flag State.

Chart showing a flag State process for responding to a complaint



2.2. Maritime labour inspection and certification process

2.2.1. General note

- 67.** All ships covered by the MLC, 2006, are subject to inspection. The inspection standards are the national requirements implementing the MLC, 2006.
- 68.** The relevant national provisions implementing the requirements of the MLC, 2006, in the 14 areas that must be certified for some ships will be referenced in Part I of the standard DMLC that is to be prepared by the competent authority. In the case of ships that are not certified, these requirements will be the same. This means that Part I of the standard DMLC will be relevant to the inspection of those ships as well, with respect to the 14 areas. However, since the MLC, 2006, documents will not be issued for those ships, the inspector will not have the benefit of the DMLC, Part II.
- 69.** Inspectors familiar with maritime inspections in connection with the ship safety and marine pollution prevention conventions of the International Maritime Organization (IMO) will note a difference of terminology in the MLC, 2006, in connection with the certification process. The IMO conventions refer to ships being “surveyed” for the purpose of issuing or endorsing a statutory certificate. The MLC, 2006, does not distinguish between a survey and an inspection. The term “inspection” is used to refer to the first inspection of a ship (for the issue of a certificate – in the case of ships that are to be certified) and to any subsequent inspections to verify ongoing compliance.
- 70.** A maritime labour inspection can be divided into two parts: the first concerns the physical items such as the seafarer accommodation and galley conditions, whilst the second relates to other elements of decent work or human and operational issues such as payment of wages, seafarer employment agreements, minimum age, medical certification and hours of work or rest. Some areas of concern, such as occupational safety and health, are mixed, involving physical aspects (protective equipment/construction) and operational practices on a ship. For a satisfactory inspection to be completed, it is likely that the inspector will need to employ different strategies and, in particular, will need to be sensitive when interviewing seafarers on what may be considered to be personal or potentially controversial matters.
- 71.** In addition, as stated in Standard A5.1.4, paragraphs 10 and 11:
10. Inspectors shall treat as confidential the source of any grievance or complaint alleging a danger or deficiency in relation to seafarers’ working and living conditions or a violation of laws and regulations and give no intimation to the shipowner, the shipowner’s representative or the operator of the ship that an inspection was made as a consequence of such a grievance or complaint.
 11. In particular, inspectors shall: ...
 - (b) subject to appropriate sanctions or disciplinary measures, not reveal, even after leaving service, any commercial secrets or confidential working processes or information of a personal nature which may come to their knowledge in the course of their duties.
- 72.** In all circumstances, attending inspectors must exercise their professional judgement when carrying out maritime labour inspections.

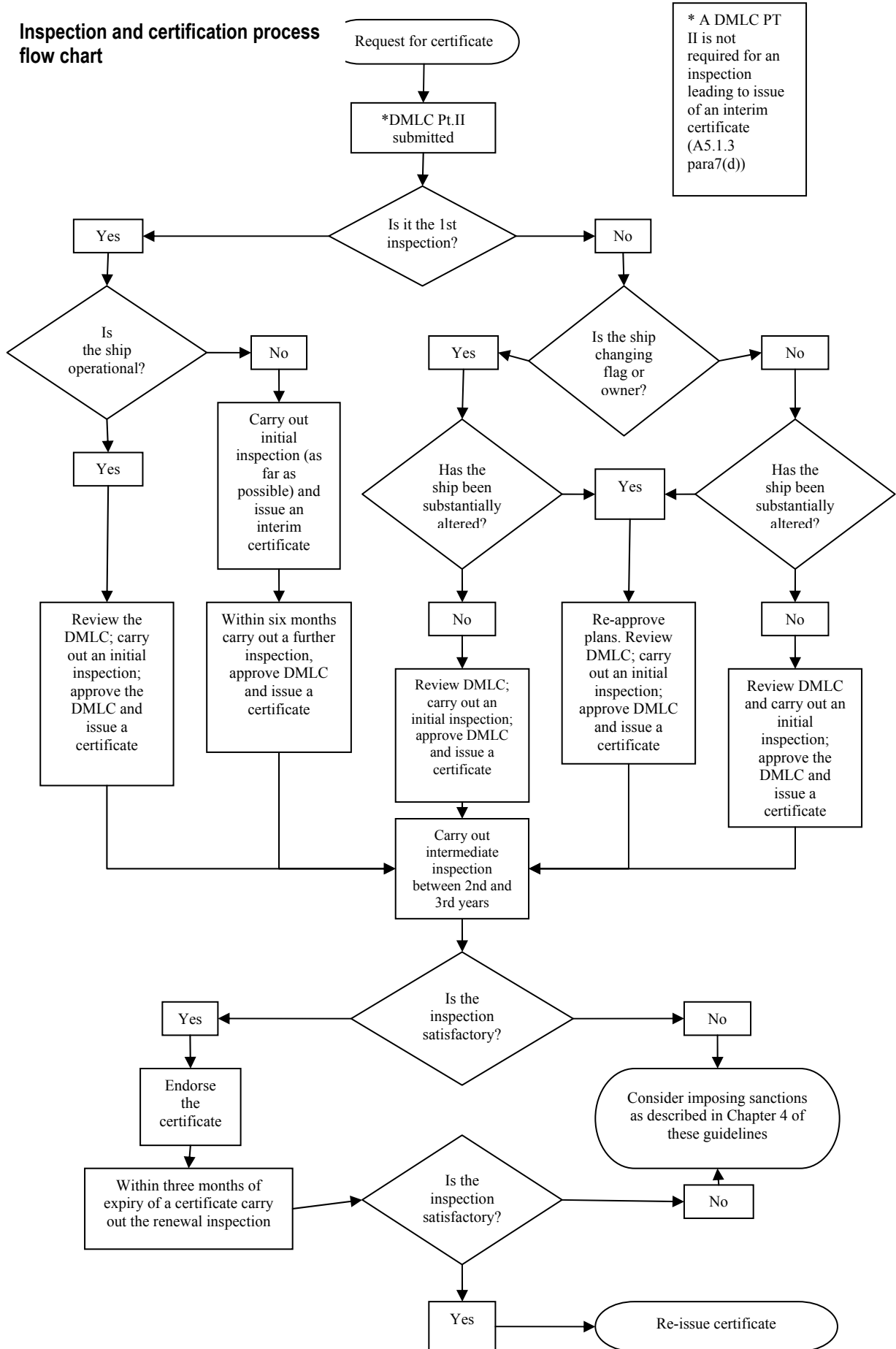
2.2.2. Preparing for an inspection

73. In addition to reviewing, especially in the case of the initial inspection, a ship's DMLC, Part II, the flag State inspector should review various sources of information in order to gain an understanding of a ship's history (where applicable). Information could be obtained from the individual ship files containing previous inspection reports, relevant flag state and port State control and other databases and ILO records.
74. For existing certified and uncertified ships before an inspection of a ship is carried out, the flag State inspector should ascertain from the information sources available whether there are any outstanding deficiencies which have not been addressed by the shipowner. If there are any outstanding deficiencies not addressed by the shipowner then the competent authority or flag State inspector should take action (see Chapter 4 below) regarding rectification in a timely manner.
75. A flag State inspector must also be aware of any national determinations, equivalences, exemptions and variations that have been made by the flag State under the MLC, 2006.
76. The Maritime Labour Certificate and the attached DMLC (where available for existing ships) should be the starting point for flag State inspections of ships subject to certification.
77. For ships that are not subject to certification (unless certification is requested), the requirements of the national laws or regulations or collective bargaining agreements or other measures implementing the MLC, 2006, are the starting point, although the standard DMLC, Part I will be equally relevant to inspections of these ships.
78. In both cases (certified and uncertified ships) there are several other matters in addition to the 14 areas subject to certification that would also need to be checked. These are included in the detailed inspection information that is set out in Chapter 3, section 3.2, below.
79. In the case of ships that carry a Maritime Labour Certificate, it is important that before a first inspection, or any other inspection, commences, the attending flag State inspector review the DMLC, Part II, setting set out the shipowner's planned procedures (measures) for the ship, in order to ascertain how ongoing compliance with the national requirements implementing the MLC, 2006 (referenced in Part I of the DMLC) will be achieved.

2.2.3. Overview of the process for ship inspections and certification

80. The following chart illustrates possible stages in the ship inspection and certification process. Ships may need to be inspected and certified or may only be inspected in a variety of circumstances. Some ships may be under construction or newly constructed, others may transfer from another registry and some may not need to be certified. This chart does not attempt to cover all these situations, but instead provides a more general overview of the elements of the process. More specific information on the various stages and situations is in the remainder of this section of Chapter 2.

Inspection and certification process flow chart



2.2.4. First inspection

81. A first inspection may need to be carried out during construction of the ship. It would always be carried out at the point when it first enters service.
82. In the case of ships under construction, the relevant drawings in relation to applicable MLC, 2006, requirements (Regulations 3.1 (Seafarer accommodation and recreational facilities), 3.2 (Food and catering) and 4.3 (Health and safety protection and accident prevention)) should be reviewed for compliance with the national requirements implementing the MLC, 2006.
83. In the case of ships entering service, the “as built” arrangement for items covered under Title 3 should be checked against the drawings when the flag State inspector attends the ship. Compliance with the other national requirements (including those covered by Part I of the DMLC in the case of ships that are to be certified) should be inspected, to the extent possible, immediately prior to the ship entering service on the basis of such documentation and information as is available.
84. In addition, Part II of the DMLC, setting out the measures drawn up by the shipowner for ensuring initial and ongoing compliance with the national requirements summarized in the DMLC, Part I must be reviewed (where applicable) to ensure that those measures are adequate and enable the competent authority or RO to certify Part II and to issue the DMLC in accordance with Standard A5.1.3, paragraph 10. This will normally be an onshore review of documents, especially in the case of a new ship.
85. The above description relates to the first inspection of a ship. In subsequent inspections (referred to below), the review with respect to the DMLC, Part II will concentrate on whether or not the measures set out in Part II are being properly implemented.
86. Upon satisfactory completion of the first inspection, including the document review, the Maritime Labour Certificate, including the DMLC, can be issued to the ship concerned.

2.2.5. Intermediate inspection

87. An intermediate inspection is required between the second and third anniversary dates⁴ in order to ensure ongoing compliance with the requirements of the MLC, 2006. The scope and depth of the intermediate inspection is to be equal to an inspection for renewal of the certificate. The certificate is to be endorsed following satisfactory intermediate inspection. Failing to undergo this inspection and record the event on the Maritime Labour Certificate will invalidate a certificate.

2.2.6. Renewal inspection

88. For a Maritime Labour Certificate renewal inspection, all requirements need to be inspected. When the renewal inspection commences up to three months before the expiry date of the existing certificate the new certificate will be valid for a period of five years from the date of expiry of the existing certificate (Standard A5.1.3, paragraph 3).
89. It is possible for a renewal inspection to be completed more than three months before the expiry date of the existing Maritime Labour Certificate. In that case, the new Certificate

⁴ “Anniversary date” means the day and month of each year which will correspond to the date of expiry of the Maritime Labour Certificate (Standard A5.1.3, para. 2).

would be valid for a period not exceeding five years starting from the date of completion of the renewal inspection (Standard A5.1.3, paragraph 4).

2.2.7. Changes of flag/re-registration, ownership change, substantial alteration

90. When a ship changes flag or changes ownership or substantial changes have been made to the structure or equipment dealt with under Title 3 (seafarers' accommodation), the Maritime Labour Certificate ceases to be valid and an inspection will be required (Standard A3.1, paragraph 3).

2.2.8. Ships in existence prior to entry into force of the MLC, 2006, for the flag State

91. Regulation 3.1, paragraph 2, provides that the requirements in Standard A3.1 that relate to ship construction and equipment apply only to ships constructed on or after the date when the MLC, 2006, comes into force for the flag State.

92. For ships constructed before that date, the requirements relating to ship construction and equipment that are set out in the Accommodation of Crews Convention (Revised), 1949 (No. 92), and the Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133), apply to the extent that they were already applicable, under the law or practice of the Member concerned. The date of construction is defined as the date when a ship's keel is laid or when it is at a similar stage of construction.

93. As noted earlier all other requirements in the MLC, 2006, as implemented nationally, including those in Standard A3.1 that are not related to construction and equipment, will still apply to these ships.

2.2.9. Ships where owners have requested certification

94. Owners of ships that are not required to carry a Maritime Labour Certificate may request that their ships be included in the certification system and be issued a Maritime Labour Certificate upon submission of a DMLC, Part II and completion of the inspection process.

2.2.10. Ships that are not certified

95. The MLC, 2006, applies to all seafarers on ships covered by the Convention regardless of the type and size of ships or whether or not the ship has been issued with a Maritime Labour Certificate. This means that ships below 500 gt or ships that are not engaged in international voyages or that operate from a port or between ports of another country are to be inspected in the same way as a ship that has been or is seeking certification. The national provisions implementing the requirements of the Convention on certified matters, as summarized in the DMLC, Part I, would, therefore, be applicable to conditions on these ships also; however, the shipowner will not have completed a DMLC, Part II.

2.2.11. Flag State inspectors' reports

96. Regardless of whether the ship is certified under the MLC, 2006, or not, after conducting an MLC, 2006, inspection, the attending inspector would need to provide an inspection report (Standard A5.1.4, paragraph 12). The report should stipulate that any deficiencies found during the inspection are rectified in accordance with standard inspection reporting procedures. A copy of the report is to be given to the ship's master and a copy is to be

posted on the ship's notice board for the information of the seafarers. A third copy is to be retained by the flag State or RO who will keep the necessary records. Upon a request, on behalf of the seafarers, a copy of the report is to be sent to the seafarers' representatives.

- 97.** For ships carrying a Maritime Labour Certificate and DMLC, the results of subsequent inspections (following the first) or verifications and any significant deficiencies found during the verifications are to be recorded together with the date when the deficiencies were found to be remedied (Standard A5.1.3, paragraph 11). This record, in English (or an English translation when it is not written in English) is to be either written on the on-board copy of the DMLC or appended to it or otherwise made available in some way for the information of seafarers, flag State inspectors, authorized officers in a port State and shipowners' and seafarers' representatives.

Chapter 3. Inspecting the MLC, 2006, maritime labour requirements

3.1. General note

- 98.** As stated earlier, in all cases the relevant national laws or regulations or collective bargaining agreements or other measures implementing the MLC, 2006, are the authoritative statement of requirements on any issue. The MLC, 2006, sets out the requirements that are to be implemented nationally. These guidelines refer only to the MLC, 2006, requirements and are to be considered general guidance only. Thus, although more detailed guidance is provided in section 3.2 below, this guidance will not necessarily be wholly relevant in all countries. The guidance in section 3.2 takes account of the requirements of the Convention as set out in the Articles and the Regulations and in Part A of the Code, including the requirement on ILO member States to give due consideration to implementing their responsibilities in the manner provided for in the non-mandatory Part B of the Code. This means that there may be differences of detail between provisions of the MLC, 2006, and national provisions (or other measures) that have been adopted to implement the MLC, 2006. These differences may be due to the fact that, after the required due consideration has been given, the national laws or regulations or collective bargaining agreements or other measures are implementing the obligations under Part A of the Code in ways that are different from those recommended in Part B. As discussed in section 2.1 of Chapter 2, a member State may also have decided to adopt legislative provisions under Article VI of the MLC, 2006, that are “substantially equivalent” to the requirements of Part A. In addition, exemptions from certain requirements may have been determined in accordance with the Convention. Any such differences should be stated in Part I of the flag State’s standard DMLC and should be taken into account in the inspection.
- 99.** Flag State inspectors may, however, be unable to find any national provisions or other measures that cover certain of the Convention’s requirements or may consider that certain national requirements conflict with those of the MLC, 2006. In the case of apparent gaps in coverage of requirements, inspectors (including ROs) should request clarification from the flag State’s competent authority. In the case of apparent conflict between national laws and the MLC, 2006, the flag State inspector should draw the attention of the competent authority to the problem.
- 100.** All of the requirements set out below in section 3.2 are subject to inspection on all ships covered by the MLC, 2006. For ships that are to be certified, this inspection will result in the certification of the ships as complying with the national requirements in 14 of the areas set out in section 3.2 below, following inspection to verify:
- compliance with the national law summarized in the DMLC, Part I; and
 - implementation of the measures that have been adopted by the shipowner to ensure initial and ongoing compliance (i.e. the measures set out in the DMLC, Part II).
- 101.** In order to verify that the national requirements are complied with and that the shipowner’s measures have been correctly implemented and are being followed (to the extent possible in the case of newly built ships), the flag State inspector should obtain supporting objective evidence by:
- inspecting the relevant areas of the ship;

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- inspecting further documentation such as birth certificates, medical certificates, training records, crew lists and payroll records, seafarer employment agreements, safe manning documents and work schedules;
 - interviewing, in private, a representative number of seafarers.

102. As discussed earlier, in section 2.2, ships will be subject to inspection in various circumstances. This means that the inspection of the requirements will need to take account of the context for the inspection. For example, for new ships that are coming into service there may not yet be historical operational information for the ship and in some cases seafarers may not yet have joined the ship and would not be available for interviews and would not have been paid, etc. The review in that case will largely involve a review of the shipowner's measures for the purpose of certifying Part II of the DMLC, a physical inspection of the ship and a review of any documentation that is available with respect to the items listed below, e.g. a sample of the seafarers' employment agreement.

103. For ships that are to be certified or already carry a Maritime Labour Certificate, Part II of the DMLC must be reviewed as the first step in the inspection to ensure that the shipowner's measures for ongoing compliance in each of the 14 areas that are subject to certification are being followed on the ship.

104. It should be noted that, whilst all the certified items should be inspected, any inspection is a sampling process and inspectors should use their professional judgement and expertise when determining the depth of inspection for each requirement. Standard A5.1.4, paragraph 15, provides that when inspections are conducted or when measures are taken, all reasonable efforts shall be made to avoid a ship being unreasonably detained or delayed.

3.2. The MLC, 2006, requirements to be inspected and, where applicable, certified

Regulation 1.1 – Minimum age

Standard A1.1; Guideline B1.1

* **Inspected and certified**

** **Review DMLC, Part II**

Basic requirements

■ Persons below the age of 16 shall not be employed or engaged or work on a ship (Standard A1.1, paragraph 1).

■ Seafarers under the age of 18 shall not be employed or engaged or work where the work is likely to jeopardize their health or safety (Standard A1.1, paragraph 4).

* Night work for seafarers under the age of 18 is prohibited, except to the extent that an exemption has been made by the competent authority under Standard A1.1, paragraph 3, in the case of training programmes (Standard A1.1, paragraph 2).

* "Night" is defined in accordance with national law and practice. It covers a period of at least nine hours starting no later than midnight and ending no earlier than 5 a.m. (Standard A1.1, paragraph 2).

How to check the basic requirements

- Check a crew list, a birth certificate or other official document confirming seafarers' birth dates.
- Check work schedule with respect to seafarers aged 16–18 to determine hours and nature of work.
- Check accident reports and safety committee reports to determine whether seafarers 18 years or below were involved.
- Confirm information through interviews with a representative number of seafarers.

Examples of deficiencies

- Person under the age of 16 working as a seafarer.
- Seafarer under the age of 18 years working at night (and not as part of a training programme).
- Seafarer under the age of 18 years carrying out tasks that are likely to jeopardize their safety or health.

Regulation 1.2 – Medical certificate

Standard A1.2; Guideline B1.2

* **Inspected and certified**

** **Review DMLC, Part II**

Basic requirements

- Seafarers are not allowed to work on a ship unless they are certified as medically fit to perform their duties.
- For seafarers working on ships ordinarily engaged on international voyages the certificate must be provided in English (Standard A1.2, paragraph 10).
- A valid certificate * is a certificate provided by a person recognized by the competent authority as a duly qualified medical practitioner **
- The period of validity for a certificate is determined under national law in accordance with the following:
 - two-year maximum for medical certificates except for seafarers under 18; then it is one year;
 - six-year maximum for a colour vision certificate.

* **Certificates issued in accordance with, or meeting the substance of the applicable requirements, under the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW), as amended, are to be accepted as meeting these requirements (Standard A1.2, paragraph 3).**

** A duly qualified medical practitioner is a medical practitioner recognized by the flag State as qualified to carry out medical examinations of seafarers and issue medical certificates (Standard A1.2, paragraph 4).

How to check the basic requirements

- Check the crew list.
- Check for valid medical certificates stating that seafarers are medically fit to perform their duties.
- Check for valid colour vision certificates.
- Check (by reviewing work schedules and interviews) that medical restrictions on work for individual seafarers are being respected and that seafarers are not assigned to or carrying out work contrary to these restrictions.
- In urgent cases where the competent authority of the flag State has permitted a seafarer to work without a valid or with an expired certificate, the authorization or permit should be checked to ensure it is still valid (subject to a three-month maximum).
- In cases where a medical certificate has expired while at sea, the certificate must be obtained within a maximum of three months.
- Check that the medical certificates of seafarers on ships ordinarily engaged in international voyages are in English.
- Check that the medical certificate has been issued by a duly qualified medical practitioner.

Examples of deficiencies

- Seafarer on board without a valid medical or colour vision certificate or authorization from the competent authority in urgent cases.
- Seafarer working on the ship or performing tasks contrary to a restriction on a medical certificate.
- Seafarer's medical certificate not in the English language on a ship ordinarily engaged in international voyages.
- A medical certificate that has not been issued by a qualified medical practitioner.

Regulation 1.3 – Training and qualifications

* **Inspected and certified**

** **Review DMLC, Part II**

Basic requirements

- Seafarers must be trained or certified * as competent or otherwise qualified to perform their duties in accordance with flag State requirements.

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- Seafarers must have successfully completed training for personal safety on board ship.
- * Training and certification in accordance with the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW), as amended, is to be accepted as meeting these requirements.**

How to check the basic requirements

- Check the minimum safe manning document (SMD) to verify the qualifications of the seafarers.
- Check certificates for STCW personnel confirming seafarer's competency with respect to their duties (check crew list to determine duties).
- Check documentary evidence (from a shipowner or, if relevant to the position concerned, a national authority or otherwise) confirming that seafarers have any qualifications that may be required under national law for those performing other duties on board ship (for example, ships' cooks – see below, Regulation 3.2).
- Check for evidence confirming that all seafarers have successfully completed training for personal safety on board ship.
- Check a copy of the training material that is issued to the crew.
- Interview a representative number of seafarers to confirm training.

Examples of deficiencies

- Seafarer's qualifications not in accordance with the SMD.
- Seafarers working on the ship who are not trained or certified or otherwise qualified to perform their duties.
- Certificates are not up to date or have expired.
- Seafarer working on the ship who has not successfully completed personal safety training.

Regulation 1.4 – Recruitment and placement

Standard A1.4; Guideline B1.4

- * **Inspected and certified**
- ** **Review DMLC, Part II**

Basic requirements

- Where a shipowner has used a private seafarer recruitment and placement service, it must be licensed or certified or regulated in accordance with the MLC, 2006. Seafarers shall not be charged for use of these services.
- Shipowners using services based in States not party to the MLC, 2006, must verify, as far as practicable, that these services are operated consistently with the MLC, 2006 (Standard A1.4, paragraph 9).

How to check the basic requirements

- Check the national web sites of the flag State regarding the licensing of seafarer recruitment and placement services (manning agencies).
- Check documentation or other information to allow the inspector to ascertain the following:
 1. Direct engagement

Seafarers were recruited and engaged by the shipowner. If this is the case, this fact should be noted and no further action is necessary.
 2. Recruited through a public service

Seafarers were engaged through a public seafarer recruitment and placement service in either the flag State or in another State to which the MLC, 2006, applies. If this is the case, this should be noted and no further action is necessary.
 3. Recruited through a private service (or a service operated by a seafarers' organization) in an MLC, 2006, country

Seafarers were engaged through a private seafarer recruitment and placement service in the flag State. If this is the case, check for documentary evidence confirming that the service concerned is operating in accordance with the national laws or regulations or other measures implementing the MLC, 2006, requirements. Where the supervision of such services is entrusted to another national authority, a statement by that authority that the service has been found to be operating in accordance with the relevant law is sufficient for this purpose. If the private seafarer recruitment and placement service is in another State to which the MLC, 2006, applies, no action need be taken unless the inspector has received a clear indication that basic rights have been violated (such as charging seafarers for use of services).
 4. Recruited through a service that is *not* based in an MLC, 2006, country

Seafarers were engaged through a seafarer recruitment and placement service based in a State or territory to which the MLC, 2006, does not apply. If this is the case, then documentation should be available showing that the shipowner has verified, as far as practicable, that the service is operated consistently with the MLC, 2006. The shipowner's conclusion that the service is operated consistently with the MLC, 2006, should be supported by adequate documentation.
- Check, by interviewing a representative number of seafarers, that they have not paid a fee or other charge to a recruitment or placement service and have been informed of their rights and duties.
- Check, by interviewing a representative number of seafarers, that the recruitment and placement service used does not operate a blacklist.

Examples of deficiencies

- No documentary evidence available to indicate that the service or agency is operated in accordance with the MLC, 2006.

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- A seafarer who was recruited through a private seafarer recruitment and placement service that was not licensed or certified or regulated in accordance with the MLC, 2006, or whose licence or certificate or any other similar document is no longer valid.
 - Use of a recruitment and placement service requiring the seafarer to pay a fee or otherwise making a charge for employment services (if this is a possibility then it should also be reported to the competent authority in the State where the service is based).
 - A seafarer working on board who was recruited by a private recruitment and placement service operating in a State which is not party to the MLC, 2006, in cases where the shipowner cannot support its conclusion of consistency with the MLC, 2006.

Regulation 2.1 – Seafarers’ employment agreements

Standard A2.1; Guideline B2.1

* **Inspected and certified**

** **Review DMLC, Part II**

Basic requirements

- All seafarers must have a copy of their seafarers’ employment agreement (SEA) (or other evidence of contractual or similar arrangements), signed by both the seafarer and the shipowner or shipowner’s representative.
- A SEA must, at a minimum, address the matters set out in Standard A2.1, paragraph 4(a)–(k) of the MLC, 2006 (Standard A2.1, paragraph 1(a)).
- Seafarers must also be given a document containing a record of their employment on the ship (such as a discharge book) (Standard A2.1, paragraph 1(e)).
- Where a collective bargaining agreement forms all or part of the SEA, the agreement must be on board the ship with relevant provisions in English (except for ships engaged only in domestic voyages) (Standard A2.1, paragraph 2).

How to check the basic requirements

- Check a copy of the SEA and any applicable collective bargaining agreements for seafarers and, at a minimum, a standard form of the SEA (in English) for the ship.
- Check, where possible, given the timing of the inspection relative to employment period, possession by seafarers of a record of their employment (or request that such records are submitted to the inspector at a later date).
- Check that seafarers’ records of employment do not contain statements as to the quality of their work or as to their wages.
- Interview a representative number of seafarers to confirm that, on signing a SEA, seafarers were given an opportunity to examine and seek advice and freely accepted the agreement before signing.

Examples of deficiencies

- A seafarer without a SEA working on the ship.
- A seafarer, with a SEA that does not address all the items in Standard A.2.1, paragraph 4(a)–(k).
- A seafarer with a SEA that is inconsistent with the national requirements.
- No system or provisions for seafarers to have their employment recorded.
- Seafarers are not given a record of their employment on the ship on completion of engagement.
- A collective bargaining agreement that forms all or part of the SEA is either not on board or, if on board, not in English on a ship that engages in international voyages.
- Standard form SEA is not in English.

Regulation 2.2 – Wages

Standard A2.2; Guideline B2.2

* **Inspected and certified**

** **Review DMLC, Part II**

Basic requirements

- Seafarers must be paid regularly and in full for their work in accordance with their employment agreements. *
- Seafarers are entitled to an account each month indicating their monthly wage and any authorized deductions such as allotments.
- No unauthorized deductions, such as payments for travel to or from the ship
- Charges for remittances/allotment** transmission services must be reasonable and exchange rates in accordance with national requirements.

* Flag States may wish to consider requiring shipowners to carry on board their ships' documents such as a copy of payroll or electronic record sheets.

** An allotment is an arrangement whereby a proportion of seafarers' earnings are regularly remitted, on their request, to their families or dependants or legal beneficiaries whilst the seafarers are at sea (Standard A2.2, paragraphs 3 and 4).

How to check the basic requirements

- Check the SEA and documentation, such as the payroll records to confirm wages are being paid at intervals no greater than one month as specified in their SEA or relevant collective agreements.
- Check relevant documents showing service charges and exchange rates applied to any remittances made to the seafarers' families or dependants or legal beneficiaries at their request.

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- Check relevant documents to confirm the payment of wages including the requirement that a monthly account (such as a wage slip) is provided to the seafarers. Copies of individual accounts should be available to inspectors at their request.
 - Check that the wages set out in the SEA are consistent with national wages for seafarers, if national laws or regulations governing seafarers' wages have been adopted.
 - Interview a representative number of seafarers to confirm compliance with requirements on the payment of wages.

Examples of deficiencies

- A seafarer is not paid regularly (at least monthly) and in full in accordance with the SEA or collective bargaining agreement.
- A seafarer is not given a monthly account (such as a wage slip) of wage.
- Allotments are not being paid or are not being paid in accordance with the seafarer's instructions.
- Charge for converting and transmitting currencies is not in line with national requirements.
- More than one set of wage accounts is in use.

Regulation 2.3 – Hours of work and hours of rest

Standard A2.3; Guideline B2.3

* **Inspected and certified**

** **Review DMLC, Part II**

Basic requirements

- Seafarers' working time must be in accordance with the MLC, 2006, requirements regarding hours of work * and hours of rest ** (as implemented in national standards) (Standard A2.3, paragraphs 4, 5 and 6)

* "Hours of work" means time during which seafarers are required to do work on account of the ship (Standard A2.3, paragraph 1(a)).

** "Hours of rest" means time outside hours of work; this term does not include short breaks (Standard A2.3, paragraph 1(b)).

How to check the basic requirements

- Check that there is an approved standardized table of shipboard working arrangements setting out the national requirements for maximum hours of work or the minimum hours of rest and the schedule for service at sea and in port, posted in an easily accessible place on the ship.
- Check the working arrangement listed in the table.

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- Check documents (the SEA or the relevant collective agreement and other documents, such as the bridge and engine room logbooks, that can also be checked) to confirm that:
 - minimum hours of rest are not less than ten hours in any 24-hour period, and 77 hours in any seven-day period;
 - or, if the relevant national law relates to hours of work, the maximum hours of work do not exceed 14 hours in a 24-hour period and 72 hours in any seven-day period.
 - Check for a table of working arrangements or schedule in the working language or language of the ship and in English.
 - Check that there are up to date records of work or rest, as required under national standards, for each seafarer serving on the ship.

Examples of deficiencies

- A seafarer's work schedule does not conform to the applicable standards.
- Table of working arrangements is not posted or does not contain required information.
- Table of working arrangements is not in English and/or the working language(s) of the ship.
- Records of work or rest are not available or are not maintained.
- Evidence of exceeding the limits of work and rest and no record of suspension of the schedule has been noted in the logbook.

Regulation 2.4 – Entitlement to leave

Standard A2.4; Guidelines B2.4

*** Inspected**

Basic requirements

- Seafarers must be allowed paid annual leave* in accordance with national laws and regulations implementing the MLC, 2006.
- Unauthorized agreements to forgo the minimum annual leave with pay are prohibited (Standard A2.4, paragraph 3).
- Seafarers are to be granted shore leave to benefit their health and well-being and consistent with the operational requirements of their positions.

* The MLC, 2006, allows for differing calculations but establishes a minimum annual paid leave calculated on the basis of two-and-a-half calendar days per month of employment. In addition to the minimum period of annual leave, seafarers may also be entitled to a number of public and customary holidays recognized by the flag State. This is regardless of whether they fall within the individual seafarer's period of annual leave. For additional guidance see Guideline B2.4.1, paragraph 4.

How to check the basic requirements

- Check documents, such as the SEA or the relevant collective agreement, to confirm that seafarers are provided with the annual leave with pay entitlement required by the flag State (at a minimum, to be calculated on the basis of two-and-a-half calendar days per month of employment).
- Check that seafarers' employment and wage records, confirm that this requirement is met.
- Interview a representative number of seafarers to confirm that they receive paid annual leave and are allowed an appropriate level of shore leave by the shipowner.

Examples of deficiencies

- Seafarer is not paid when taking annual leave.
- Seafarer who has an annual leave entitlement that is less than the national requirement (if more than two-and-a-half calendar days per month) or less than two-and-a-half calendar days per month of employment.
- Seafarer does not have an entitlement to paid annual leave in the SEA.
- Seafarer has agreed to forgo minimum annual leave with pay (and the competent authority has not authorized the agreement) (Standard A2.4, paragraph 3).
- Seafarer not allowed shore leave (although leave would be consistent with operational requirements of the seafarer's position).

Regulation 2.5 – Repatriation

Standard A2.5; Guideline B2.5

*** Inspected**

Basic requirements

- Seafarers are to be repatriated, with no cost to themselves, in accordance with the national provisions implementing the MLC, 2006.
- Shipowners are required to provide financial security to ensure that repatriation will occur.
- A copy of the applicable national provisions regarding repatriation must be carried on ships and available to seafarers in an appropriate language (Standard A2.5, paragraph 9).

How to check the basic requirements

- Check relevant documents confirming that shipowner has provided financial security.
- Check that a copy of the national provisions regarding repatriation is available (in an appropriate language) to seafarers.
- Check that the SEA or relevant collective bargaining agreement includes information on the repatriation arrangements confirming the situations when costs relating to the

repatriation of seafarers are, under the national provisions, to be borne by the shipowner. For example, situations such as:

- expiry of the employment agreement;
 - illness or injury;
 - shipwreck;
 - the shipowner’s inability to fulfil its obligations by reason of insolvency, sale of the ship or change of flag;
 - the ship being bound for a war zone;
 - termination or interruption of employment in accordance with an industrial award, etc. (Guideline B2.5, paragraph 1).
- Check for compliance with any national provision that seafarers under the age of 18 are to be repatriated after a prescribed period if it is apparent that they are unsuited to a career at sea (Guideline B2.5.2, paragraph 3).

Examples of deficiencies

- Seafarer is not repatriated in accordance with national requirements.
- Ship does not have a copy of the national provisions on repatriation on board and accessible to seafarers.
- No evidence that financial security for repatriation has been provided.
- No provision for seafarer repatriation is in place.

Regulation 2.7 – Manning levels

Standard A2.7; Guideline B2.7

* **Inspected and certified**

** **Review DMLC, Part II**

Basic requirements

- Ship must have a sufficient number of seafarers employed on board to ensure that ships are operated safely, efficiently and with due regard to security under all conditions, taking into account concerns about fatigue and the particular nature and conditions of voyage.
- Ship must comply with the manning levels listed on the Safe Manning Document (SMD) or equivalent issued by the competent authority (Standard A2.7, paragraph 1).

How to check the basic requirements

- Check safe manning document (SMD) or applicable equivalent.

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- Check crew list for number, category (such as cooks and those responsible for food preparation and those who are responsible for medical care) and qualifications of seafarers working on board.
 - Check on-board table of working arrangements to confirm that safe manning requirements are being implemented.
 - Interview a representative number of seafarers to confirm that requirements are met.

Examples of deficiencies

- Number and/or categories of seafarers working on board does not correspond with those stated in the SMD.
- No SMD or equivalent on board.

Regulation 3.1 – Accommodation and recreational facilities

Standard A3.1; Guideline B3.1

*** Inspected and certified**

**** Review DMLC, Part II**

- Ships must provide and maintain decent accommodation and recreational facilities for seafarers working or living on ships, or both, consistent with promoting seafarers' health and well-being.
- Seafarer accommodation must be safe, decent and meet national requirements implementing the MLC, 2006 (Standard A3.1, paragraph 1).
- Regular inspections of seafarer accommodation areas are carried out by the master or a designate (Standard A3.1, paragraph 18).

*** Note:** For ships coming into service:

- The attending flag State inspector should be aware of the plan approval process undertaken during the construction of the ship with respect to the seafarer accommodation arrangements. As part of the first inspection of a ship the inspector will need to verify that the accommodation and recreational facilities have been constructed in accordance with the approved drawings. The same applies to ships that have been substantially altered. This process need not be repeated for subsequent inspections.

For ships that were in existence before entry into force of the MLC, 2006, for the flag State:

- Account should be taken of any national provisions that may have been adopted (see Chapter 2 of these guidelines) with respect to this issue. These ships will still need to be inspected in connection with seafarers' accommodation and recreational facilities to verify that the ship:
 - meets the standards set out in either ILO Conventions Nos 92, 133 or 147 (if applicable in the flag State); and/or

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- provides and maintains decent accommodation and recreational facilities for seafarers working or living on board, or both, consistent with promoting the seafarers' health and well-being.

How to check the basic requirements

- Check the construction plan of the ship that shows dimensions and identifying the use to be made of each room or other area.
- Check the crew list compared to the number of sleeping rooms and berths.
- Carry out a visual observation of seafarers' on-board accommodation and recreational facilities with particular attention paid to the following requirements in the MLC, 2006:
 - general requirements (Standard A3.1, paragraph 6);
 - the size of rooms and other accommodation spaces (Standard A3.1, paragraphs 9 and 10);
 - heating and ventilation (Standard A3.1, paragraph 7);
 - noise and vibration and other ambient factors (Standard A3.1, paragraph 6(h));
 - sanitary and related facilities (Standard A3.1, paragraphs 11 and 13);
 - lighting (Standard A3.1, paragraph 8)
 - hospital accommodation (Standard A3.1, paragraph 12);
 - recreational facilities (Standard A3.1, paragraphs 14 and 17);
 - occupational safety and health and accident prevention requirements on ships, in light of the specific needs of seafarers who both live and work on ships (Standard A3.1, paragraphs 2(a) and 6(h)).
- Check the on-board records to confirm that frequent inspections are carried out by, or under the authority of, the ship's master, as well as (for ships that carry a Maritime Labour Certificate) that other inspections or actions provided for in the shipowners' approved measures found in the DMLC, Part II, have been carried out.
- Check that measures are being taken on the ship to monitor noise and vibration levels in seafarers' working and living areas.

Examples of deficiencies

- Location of sleeping rooms on the ship does not conform to national standards implementing the MLC, 2006.
- Number and/or size (including height) of sleeping rooms does not conform to national standards implementing the MLC, 2006.
- More than one seafarer per berth.
- Recreational facilities do not conform to national standards implementing the MLC, 2006.

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- Heating, lighting or ventilation is inadequate or not functioning correctly.
 - Fittings and fixtures within seafarer accommodation areas, including the hospital, mess rooms and recreational rooms, do not conform to national standards implementing the MLC, 2006.
 - Separate sleeping rooms are not provided for males and females.
 - Separate sanitation facilities are not provided for males and females.
 - Sanitary facilities are inadequate or not functioning.
 - Hospital is being used to accommodate persons who are not sick.
 - Seafarer accommodation or recreational facilities are not being maintained in a clean and tidy condition.
 - Regular inspections of seafarer accommodation are not being carried out by the master or another designated person.
 - Laundry facilities are inadequate or not functioning correctly.
 - Exposure to hazardous levels of noise and vibration and other ambient factors and chemicals in the seafarer accommodation or recreational or catering facilities.

Regulation 3.2 – Food and catering

Standard A3.2; Guideline B3.2

* **Inspected and certified**

** **Review DMLC, Part II**

Basic requirements

- Food and drinking water must be of appropriate quality, nutritional value and quantity, taking into account the requirements of the ship and the differing cultural and religious backgrounds of seafarers on the ship.
- Food is to be provided free of charge to seafarers during the period of engagement.
- Seafarers employed as ships' cooks * with responsibility for preparing food must be trained and qualified for their positions.
- Seafarers working as ships' cooks must not be less than 18 years old (Standard A3.2, paragraph 8).
- Regular inspections of food, water and catering facilities are carried out by the master or a designate (Standard A3.1, paragraph 7).

* "Ships' cook" means a seafarer with responsibility for food preparation (Regulation 3.2, paragraph 3; Standard A3.2, paragraphs 3 and 4).

How to check the basic requirements

- Check documents (see Regulation 1.1 on minimum age) to confirm that the ship's cooks are 18 years old or older and that the ship's cooks are trained, qualified and competent for their positions in accordance with national requirements. In cases where a fully qualified cook is not required, check that seafarers processing food in the galley are trained or instructed in food and personal hygiene and handling and storage of food on board ships.
- Check on-board records to confirm that frequent and documented inspections are made of:
 - supplies of food and drinking water;
 - spaces used for handling and storage of food;
 - galleys and other equipment used in the preparation and service of meals;
 - visual observation of catering facilities, including galleys and store rooms, to check that they are hygienic and fit for purpose.
- Check that food and drinking water is of an appropriate quality and quantity and nutritional value by:
 - checking drinking water quality and ascertaining how the quality is monitored;
 - reviewing menu plans together with visual observation of food supplies and storage areas to ensure that the food supplied is varied in nature.
- Check, by interviewing a representative number of seafarers, that they are not charged for food and are provided with drinking water and that food and drinking water is of appropriate quality and quantity.

Examples of deficiencies

- Food and drinking water are not of appropriate quality, nutritional value and quantity, for the seafarers on the ship.
- Seafarer is charged for food and/or is not provided with drinking water.
- Seafarer who has responsibility for preparing food is untrained or not instructed as required.
- Ship's cook is not trained and qualified.
- Ship's cook is under 18 years of age.
- Inspections of the food or water or the preparation/storage/handling areas are not being carried out.
- Catering facilities are not hygienic or are otherwise unfit for purpose.

Regulation 4.1 – Medical care on board ship and ashore

Standard A4.1; Guideline B4.1

* **Inspected and certified**

** **Review DMLC, Part II**

Basic requirements

- Seafarers must be covered by adequate measures for the protection of their health and have access to prompt and adequate medical care, including essential dental care, whilst working on board.
- Health protection and care is provided at no cost to the seafarer.
- Shipowners are to allow seafarers the right to visit a qualified medical doctor or dentist without delay in ports of call, where practicable (Standard A4.1, paragraph 1(c)).

How to check the basic requirements

- Check documents (such as the SEA) to confirm that seafarers have access to medical care on board without charge and are given leave to obtain medical and dental care services when calling in a port, where practicable. *
- Check records and equipment to confirm that general provisions on occupational health protection and medical care are being observed (Standard A4.1, paragraph 1(a)).
- Undertake visual observation to confirm that the ship is equipped with sufficient medical supplies including a medicine chest and equipment, including either the most recent edition of the *International Medical Guide for Ships* or a medical guide as required by national laws and regulations.
- Check documents (such as the SMD and crew list and training documents) to confirm that a qualified medical doctor is working on board ships that carry 100 or more people and that are ordinarily engaged in voyages of more than three days' duration.
- Check that, where ships are not required to carry a medical doctor, they have at least one seafarer on board (who is trained and qualified to the requirements of STCW) to be in charge of medical care or is competent to provide medical first aid as part of their regular duties.
- Check that medical report forms are carried on board the ship.
- Interview a representative number of seafarers to confirm that seafarers have access to medical care on board without charge and are given leave to obtain medical and dental care services when calling in a port, where practicable.

(* The inspector need only verify that a shipowner has granted the seafarer leave to access medical facilities ashore. The shipowner is not responsible if the port State refuses a seafarer access or for the quality of such facilities. The DMLC, Part II should be reviewed to check what provision the shipowner has made for these situations.)

Examples of deficiencies

- A seafarer working on the ship is denied, without reason, shore leave by the master and/or shipowner to go ashore for medical or dental care.
- A seafarer is not provided with appropriate health protection and medical care on board ship.
- Medical personnel, as required by national laws or regulations, are not on board.
- Medical chest or equipment does not meet national standards and/or no medical guide is on board.
- No medical report forms are on board.

Regulation 4.2 – Shipowners’ liability

Standard A4.2; Guideline B4.2

*** Inspected**

Basic requirements

- Seafarers have a right to material assistance and support from the shipowner with respect to the financial consequences of sickness, injury or death occurring while they are serving under a SEA or arising from their employment under such agreement.
- Shipowners are to bear the costs for seafarers working on their ships in respect of sickness and injury of the seafarers (Standard A4.2, paragraph 1(a)).
- Shipowners are to provide financial security to assure compensation in the event of the death or long-term disability of seafarers due to an occupational injury, illness or hazard, as set out in national law, the SEA or collective agreement (Standard A4.2, paragraph 1(b)).
- Measures are to be taken to safeguard the property of seafarers left on board by sick, injured or deceased seafarers (Standard A4.2, paragraph 7).

How to check the basic requirements

- Check the SEA and/or relevant collective bargaining agreement to verify that seafarers have the coverage required by national law implementing the MLC, 2006.
- Check documents confirming that the shipowner has provided financial security to assure compensation as required.
- Check for on-board procedures with respect to property that is left on board by sick, injured or deceased seafarers.

Examples of deficiencies

- No evidence that financial security has been provided.
- No information on coverage in the SEA or relevant collective bargaining agreement.

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- Provisions in the SEA or collective bargaining agreement are not consistent with national requirements implementing the MLC, 2006.
 - No procedures are in place to safeguard seafarers' property left on board.

Regulation 4.3 – Health and safety protection and accident prevention

Standard A4.3; Guideline B4.3

* **Inspected and certified**

** **Review DMLC, Part II**

Basic requirements

- The working, living and training environment on ships must be safe and hygienic and conform to national laws and regulations and other measures for occupational safety and health protection and accident prevention on board ship. Reasonable precautions are to be taken on the ships to prevent occupational accidents, injuries and diseases including risk of exposure to harmful levels of ambient factors and chemicals and well as risk of injury or disease that may result from the use of equipment and machinery on the ship (Standard A4.3, paragraph 1(b)).
- Ship must have an occupational safety and health policy and programme to prevent occupational accident injuries and diseases, with a particular concern for the safety and health of seafarers under the age of 18 (Standard A4.3, paragraphs 1(c) and 2(b)).
- A ship safety committee is required (for ships with five or more seafarers) (Standard A4.3, paragraph 2(d)).
- Risk evaluation is required for on-board occupational safety and health management (taking into account relevant statistical data) (Standard A4.3, paragraph 8).

How to check the basic requirements

- Check relevant documents, such as the on-board occupational accident reports, and the reports of risk evaluations undertaken for the management of occupational safety and health on the ship.
- Check for documents evidencing membership and meetings of the safety committee (e.g. records and minutes of the meetings, etc.) if the ship has more than five seafarers.
- Check documents related to the ship's on-board ongoing occupational safety and health policy and programme, to confirm that:
 - it is available to seafarers;
 - it is consistent with national provisions;
 - it includes risk evaluation, training and instruction for seafarers;
 - it pays special attention to the health and safety of young seafarers;
 - adequate preventive measures are being taken;

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- appropriate personal protective equipment is being used and maintained correctly.
 - Check that relevant occupational safety and health and accident prevention notices and official instructions with respect to particular hazards on the ships are posted on the ship in a location that will bring it to the attention of seafarers (Standard A4.3, paragraph 7).
 - Check that appropriate protective equipment is available for seafarers to use.
 - Check that a reporting procedure for occupational accidents is in place.
 - Interview a representative number of seafarers to confirm on-board occupational safety and health programmes and practices.
 - Check that, with respect to health and safety protection and accident prevention, special consideration is given to:
 - the structural features of the ship, including means of access and asbestos-related risks;
 - machinery;
 - the effects of the extremely low or high temperature of any surfaces with which seafarers may be in contact;
 - the effects of noise in the workplace and in shipboard accommodation;
 - the effects of vibration in the workplace and in shipboard accommodation;
 - the effects of ambient factors (other than noise and vibration) in the workplace and in shipboard accommodation, including tobacco smoke;
 - special safety measures on and below deck;
 - loading and unloading equipment;
 - fire prevention and fire-fighting;
 - anchors, chains and lines;
 - dangerous cargo and ballast;
 - personal protective equipment for seafarers;
 - work in enclosed spaces;
 - physical and mental effects of fatigue;
 - the effects of drug and alcohol dependency;
 - HIV/AIDS protection and prevention;
 - emergency and accident response.

Examples of deficiencies

- Conditions exist on board which may impair efforts to prevent accidents.
- No evidence of an on-board policy and/or programmes for the prevention of occupational accidents, injuries and diseases.
- No established or functioning ship's safety committee when there are five or more seafarers working on board.
- Personal protective equipment is in poor condition or being incorrectly used or not being used.
- Risk assessments are missing.
- Seafarers are unaware of the measures adopted by the management to provide OSH and to prevent accidents.
- Risks posed to young seafarers have not been addressed.
- Occupational accidents are not being investigated or reported in accordance with the ship's procedures.

Regulation 4.5 – Social security

Standard A4.5; Guideline B4.5

*** Inspected**

Basic requirements

- Seafarers who are subject to the flag State's social security legislation, and, to the extent provided for in its national law, their dependants, are entitled to benefit from social security protection no less favourable than that enjoyed by shore workers.

Note:

The MLC, 2006, requires that all seafarers be provided with social protection. This covers a number of complementary requirements including prevention-based approaches in connection with occupational safety and health, medical examinations, hours of work and rest and catering. Social protection is mainly addressed in the Title 4 with respect to Medical care (Regulation 4.1); Shipowner liability (Regulation 4.2); and Social security (Regulation 4.5). Regulation 4.5 and the related Standard A4.5 reflect an approach that recognizes the wide range of national systems and schemes and differing areas of coverage with respect to the provision of social security. Under Standard A4.5, paragraph 3, a ratifying country is required to "take steps according to its national circumstances to provide the complementary social security protection referred to in paragraph 1 of this Standard to all seafarers ordinarily resident in its territory". The resulting protection must be no less favourable than that enjoyed by shoreworkers resident in its territory. The main responsibility of flag States is to ensure that the shipowners' social security obligations are respected for seafarers on their ships, particularly those set out in Regulations 4.1 and 4.2 (see Standard A4.5, paragraph 5). A more general duty, referred to in Standard A4.5, paragraph 6, and Guideline B4.5, paragraph 5, is also applicable to flag States. ILO member States are to give consideration to ways in which comparable benefits could be provided to seafarers who do not have adequate social security coverage and to possibly themselves arrange for the needed protection to be provided. This responsibility reflects

the fact that all States have an important role in promoting the protection of all seafarers and in cooperating to help ensure such protection. In this way flag States can make an important contribution to the achievement of adequate social security protection for seafarers worldwide.

In the context of flag State inspection of ships the main concern lies with confirming the complementary protection to be provided by shipowners and stated in the SEA (Standard A2.1, paragraph 4(h)).

How to check the basic requirements

- Check for evidence that, for seafarers covered by the national social security system, the appropriate contributions are being made if it is a contributory system.
- Check the SEA to confirm the protection to be provided by the shipowner.
- Interview a representative number of seafarers to confirm that mandatory contributions, if any, are made.

Examples of deficiencies

- No information on protection in the SEA.
- Mandatory contributions are not being made.

Standard A5.1.1 – General principles

Standard A5.1.1; Guideline B5.1.2

*** Inspected**

Basic requirements

- Ships are required to have a copy of the MLC, 2006, available on board.

How to check the basic requirements

- Check to confirm that there is a copy of the MLC, 2006, on board.

Examples of deficiencies

- No copy of the MLC, 2006, on board.

Regulation 5.1.5 – On-board complaint procedures

Standard A5.1.5; Guideline B5.1.5

*** Inspected and certified**

**** Review DMLC, Part II**

Basic requirements

- Ships must have on-board procedures for the fair, effective and expeditious handling of seafarer complaints alleging breaches of the requirements of the MLC, 2006 (including seafarers' rights).
- Victimization of seafarers for filing complaints under the MLC, 2006, is prohibited.

How to check the basic requirements

- Check the document outlining the on-board complaint procedures to confirm that the procedures are functioning on the ship, paying particular attention to the right of representation and to the required safeguards against victimization.
- Check that seafarers are provided with a copy of the on-board complaint procedures for the ship.
- Check a document outlining the on-board complaint procedures to confirm that seafarers are able to complain directly to the ship's master or an external authority.
- Interview a representative number of seafarers to confirm that seafarers are given a copy of the procedures and that they are able to complain directly to the ship's master or an external authority and that there is no victimization.

Examples of deficiencies

- No document setting out the on-board complaint procedures.
- Ship's on-board procedures are not operating.
- Victimization of a seafarer for making a complaint.
- Seafarer is not given a copy of the ship's procedures.

Chapter 4. Action to be taken if deficiencies are identified

4.1. General note

- 105.** The MLC, 2006, sets out a number of possible responses available to flag State inspectors (or the competent authority in the flag State) to help ensure that ships comply with the national requirements. Some actions are required while others allow for some exercise of discretion. All actions involve an exercise of professional judgement by the flag State inspector on identifying deficiencies (including those identified during the course of investigating a complaint (see Chapter 2) as set out in Standard A5.1.4, paragraph 5).
- 106.** In determining the action to be taken, an important consideration is the question of who is to take the action. Where the authority for verifying compliance with the MLC, 2006, has been delegated to a RO then, even if the RO identifies deficiencies, it will still be a matter for the flag State to make a determination, in light of the information about the deficiencies filed by a RO, and then to carry out the enforcement action.
- 107.** Some possible remedies, such as withdrawing certificates, apply specifically to certified ships, others such as detaining a ship apply to all ships and relate to the flag State inspector's authority to require rectification of the deficiencies before allowing a ship to sail. In addition, national laws or regulations may enable the flag State inspector or competent authority to impose penalties and other corrective measures on shipowners for breaches of the requirements of the MLC, 2006 (including seafarers' rights).
- 108.** In addition to specific events that may result in invalidity of a certificate (Standard A5.1.3, paragraph 14), Standard A5.1.3, paragraphs 7, 9, 16 and 17 should also be considered.
- 109.** Before a certificate can be issued or endorsed or a ship allowed to sail, the flag State inspector would need to have confirmation either that all deficiencies noted during the inspection have been rectified or that a rectification action plan has been provided by the owner and agreed by the inspector.
- 110.** As noted in Chapter 2, under Standard A5.1.3, paragraph 11, in the case of a ship that is certified, the results of subsequent inspections (after the first inspection) or verifications and any significant deficiencies found during the verification are to be recorded together with the date when the deficiencies were found to be remedied. This record, in English (or an English translation when it is not written in English), is to be either written on the on-board copy of the DMLC or appended to it or otherwise made available in some way for the information of seafarers, flag State inspectors, authorized officers in a port State and shipowners' and seafarers' representatives.
- 111.** In all cases the national laws and regulations or other measures implementing the MLC, 2006, provisions remain the overriding authority on the applicable requirements for inspections.
- 112.** Chapter 3 contains examples of deficiencies for inspected items. In all cases any deficiencies should be rectified. In some cases a single instance of the deficiency may be sufficient to prevent a ship from going to sea until it is rectified, e.g., a ship with an under-age person working as a seafarer. In other cases, a deficiency, for example, a breach of the lighting requirements in one sleeping room, may be rectified within a period of time. However, if the lighting is faulty or inadequate in a number of sleeping rooms and/or there is a history of this problem then it may be a basis to keep the ship in port until it is

addressed. In other instances, to continue with the example, a deficiency related to lighting on the ship may well constitute a general occupational safety and health problem and the ship should not sail until it is rectified.

- 113.** Flag State inspectors will need to use their professional judgement as to whether a ship should be allowed to sail before the deficiency is rectified and, if it is not rectified, to decide on what action to take including withdrawal of the certificate.

4.2. Guidance on making determinations as to action

- 114.** Depending upon the number and severity of any deficiencies the flag State inspector may consider the following actions:

- give appropriate advice;
- list, with appropriate timescales, the deficiencies to be rectified, for example, before departure; within 14 days; or before the issue of a Maritime Labour Certificate;
- refuse to endorse the Maritime Labour Certificate following an intermediate inspection or renewal inspection;
- prevent the ship from leaving port until necessary actions are taken;
- impose any penalties or other corrective measures available under national law;
- in the case of ships that are certified:
 - withdraw the Maritime Labour Certificate;
 - refuse to endorse the Maritime Labour Certificate following an intermediate inspection or renewal inspection in the case of ships that are certified.

- 115.** When considering which action or actions to take, flag State inspectors should use their professional judgement. In addition, flag State inspectors should take into account the following when reaching a decision on whether or not to accept a rectification plan or prevent a ship from leaving port and/or recommend withdrawal of Maritime Labour Certificate:

- whether or not the non-conformities can be rapidly remedied in the port of inspection;
- whether the deficiencies constitute a significant danger to seafarers' safety, health or security;
- the seriousness of the breach of the requirements of the MLC, 2006 (including seafarers' rights);
- length and nature of the intended voyage or service;
- size and type of ship and equipment provided;
- whether or not the appropriate rest period for seafarers is being observed;
- nature of the cargo;
- prior history of similar deficiencies;

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- number of deficiencies identified on the inspection;
 - safe manning requirements;
 - prior history with respect to rectifications.

116. All reasonable efforts are to be made to avoid a ship being unreasonably detained or delayed (Standard A5.1.4, paragraph 15).