

INTERNATIONAL LABOUR ORGANIZATION

International Labour Standards Department
Sectoral Activities Programme

Proposal for

**Guidelines for port State control
officers carrying out inspections
under the Maritime Labour
Convention, 2006**

Geneva, 2008



INTERNATIONAL LABOUR OFFICE GENEVA

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Tripartite expert meeting to develop guidelines for port State control officers carrying out inspections under the Maritime Labour Convention, 2006

The 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 IV on developing guidelines for port State control reads as follows:

Resolution concerning the development of guidelines for port State control

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,

Mindful of the core mandate of the Organization to promote decent working and living conditions,

Noting paragraphs 4 and 7 of Article V, and Regulation 5.2.1, Standard A5.2.1, Guideline B5.2.1 of the above Convention, which provide for port State responsibilities and control under the term of “no more favourable treatment”,

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

Considering that, given the global nature of the shipping industry, it is important for port State control officers to receive proper guidelines for the performance of their duties,

Recognizing the work done by the IMO in this area, and the importance the international community attaches to cooperation between international agencies;

Invites the Governing Body of the International Labour Office to request the Director-General to convene a tripartite expert meeting to develop suitable guidance for port State

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

control officers and to request that the Office utilizes the technical expertise of the IMO in this area.

5. Both resolutions IV and XIII envisage future tripartite meetings of experts to develop this guidance. The importance that the Conference attached to encouraging uniformity and harmonization in connection with inspection, by authorized officers, of foreign ships calling in the port of a Member is reflected in the discussion during the preparation of the resolution. In that discussion, it was considered important that, in addition to the experts in the tripartite expert meeting to adopt the guidelines for port State control officers, experts from other governments would be able to attend, as “participating observers” at their own expense.² In fact, the development of these international guidelines and related national guidance is foreseen in the MLC, 2006, itself.³
6. It has been decided that the flag State guidelines should be developed 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.⁴
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.

Structure of the Office proposal

8. Guidelines for port State control officers carrying out inspections under the MLC, 2006, in the appendix below as a working basis for the tripartite expert meeting. The proposal comprises six chapters. Its primary objective is to provide practical advice for port State control officers (PSCOs) verifying compliance of ships with the requirements of the MLC, 2006 (as implemented under the national law concerned). It begins with information similar to that found in the proposal for guidelines for flag State inspection regarding key concepts in the MLC, 2006, to the extent relevant to the port State context, and also includes the definitions found in the Convention. The majority of the chapters, other than Chapter 6, are directed to port State control officers who undertake inspections of foreign ships, in accordance with Regulation 5.2.1 and Standard A5.2.1 of the Convention. Chapter 6 addresses the provisions in Regulation 5.2.2 and Standard A5.2.2 on handling a complaint by a seafarer to an authorized officer in a port (“Onshore seafarer complaint-handling procedures”).

² See International Labour Conference, 94th (Maritime) Session, 2006, *Provisional Record* No. 3-1(Rev.), paras 17–28.

³ Standard A5.2.1., para. 7, provides “Each Member shall ensure that its authorized officers are given guidance, of the kind indicated in Part B of the Code, as to the kinds of circumstances justifying detention of a ship under paragraph 6 of this Standard”. Guideline B.5.2.1., para. 3, provides “Members should cooperate with each other to the maximum extent possible in the adoption of internationally agreed guidelines on inspection policies, especially those relating to the circumstances warranting the detention of a ship”.

⁴ Tripartite Intersessional Meeting on the Follow-up to the Preparatory Technical Maritime Conference, report of the discussion, PTMC/2005/23, paras 138–149.

The sources of the Office proposal

9. The Office proposal for guidelines for port State control officers set out in the appendix below is derived from three different sources, namely:
- relevant international arrangements on port State control;
 - the relevant provisions of the MLC, 2006;
 - the Office's proposal relating to guidelines for flag State inspection.

The first two of those sources are based on Regulation 5.2.1, paragraph 3, of the Convention, which provides that "Inspections in a port shall be carried out by authorized officers in accordance with the *provisions of the Code and other applicable international arrangements governing port State control inspections* in the Member". The third source takes account of the complementary nature of port State control inspections with flag State inspections.

International arrangements on port State control (PSC)

10. The proposed guidelines have taken into account information in a draft text that was developed by governments that are members of a task force established under the auspices of a regional Memorandum of Understanding on Port State Control (the Paris MOU). This draft was provided to the Office on an informal basis in July 2007 and served as a working basis for the Office's draft, particularly with respect to the overall structure and approach and the importance of providing a practical tool for inspectors, as well as to the treatment of principles such as that of "no more favourable treatment".⁵ The Office has also taken into account the content of the Paris MOU (and subsequent PSC MOUs developed in other regions of the world) as well as the content of related resolutions on port State control developed under the auspices of the International Maritime Organization (IMO). As requested by the International Labour Conference in resolution IV the advice of experts in the IMO secretariat has also been sought and taken into account in the proposed guidelines.
11. To the extent applicable, use has been made of procedures or guidelines relating to port State control developed under the auspices of the IMO.⁶ As requested in resolution IV the advice of experts in the IMO secretariat has also been sought and taken into account in the Office's proposal.

Port State control inspections under the MLC, 2006

12. As indicated by paragraph 3 of Regulation 5.2.1, mentioned above, any international guidelines developed under the auspices of the International Labour Organization must also reflect the text and concepts contained in the Maritime Labour Convention, 2006, which were often the subject of carefully balanced understandings reached in the process of developing the Convention. The provisions relating to compliance and enforcement

⁵ Article V, para. 7, states "Each Member shall implement its responsibilities under this Convention in such a way as to ensure that the ships that fly the flag of any State that has not ratified this Convention do not receive more favourable treatment than the ships that fly the flag of any State that has ratified it".

⁶ Procedures for Port State Control (Resolution A.787(19)), as amended; Code of Good Practice for Port State Control Officers (MSC-MEPC.4/Circ.2) of 1 November 2007.

were intended to fit as seamlessly as possible with the existing system in the sector that had been developed in connection with the IMO conventions. However, as noted during the discussion in preparation of resolution IV, the Convention is in many respects “a pioneer instrument”.⁷ The guidelines on port State control under the MLC, 2006, have therefore to take account of some challenging differences as compared with other port State control arrangements. In particular, the MLC, 2006:

- allows a degree of discretion for member States when establishing the details of the ways in which the requirements of the Convention are to be implemented on ships flying their flag;
- tends to place greater reliance on shipowners committed to the principles of decent work, in order to allow inspection resources to concentrate on the elimination of substandard ships;
- balances this greater reliance with a greater role for, in particular, seafarers and seafarers’ organizations in the inspection process.

The Office proposal seeks to take account of these and other special features of the MLC, 2006, and, in some cases, to exploit them with the aim of achieving a strong inspection system.

The content and role of onboard documents under the MLC, 2006

13. The discretion given to member States with respect to implementation and the reliance placed on shipowners in ensuring compliance with those requirements can, in particular, be seen in the content and role of the onboard documents, the Maritime Labour Certificate and the Declaration of Maritime Labour Compliance (DMLC).
14. Because of the discretion given to member States, the guidelines need to take account of the possible differences of detail in the various national provisions implementing the requirements of the Convention. This is why special attention is given to Part I of the DMLC, summarizing relevant national requirements and identifying areas of variation, for example in connection with “substantial equivalence”, and Part II of the DMLC, which sets out the approved procedures adopted by the shipowner to achieving compliance on an ongoing basis. These documents are central to, and must inform, any port State control inspection.
15. The guidelines also need to take account of the fact that the Maritime Labour Certificate and the DMLC attached to it “constitute prima facie evidence that the ship has been duly inspected by the Member whose flag it flies and that the requirements of this Convention relating to working and living conditions of the seafarers have been met to the extent so certified”. “Accordingly, the inspection in its port, shall except in the circumstances specified in the Code (in subparagraphs (a)-(d) of Standard A5.2.1, paragraph 1) be limited to a review of the certificate and declaration”.
16. The emphasis on the primacy of the documentation provides an example of one area where the process for inspection may differ, at least initially, from the existing international arrangements in order to remain consistent with the text of the Convention. For example,

⁷ See International Labour Conference, 94th (Maritime) Session, 2006, *Provisional Record* No. 3-1(Rev.), para. 27.

the Convention is clear that the usual practice of a walk around the ship to verify different areas is not permitted if the ship's documents are in order except where a more detailed inspection may or must be carried out, in particular in the case of the "clear grounds" referred to below.

17. At the same time, the guidelines need to take account of the balances of this primacy that are reflected in other provisions of the Convention, in particular those relating to the careful inspection that is required under the Convention to ensure that the ship's documents are indeed fully in order and, in addition, that they contain evidence that the shipowner has adopted procedures for ensuring ongoing compliance and that those procedures are actually being implemented on the ship.

Clear grounds for believing that conditions do not conform to requirements

18. In addition, the concept that a more detailed inspection may be carried out, *inter alia*, if there are clear grounds for believing that the working and living conditions on the ship do not conform to the requirements of the Convention, takes on a particular importance in the context of the MLC, 2006, and guidance is certainly required for port State control officers (PSCOs) as to the kinds of circumstances in which such "clear grounds" may arise. The proposed guidelines take account of the fact that these "clear grounds" may come to the PSCOs' knowledge during the review of the ship's documents or in other ways, in particular (as recognized in Standard A5.2.1, paragraph 3) in the course of an investigation of a complaint from, for example, a seafarer or a seafarers' organization, even where the non-compliance found is not actually related to the complaint itself.

Action to be taken by PSCOs on finding deficiencies and non-conformities

19. The guidelines proposed in the appendix below, following the text of the Convention under Standard A5.2.1, in particular paragraph 6, and Guideline B5.2.1, and following the approach adopted in the flag State guidelines, propose criteria that a PSCO should consider in exercising her or his professional judgement to make a determination as to what action to take. While a "single list" of detainable items might appear attractive, in fact as Standard A5.2.1, paragraph 6(a) and (b), and Guideline B5.2.1, paragraph 2, suggest, it may not be appropriate or possible to determine what these would be in the abstract. In each case a determination would depend on factors including matters such as the number of deficiencies identified and their severity or their repetition on the ship in question. The Convention itself does not contain an agreed list, and indeed, instead it suggests the criteria-based approach that is set out in the proposed guidelines. In addition, it is noted that the discussions leading up to the adoption of the text in paragraph 6, Standard A5.2.1 and Guideline B5.2.1, paragraph 2, suggest that it may not be possible to obtain agreement on a specific list.

Rectification plan

20. Another area where the implementation of the MLC, 2006, may require some adjustment to existing practice relates to the idea of a rectification plan, in paragraph 6 of Standard A5.2.1. Although the PSC MOUs contain the concept of rectification, the concept of an agreed rectification plan is not provided for. The guidelines propose the concept of a proposal for rectification as a means of reconciling the Convention text with existing practice, to the extent possible.

Flag State inspection guidelines

21. The proposal for guidelines has also been developed in light of the work by the Office, aided by an informal tripartite expert working group led by the United Kingdom, to develop draft guidelines on flag State inspection. In that respect, the Office's concern has been to ensure consistency and complementarity between the guidelines on flag State inspection and those on port State control.
22. 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.
23. An example in which *complementarity* is particularly important concerns the Maritime Labour Certificate and the DMLC. As noted above, this documentation, when properly established, is to be recognized by 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 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.
24. The best example (but by no means the only one) where *consistency* between the two sets of guidelines is essential concerns Chapter 3, section 3.2, of the proposed guidelines on flag State inspection, 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 possible “more detailed inspection” by PSCOs (although the latter inspection will normally be less extensive and sometimes much less), the wording of the equivalent section, Chapter 4, section 4.2, of the proposed guidelines set out below, closely follows the text of the guidelines for flag State inspection (section 3.2), in so far as the items coming within the 14 areas subject to certification are concerned.
25. It is hoped that the tripartite expert meeting to develop guidelines for port State control officers will follow the text suggested in section 4.2 of the Office's proposal to the extent that they consider it to be applicable to port State inspection and taking account of relevant adjustments to the content of section 3.2 of the Office's proposal for guidelines for flag State inspection as amended at the preceding tripartite expert meeting to develop the latter guidelines.

Onshore seafarer complaint-handling procedures

26. Given the relationship between the port State control procedures and the procedures outlined in Regulation 5.2.2 for handling onshore complaints made by seafarers, guidance has also been proposed (in Chapter 6) on this subject, to the extent that there is an interaction with the port State control inspection process established under Regulation 5.2.1 and the related Standard A5.2.1 and Guideline B5.2.1.

Status of the guidelines

27. 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 MLC, 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. While these guidelines should, from a legal point of view, be considered as advisory only for governments in such contexts as the drafting of national guidelines referred to in Standard A5.2.1, paragraph 7, of the Convention, they have a much greater practical importance. **This is because a primary aim is to achieve uniformity in port State inspections in order to ensure that a level playing field in the implementation of the Convention exists not only in law but also in practice.**

Appendix

Contents

	<i>Page</i>
Chapter 1. Introduction	11
1.1. Explanation of the objectives and content of the guidelines.....	11
1.2. Brief overview of the MLC, 2006, structure.....	12
1.3. Key concepts in the MLC, 2006	14
1.3.1. Application	14
1.3.2. Seafarers' rights.....	14
1.3.3. Compliance and enforcement	15
1.4. Definitions	16
Chapter 2. Port State control inspection responsibilities under the MLC, 2006.....	18
2.1. Overview of the MLC, 2006, port State responsibilities	18
2.2. Port State control officers	18
2.2.1. Professional profile of authorized officers/PSCOs under the MLC, 2006	19
2.2.2. Requirements of PSCOs	19
Chapter 3. Carrying out port State control inspections under the MLC, 2006.....	20
3.1. General considerations for MLC, 2006, port State control inspections	20
3.1.1. The purpose and subject matter of MLC, 2006, port State control inspections.....	20
3.1.2. How to conduct an MLC, 2006, port State control inspection	20
3.2. Procedure where inspection is initiated by the PSC authority	22
3.2.1. Preparing for inspections.....	22
3.2.2. Sources of information	22
3.2.3. Scope of the port State control inspection.....	22
3.2.4. The MLC, 2006, requirements that may be the subject of a more detailed inspection by a PSCO	23
3.2.5. Review of a ship's MLC, 2006, documents in a port State control inspection	23
3.3. Procedure for inspections initiated upon receipt of a complaint.....	28
Chapter 4. More detailed inspection of maritime labour conditions on ships.....	30
4.1. General.....	30
4.2. The basic requirements; sources of information; examples of deficiencies or non-conformities.....	31
Regulation 1.1 – Minimum age	31
Regulation 1.2 – Medical certificate.....	31
Regulation 1.3 – Training and qualifications.....	32
Regulation 1.4 – Recruitment and placement.....	33

Regulation 2.1 – Seafarers’ employment agreements.....	34
Regulation 2.2 – Wages.....	35
Regulation 2.3 – Hours of work and hours of rest.....	36
Regulation 2.7 – Manning levels.....	37
Regulation 3.1 – Accommodation and recreational facilities.....	37
Regulation 3.2 – Food and catering.....	39
Regulation 4.1 – Medical care on board ship and ashore.....	40
Regulation 4.3 – Health and safety protection and accident prevention.....	42
Regulation 5.1.5 – On-board complaint procedures.....	44
Chapter 5. Action to be taken by port State control officers when finding deficiencies or non-conformities.....	45
5.1. Actions to be considered when deficiencies are found.....	45
5.2. Examples of circumstances that may require detention of the ship.....	48
5.3. Factors to be considered by a PSCO in deciding whether to accept a rectification proposal.....	49
5.4. Consultation prior to a decision concerning a rectification proposal.....	50
5.5. Form and content of a proposal for rectification.....	50
5.6. Action to be taken if a rectification proposal is agreed.....	50
5.7. Action to be taken if the ship is not allowed to sail.....	50
Chapter 6. Onshore complaints by seafarers.....	51

Charts

3.2.5. Port State control procedure: Review of a ship’s MLC, 2006, documents in a port State inspection.....	24
5.1. Port State control procedure: Action to be taken.....	46
6. Onshore complaints by seafarers.....	52

Proposal for Guidelines for port State control officers carrying out inspections under the Maritime Labour Convention, 2006

Chapter 1. Introduction

1.1. Explanation of the objectives and content of the guidelines

1. In accordance with resolution IV of the 94th (Maritime) Session of the International Labour Conference (94th (Maritime) Session of the ILC), these international guidelines for port State control officers¹ (PSCOs) have been developed to:
 - assist port State administrations to effectively implement their responsibilities under the Maritime Labour Convention, 2006 (MLC, 2006); and
 - promote harmonization in the implementation of the provisions of the Convention concerning port State responsibilities.
2. The guidelines are intended to provide supplementary practical information and guidance to port State administrations that can be adapted to reflect national practices and policies and other applicable international arrangements governing port State control inspections.
3. The guidelines should be regarded as complementary to the national measures taken by administrations of flag States in their countries and abroad. They are intended to provide assistance to flag State administrations in securing compliance with the MLC, 2006. They should be read in conjunction with the guidelines for flag State inspections under the MLC, 2006, as much of the information contained in the flag State guidelines will also be helpful to personnel carrying out MLC, 2006, port State control inspections.
4. The rest of Chapter 1 of these guidelines provides general information on the MLC, 2006, regarding its structure, key concepts and terminology.
5. Chapter 2 provides background information on port State control inspection responsibilities in connection with the MLC, 2006.
6. Chapters 3 and 4 address the procedures for carrying out port State control inspections under the MLC, 2006. The procedures describe, from a practical perspective, the various stages or steps that an inspection might go through, depending on the circumstances that the PSCO finds when going on board a ship. Chapter 3 covers matters such as preparing for an inspection and the beginning part of a PSCO inspection, which is the on-board review of the ship's MLC-related documents that provide prima facie evidence that the

¹ The MLC, 2006, uses the term “authorized officer” in Regulation 5.2.1 to reflect the fact that national situations differ and in some cases the person carrying out a port State inspection under the Convention may not necessarily be the same person or persons as those currently carrying out inspection under the existing international (regional) port State control arrangements. The 94th (Maritime) Session of the ILC resolution used the term “port State control officers”. In these guidelines the same term and the related acronym PSCO is used to refer to “authorized officer”.

ship is in compliance. Chapter 3 also provides guidance on the matters that a PSCO would need to consider in making a determination as to whether an inspection is finished at that first point – the document review – or whether there are grounds for carrying out a more detailed inspection. Chapter 4 addresses the next stage, the more detailed on-board inspection of conditions on a ship in cases where the PSCO has concluded that there are grounds under the MLC, 2006, to carry out this level of inspection.

7. Chapter 5 provides guidance on action to be taken by PSCOs on finding, after a more detailed inspection, that there are deficiencies or non-conformities on a ship.
8. Chapter 6 outlines the steps to be taken in connection with the handling of onshore complaints that are made by seafarers (Regulation 5.2.2).

1.2. Brief overview of the MLC, 2006, structure

9. The MLC, 2006, contains an explanatory note, which was adopted by the 94th (Maritime) Session of the International Labour Conference 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

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. Title 5 relates to compliance and enforcement and includes the requirements of the MLC, 2006, in connection with carrying out inspections of foreign ships in a port (port State control) in Regulation 5.2.1 and Standard A5.2.1 with guidance provided in Guideline B5.2.1. It is important to take account of the four appendices located at the end of Title 5 of the MLC, 2006.

- Appendix A5-III: List of areas that may be the subject of a more detailed inspection in a port State;
- Appendix A5-I: List of matters for flag State inspection;
- 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 Convention. A seafarer is any person² who is employed or engaged or works in any capacity on board a ship to which this Convention applies.³ 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 Convention relates to *fundamental* rights and principles requiring ILO Members to satisfy themselves that the provisions of their law 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.

² The MLC, 2006, provides that, in the event of doubt as to whether any categories of persons are to be regarded as “seafarers” for the purpose of the Convention, the question is to be determined by the competent authority in the flag State, after consultation with the shipowners and seafarers concerned. Guidance on this matter is provided in the resolution concerning information on occupational groups (No. VII), adopted at the 94th (Maritime) Session of the International Labour Conference.

³ 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.

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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. Compliance and enforcement

16. Flag States 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. 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.
17. The MLC, 2006, gives countries a certain degree of flexibility concerning the way in which its requirements are implemented in their national laws or regulations, collective agreements or practices. 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, Titles 1–4, and allows them to adopt measures which are “substantially equivalent”. The MLC, 2006, provides guidance primarily directed to national law-making bodies in flag States 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 (PSCOs).

Certified ships

18. 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 these ships; however a shipowner can also request that a ship be certified even in cases where certification is not required.
19. The documents that are issued by the flag State, or by a recognized organization (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.
20. These two documents and, where warranted, also the conditions that they certify may be the subject of an inspection in foreign ports (port State control inspection). **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.**
21. The Maritime Labour Certificate and DMLC, if properly maintained by the ship concerned, constitute **prima facie evidence that the ship meets the requirements of the MLC, 2006**, and will facilitate the process of inspection when the ship visits foreign ports.

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22. The MLC, 2006, was expressly designed to harmonize with the existing arrangements in the maritime sector for ship inspections (by flag and port States) in connection with an earlier maritime labour Convention – the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)) and the major ship safety and security and pollution protection conventions developed by the International Maritime Organization (IMO).⁴ It also seeks to take account of the arrangements currently in place under the various regional Memoranda of Understanding (MOU) on port State control.
 23. To help ensure decent conditions of work for seafarers and a level playing field for shipowners, all ships covered by the MLC, 2006, irrespective of size, visiting foreign ports in ratifying States are potentially subject to an inspection (Article V, paragraph 4).
 24. States that ratify the MLC, 2006, are given the responsibility to carry out port State control inspections of foreign ships that come into their ports. This responsibility, essentially reflecting a right, can also be understood as part of the ratifying member States' shared interests and obligation (under Article I, paragraph 2) to cooperate with each other to help ensure the effective implementation and enforcement of the MLC, 2006.
 25. Inspection in a foreign port applies even if the ship is flying the flag of a country that has not ratified the MLC, 2006, because the MLC, 2006, obliges the States that ratify it to give no more favourable treatment to ships of States that have not ratified (Article V, paragraph 7). This means that these ships may be the subject of a more detailed inspection as provided under the MLC, 2006.⁵

1.4. Definitions

26. 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;
 - (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

⁴ See Regulation 5.2.1, paragraph 3; International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS); and the International Convention for the Prevention of Pollution from Ships, 1973, and the Protocol 1978 (MARPOL 73/78).

⁵ The MLC, 2006, does not expressly address the requirements for these ships; however, the Convention was intended to operate as consistently as possible with existing practices in the maritime sector and key international conventions of the International Maritime Organization. Based on the example found in IMO resolution A.787(19), section 1.5, on port State control, the following would apply as the appropriate approach: "All Member Parties should as a matter of principle apply the procedures set out in these guidelines to ships of non-ratifying States and ships of ratifying States that, for reasons related to size, are not carrying documents required by the MLC, 2006, in order to ensure that equivalent inspections are conducted and that equivalent level of seafarers' working and living conditions (including seafarers' rights) apply on board these ships. The seafarers' working and living conditions on such ships should be compatible with the aims of the provisions of the MLC, 2006; otherwise, the ship should be subject to such requirements as are necessary to obtain a comparable level with the MLC, 2006." This approach is also adopted in the Paris Memorandum of Understanding on Port State Control, section 1.3.

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. Port State control inspection responsibilities under the MLC, 2006

2.1. Overview of the MLC, 2006, port State responsibilities

27. Although port State control inspection is voluntary or discretionary in character as noted above, if a country chooses to carry out such inspections they must be based on an effective port State inspection and monitoring system (Regulation 5.2.1, paragraph 4). The main aspect of this obligation is the need to ensure that the port State has an adequate number of qualified officers trained to carry out port State control under the MLC, 2006. In most cases this will involve personnel that are already qualified under the existing international port State control inspection arrangements, developed in connection with the IMO conventions and under regional MOU on port State control.¹³ However, in some countries it is possible that these inspections would be carried out by an authorized officer who is not necessarily qualified as a PSCO for other purposes, for example, a maritime labour inspector. Irrespective of the approach adopted in each country, in general, most of the expectations and guidance for PSCOs, especially with respect to conduct and the level of training expected for a person to exercise professional judgement will be equally applicable.

2.2. Port State control officers

28. Port State control inspection under the MLC, 2006, is to be carried out by “authorized” officers (Regulation 5.2.1, paragraph 3). As mentioned earlier, the term “port State control officer (PSCO)” is adopted in these guidelines. This means that persons must be authorized, by the competent authority in the port State to carry out these inspections and should carry official identification that can be shown to ships’ masters and to seafarers.

29. PSCOs should also be given sufficient power under relevant national laws or regulations to carry out their responsibilities under the MLC, 2006, in the event that a port State authority decides to inspect a foreign ship.

30. The MLC, 2006, does not set out specific requirements with respect to PSCOs, but port State control is to be carried out in accordance with the MLC, 2006, and “... other applicable international arrangements governing port State control inspections” (Regulation 5.2.1, paragraph 3). This means that existing requirements and international guidance with respect to qualifications and training required for persons functioning as a PSCO would be generally relevant.¹⁴

¹³ See for example IMO resolution A.787(19), section 2.5, and Annex 7 of the Paris MOU.

¹⁴ See: IMO resolution A.787(19), section 2.5; Annex 7 of the Paris MOU, and the *Code of good practice for port State control officers*, adopted in the framework of the IMO (MSC-MEPC.4/Circ.2). The provisions of the MLC, 2006, relating to flag State inspectors may also be useful for port State authorities to consider (Regulation A5.1.4, paras 2, 3, 6, 7, 10, 11 and 12).

2.2.1. Professional profile of authorized officers/PSCOs under the MLC, 2006¹⁵

31. Port State control should be carried out only by authorized PSCOs who have the qualifications and training necessary for them to carry out their duties under the MLC, 2006.
32. The PSCO may be assisted by any person with the required expertise acceptable to the port State.
33. The PSCOs and any persons assisting them should have no commercial interest, either in the port of inspection, or in the ships inspected, nor should PSCOs be employed by or undertake work on behalf of ROs. They should, as appropriate, be required to apply the *Code of good practice for port State control officers*, adopted in the framework of the IMO (MSC-MEPC.4/Circ.2).
34. A PSCO should carry a personal document in the form of an identity card issued by the port State, bearing their photograph and indicating that the PSCO is authorized to carry out the control.

2.2.2. Requirements of PSCOs

35. The PSCO should be able to review documents written in English and communicate in English with seafarers.
36. Specific training with respect to labour inspections under the MLC, 2006, is essential and, for personnel who have not been involved in port State control inspections previously, also with respect to the role and professional practice of PSCOs.

¹⁵ See also IMO resolution A.787(19), section 2.4.

Chapter 3. Carrying out port State control inspections under the MLC, 2006

37. PSCOs should use their professional judgement in carrying out all duties, and consult others where they consider it appropriate to do so.
38. To ensure consistent enforcement of port State control requirements, PSCOs should carry a copy of the MLC, 2006, and of these guidelines, either in a digital format or paper copy, for ready reference when carrying out any port State control inspections. The PSCO should also have a copy of the ILO guidelines for flag State inspections under the MLC, 2006.

3.1. General considerations for MLC, 2006, port State control inspections

3.1.1. *The purpose and subject matter of MLC, 2006, port State control inspections*

39. The purpose of the inspection by PSCOs is to determine whether a ship is in compliance with the requirements of the Convention (including seafarers' rights) (Article IV, paragraph 5). These requirements are laid down in the Articles and Regulations and in Part A (Standards) of the Code of the MLC, 2006, relating to the working and living conditions of seafarers on the ship (Regulation 5.2.1, paragraphs 1 and 3). Part B (guidelines) of the MLC, 2006, Code is not subject to inspection by port State control. Port State control inspections are, in principle, concerned with the 14 areas of working and living conditions on the ship (Standard A5.2.1, paragraph 2) that are listed in Title 5, Appendix A5-III of the MLC, 2006, and are to be certified by flag States as being in compliance with the related requirements of the Convention. However, the PSCO may also take action in the case of non-compliance with any other requirement of the Convention relating to working and living conditions (Regulation 5.2.1, paragraph 1).
40. The details for the implementation of the MLC, 2006, requirements are to be prescribed, in accordance with the Convention, in the national laws or regulations, collective agreements or other measures in the flag State concerned. On ships carrying a Maritime Labour Certificate, a summary of the relevant national standards adopted to implement the MLC, 2006, in the 14 areas referred to will be set out in Part I of the DMLC attached to the Certificate. **As indicated below, the Certificate and DMLC should be the starting point in the inspection process as they constitute prima facie evidence that the ship is in compliance.**
41. PSCOs may also be entrusted with handling and investigating complaints made by seafarers on ships visiting their ports. If complaint handling is not part of their functions, they should be able to direct seafarers to the competent official for handling complaints or to receive complaints for transmittal to the competent official.

3.1.2. *How to conduct an MLC, 2006, port State control inspection*

42. The guidance in this section and in Chapters 4 and 5 of these guidelines describes port State control under the MLC, 2006, as a process involving three potential phases or stages, depending on the situation that the PSCO encounters when going on board a ship to initiate the inspection:

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- review of documentation constituting prima facie evidence of compliance (Chapter 3);
 - more detailed inspection, where applicable (Chapter 4);
 - action to be taken in case of deficiencies or non-conformities (Chapter 5).
43. An inspection may end after a satisfactory document review or it may move to a more detailed inspection and end at that point or an inspection may also require that action be taken if deficiencies are identified. At all stages of the inspection, PSCOs should bear in mind the obligation to make all possible efforts to avoid a ship being unduly detained or delayed (Standard A5.2.1, paragraph 8).
44. The procedures recommended in the following sections deal with the initiation of the inspection, the first (or often only) stage of the inspection, which is mainly concerned with reviewing a ship's MLC, 2006, documentation, the Certificate and the DMLC. They are based on MLC, 2006, Standard A5.2.1 "Inspections in port", taking account of other relevant inspection procedures. The PSCO should be familiar with Standard A5.2.1, especially paragraph 1, which reads as follows:
1. Where an authorized officer, having come on board to carry out an inspection and requested, where applicable, the Maritime Labour Certificate and the Declaration of Maritime Labour Compliance, finds that:
 - (a) the required documents are not produced or maintained or are falsely maintained or that the documents produced do not contain the information required by this Convention or are otherwise invalid; or
 - (b) there are clear grounds for believing that the working and living conditions on the ship do not conform to the requirements of this Convention; or
 - (c) there are reasonable grounds to believe that the ship has changed flag for the purpose of avoiding compliance with this Convention; or
 - (d) there is a complaint alleging that specific working and living conditions on the ship do not conform to the requirements of this Convention;

a more detailed inspection may be carried out to ascertain the working and living conditions on board the ship. Such inspection shall in any case be carried out where the working and living conditions believed or alleged to be defective could constitute a clear hazard to the safety, health or security of seafarers or where the authorized officer has grounds to believe that any deficiencies constitute a serious breach of the requirements of this Convention (including seafarers' rights).
45. Inspections may be carried out by the port State authority either on its own initiative or upon receipt of a complaint. They may also be carried out at the request of a flag State. Where an inspection is to take place, the PSCO should first determine whether or not the ship is carrying a Maritime Labour Certificate and DMLC, which constitute prima facie evidence of compliance (see paragraph 51 below). If the ship is not flying the flag of a ratifying Member then the ship may be the subject of a more detailed inspection (Chapter 4) and a document review is not applicable. The initial inspection may be followed by a more detailed inspection (see Chapter 4) in any of the four cases described in paragraphs (a)–(d) of Standard A5.2.1, paragraph 1. In some cases a more detailed inspection must be carried out (see the last sentence of the Standard).
46. **The chart in section 3.2.5** below describes, as five steps, the process for carrying out an MLC, 2006, port State control inspection (see section 3.2.5), leading to the decision whether or not to carry out a more detailed inspection. The inspection may be determined to be complete and satisfactory at any of these steps. Steps 1–5 in the chart cross reference paragraphs in sections 3.2.5 and 3.3 of these guidelines as well as references to the relevant

MLC, 2006, provisions. These paragraphs explain considerations at each step and provide references to the relevant MLC, 2006, provisions.

3.2. Procedure where inspection is initiated by the PSC authority

3.2.1. Preparing for inspections

47. The effectiveness and conduct of a port State control inspection may be improved if background information is obtained prior to carrying out an inspection. In this regard basic information concerning the type of ship, cargo, flag and history as well as its previous and next ports of call and time available in port for the inspection should be obtained in advance, if possible.
48. Special attention should be paid to any previously reported deficiencies or non-conformities. Depending upon their nature, number and frequency on the ship concerned, or on ships of the same shipowner, prior non-conformities may affect the decision whether or not to carry out an inspection on a particular ship. They might constitute clear grounds for a more detailed inspection (see paragraph 71 below), especially if the subsequent review of the ship's documentation shows no evidence that a prescribed rectification has been completed (see paragraphs 93 and 103 below).

3.2.2. Sources of information

49. Information on previous non-conformities is available, for example, from deficiency notices or inspection reports issued by the port State control authority itself and from the port State control authorities of previous ports of call, as well as from port State control databases or other material.
50. In addition, it is important to share information and generally coordinate activities with the PSCOs responsible for the inspection of ships for compliance with the requirements of the SOLAS, STCW and the MARPOL and other IMO conventions. Certain non-conformities with the MLC, 2006, may have already been noted as also constituting non-compliance with a requirement of the SOLAS or STCW Conventions, or noted by the PSCO on the occasion of an inspection in connection with the IMO conventions.

3.2.3. Scope of the port State control inspection

51. Where the ship carries a Maritime Labour Certificate and DMLC issued by a flag State that has ratified the MLC, 2006, these documents constitute "prima facie evidence that ... the requirements of this Convention relating to working and living conditions of the seafarers have been met to the extent so certified" (Regulation 5.1.1, paragraph 4). **Except in the four situations set out under paragraph 1(a)–(d) of Standard A5.2.1 (see section 3.2.5 below), a port State control inspection, if undertaken, would be limited to carrying out a review of the ship's Certificate and the DMLC (Regulation 5.2.1, paragraph 2).**
52. The document review is concerned with:
- (a) ascertaining the existence of a MLC, 2006, Certificate and a DMLC (or an Interim Certificate) and verifying that these documents have been **validly** established for the ship; and

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- (b) verifying that the documents are **complete**, in the sense that they contain all the information required by the MLC, 2006 (see paragraph 62 below), especially with respect to the 14 subject areas listed in Appendix A5-I.

53. If the documentation is found to be **valid** and **complete**, the inspection would come to an end at that point unless there are **clear grounds** for believing that the working and living conditions on the ship do not conform to the requirements of the Convention (Standard A5.2.1, paragraph 1(b)) or **reasonable grounds** to believe that the ship has changed flag for the purpose of avoiding compliance (Standard A5.2.1, paragraph 1(c)) or there has been a **complaint** (Standard A5.2.1, paragraph 1(d)).

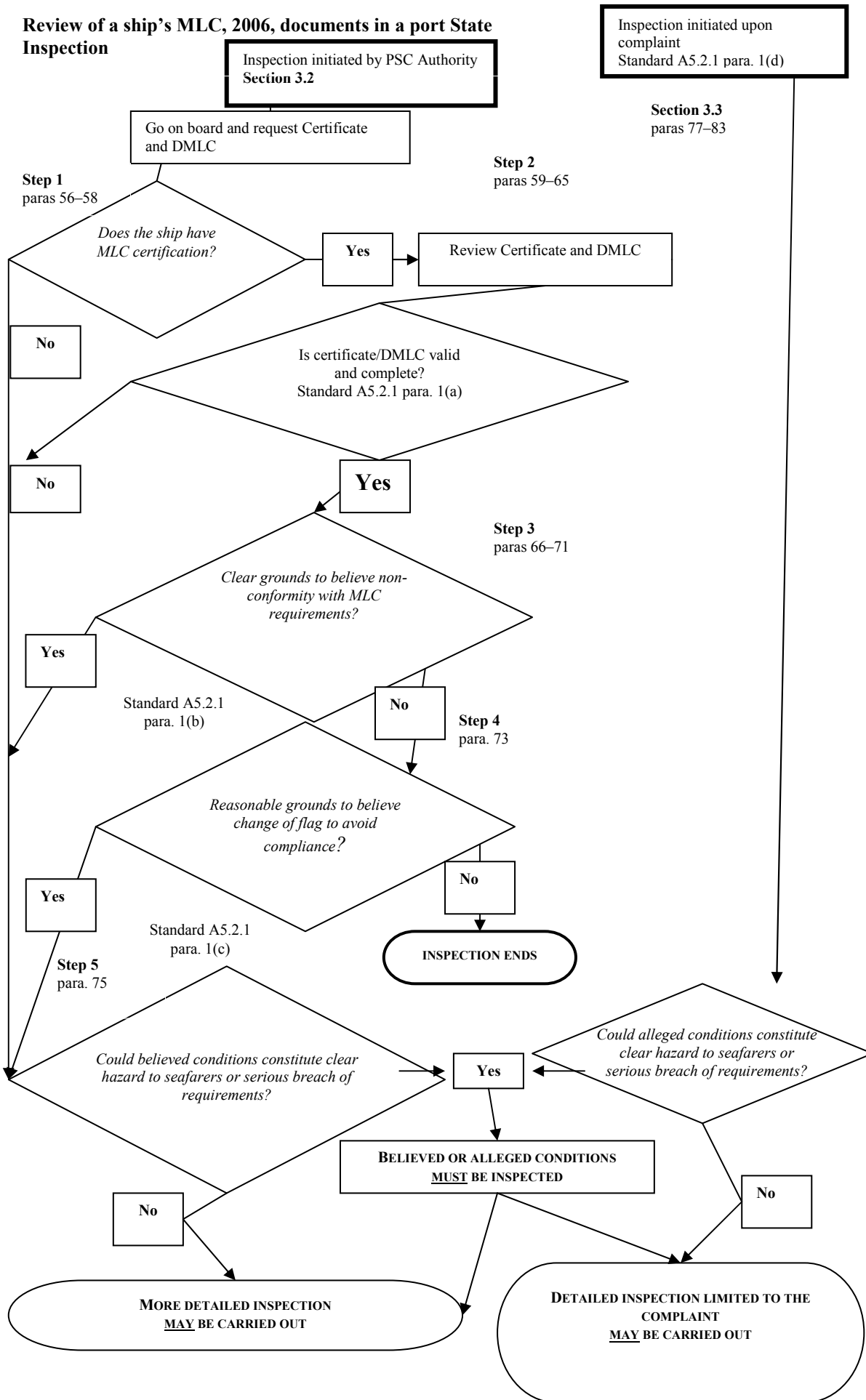
3.2.4. The MLC, 2006, requirements that may be the subject of a more detailed inspection by a PSCO

54. As stated earlier, the requirements for working and living conditions to be met by all ships are those set out in the MLC, 2006, with the detailed implementation of those requirements being prescribed in the national law of the flag State concerned. Since many of the basic requirements of the MLC, 2006, are worded in general terms, reference should be made – in the case of ships carrying a Certificate and a DMLC – to the national law requirements outlined in **Part I** of the DMLC, with note being taken of those that vary from the MLC, 2006, because of substantial equivalence, for example. Shipowners' approved measures for ongoing compliance will be set out in **Part II**. Guidance relating to ships which do not carry a Certificate and a DMLC is provided in paragraph 85 below.

3.2.5. Review of a ship's MLC, 2006, documents in a port State control inspection

55. The following guidance applies only in the case of ships flying the flag of a State for which the MLC, 2006, is in force. In any other case, the PSCO may decide to immediately proceed to carry out a more detailed inspection (see Chapter 4 below).

Review of a ship's MLC, 2006, documents in a port State Inspection



Step 1: Boarding the ship and requesting documentation

56. When boarding a ship, the PSCO should present to the master or to the duty officer, if requested to do so, a document or card (with a photograph) confirming his or her authority to carry out the inspection.
57. PSCOs when boarding a ship should try to gain an impression of whether the ship is well maintained and operated. The PSCO may observe situations or practices that suggest that the working and living conditions on the ship may be inconsistent with the requirements of the MLC, 2006. It should be borne in mind that the purpose of the initial inspection is (where applicable) to review the Certificate and DMLC and that any deficiencies observed should be dealt with after the review of these documents has taken place (except in the case of an emergency).
58. If a Maritime Labour Certificate and DMLC are not produced, the PSCO may proceed to consider whether a more detailed inspection is needed (see **step 5** below and Chapter 4 (Standard A5.2.1, paragraph 1(a))).

Step 2: Reviewing the documents

59. As explained above (paragraph 52), a review of the ship's Maritime Labour Certificate and DMLC should include checking for:
 - validity; and
 - completeness.
60. To the extent necessary to verify the Maritime Labour Certificate and DMLC, further documentation with regard to the working and living conditions may be checked at this stage of the inspection.
61. *Validity.* In addition to checking the date of validity stated on the Maritime Labour Certificate, the PSCO should check that:
 - the period of validity does not exceed five years or, in the case of an Interim Certificate, six months;
 - except in the case of an Interim Certificate, the ship is covered by a signed certification and, where applicable, endorsements, that purport to be based on an initial or intermediate inspection carried out in compliance with Standard A5.1.3, paragraphs 2–4 and Standard A5.1.4, paragraph 4 (see, in particular, *Guidelines for flag State inspections under the Maritime Labour Convention, 2006*, sections 2.2.4–2.2.7);
 - the Certificate, and the accompanying DMLC (where applicable), have apparently been signed by an authorized flag State official; where the authorized official is engaged by a RO, reference should be made to the list of ROs authorized by the flag State concerned, made available by the ILO in accordance with Standard A5.1.2, paragraph 4 (see *Guidelines for flag State inspections under the Maritime Labour Convention, 2006*, section 2.2).
62. *Completeness.* A Maritime Labour Certificate must have a DMLC attached or it is incomplete. An Interim Maritime Labour Certificate, however, need not be accompanied

by a DMLC. The PSCO should ensure that all spaces requiring input from the flag State¹⁶ have been completed in the Maritime Labour Certificate and the DMLC, or in the Interim Maritime Labour Certificate. The check for completeness should then ensure (except in the case of an Interim Certificate) that:

- Part I of the DMLC identifies, for each of the 14 certified areas, the national requirements embodying the relevant provisions of the MLC, 2006, by providing a reference to the relevant national legal provisions as well as setting out, to the extent necessary (see Guideline B5.1.3), concise information on the main content of the national requirements, including ship-type specific requirements;
- Part II of the DMLC indicates the main measures adopted by the shipowner to ensure ongoing compliance with the national requirements between flag State inspections;
- the results of any subsequent flag State verifications, including those related to measures referred to in Part II of the DMLC are recorded in or attached to the DMLC or made available to the PSCO in some other way, and include information not only on any deficiencies found during the verifications but also the dates when the deficiencies were found to have been remedied.

63. The DMLC is not expected to cover every single national law or regulation or other measure adopted by the flag State to implement the requirements of the MLC, 2006. A DMLC should be considered as complete if it at least identifies, in each of the 14 areas, the national law requirements on the matters that are referred to as *Basic requirements* in Chapter 4 below.

64. The documents will not be complete if any necessary element in them is not in English or accompanied by a translation into English, as required (for ships on international voyages) (Standard A5.1.3, paragraphs 11 and 12).

65. If the documents are not complete, the PSCO may, instead of proceeding to a determination as to whether there are grounds for a more detailed inspection in step 3 below, decide to consider undertaking a more detailed inspection (see **step 5** below) (Standard A5.2.1, paragraph 1(a)).

Step 3: Determining whether there are clear grounds for believing that the conditions do not conform to requirements

66. Clear grounds for believing that the working and living conditions on the ship do not conform to the requirements of the Convention (Standard A5.2.1, paragraph 1(b)) may result from:

- the ship's documentation; or
- other elements.

67. *Clear grounds from the ship's documentation.* The ship's Maritime Labour Certificate and DMLC must be viewed as prima facie evidence of compliance with the requirements of the Convention (including seafarers' rights), to the extent that they certify compliance with the national requirements implementing the MLC, 2006, relating to the working and living

¹⁶ See Title 5, MLC, 2006, Appendices A5-II, and Standard A5.1.3, paras 10 and 11; see also the example in Appendix B5-I.

conditions of seafarers (Regulation 5.1.1, paragraph 4). When reviewing these documents for completeness under step 2 above, the PSCO should form an opinion as to whether the information provided in the DMLC shows that:

- the requirements of the MLC, 2006, in each of the 14 areas appear to be complied with, especially the requirements on the matters that are referred to as *Basic requirements* in Chapter 4 below;
- the measures stated in Part II of the DMLC appear to be sufficient to ensure ongoing compliance with those requirements.

- 68.** Clear grounds, in this context, would exist only where a PSCO concludes that in his or her professional judgement (see paragraph 54 above) one or more national requirements for working and living conditions are **clearly** insufficient on the face of the document, for example, if the minimum age in the Part I DMLC is set at 15 or if the shipowner's measures for ongoing compliance are **clearly** inadequate. **It must be noted that it is not the function of the PSCO or the PSC authority to evaluate the consistency of national legislation with the MLC, 2006.** This is a matter for the supervisory bodies of the ILO. However, a statement in the documentation that the national minimum age is 15 (to take the example given above) would constitute prima facie evidence of an important instance of non-compliance, and therefore indicate that conditions on board should be the subject of a more detailed inspection. If the more detailed inspection shows that no under-age persons are, in fact, working as seafarers on the ship, no further action should be taken by the PSCO on that account.
- 69.** Where a national requirement is stated in Part I of the DMLC to be a *substantially equivalent provision* (Standard A5.1.3, paragraph 10(a)(iv)) to the corresponding requirement in the MLC, 2006, special care should be taken and full consideration should be given to any explanation provided in the DMLC. A conclusion that the national requirement is clearly insufficient should be reached only if the national requirement is **clearly** below the standard set out in the Convention for the requirement concerned.
- 70.** Account should also be taken of any *exemptions* granted by the flag State provided that they are permitted by the MLC, 2006,¹⁷ and that any exemption granted by the competent authority of the flag State relating to Title 3 of the MLC, 2006, is clearly indicated in Part I of the DMLC (Standard A5.1.3, paragraph 10(a)(v)).
- 71.** *Clear grounds from other elements.* Clear grounds for believing that the working and living conditions on the ship do not conform to the requirements of the Convention may arise in several other contexts, including during the preparations for inspections (see sections 3.2.1 and 3.2.2 above), visual observations when going on board (paragraph 56 above) and during the investigation of a complaint (see paragraphs 83 and 115 below).
- 72.** Where clear grounds exist for believing that the working and living conditions on the ship do not conform to the requirements of the Convention, the PSCO should proceed to **step 5** below. Where clear grounds *do not* exist and there has been no change of flag justifying consideration of step 4 below, **the inspection must come to an end.**

¹⁷ See section 2.1.2 of the *Guidelines for flag State inspections under the Maritime Labour Convention, 2006*, which discusses national flexibility in connection with possible determinations, exemptions, variations, substantial equivalences and other matters regarding application of the MLC, 2006.

Step 4: Determining whether there are reasonable grounds to believe that the ship has changed flag to avoid compliance with the Convention

73. A PSCO may also decide to undertake a more detailed inspection if there are reasonable grounds to believe that the ship has changed flag for the purpose of avoiding compliance with the MLC, 2006 (Standard A5.2.1, paragraph 1(c)). This may be difficult to determine on board a ship and is more likely to arise in connection with the preparation for an inspection or through other documents. Any change or changes of flag should be noted in the documentation of the ship concerned, in particular its Continuous Synopsis Record, maintained under Regulation 5 of the SOLAS Convention, Chapter XI-1. There must be “reasonable grounds”, rather than “clear grounds”, to believe that the purpose of the change or changes was to avoid compliance. The PSCO could form an opinion on the purpose of changing flag by looking at the ship’s records concerning compliance and talking to the shipowner’s representative and to the authorities of the previous flag State or States.

74. In the absence of reasonable grounds to believe that the ship has changed flag for the purpose of avoiding compliance with the Convention, **the inspection must come to an end**. Otherwise, the PSCO must determine whether or not to carry out a more detailed inspection.

Step 5: Determining whether or not to carry out a more detailed inspection

75. Where the inspection has not been determined to be complete in any of the steps set out above, the question of whether or not to carry out a more detailed inspection (see Chapter 4 below) will normally be at the discretion of the PSCO or the PSC authority. A more detailed inspection is *mandatory* where the working and living conditions believed (by the PSCO) or alleged (by a complainant: see section 3.3 below) to be defective could constitute a clear hazard to the safety, health or security of seafarers or where the PSCO has grounds to believe that any deficiencies constitute a serious breach of the requirements of the Convention (including seafarers’ rights). Guidance on the concept of a serious breach is provided below (Chapter 5, section 5.2, paragraphs 97 and 98).

76. If the PSCO decides, or is required, to carry out a more detailed inspection, the ship’s master should be immediately informed of the grounds for this action. If the PSCO determines that a more detailed inspection is not needed, no further action is required.

3.3. Procedure for inspections initiated upon receipt of a complaint

77. The MLC, 2006, envisages complaints in a port State in two different situations. Both situations can result in a more detailed inspection. However the steps and considerations differ. One relates to onshore complaints made by a seafarer under Regulation 5.2.2 and is addressed below in Chapter 6. The present section deals with complaints that are made as part of the port State control inspection procedure (Standard A5.2.1, paragraph 1(d): see chart 3.2.5). A complaint in this context means information submitted by a seafarer, a professional body, an association, a trade union or generally any person with an interest in the safety of the ship, including an interest in safety or health hazards to seafarers on board (Standard A5.2.1, paragraph 3).

78. The PSCO and/or port State authority should keep a record of the time when the complaint was received, the means by which it was transmitted, the source of the complaint, the name of the person receiving the complaint, the name and flag of the ship concerned, and the

nature and details of the alleged non-conformity with the requirements of the MLC, 2006. A record of action taken upon receipt of the complaint should also be kept.

79. Before taking any action upon a complaint, the PSCO needs to check that it relates to a requirement of the Convention (including seafarers' rights) that is laid down in its Articles and Regulations or in Part A of the Code and that it relates to the working and living conditions of seafarers on the ship concerned (Standard A5.2.1, paragraph 1(d)). It need not be in one of the 14 areas listed in Appendix A5-III of the Convention.
- 80. Unless the complainant has clearly indicated otherwise, all complaints from seafarers should be treated as confidential and the records should be maintained by the port State authority in strict confidence.**
81. On the basis of the complaint, the PSCO may, or must (where the working and living conditions alleged to be defective could constitute a clear hazard to safety or health or a serious breach referred to in the last sentence of Standard A5.2.1, paragraph 1 – see paragraph 75 above), decide to carry out a more detailed inspection on board ship.
82. If the PSCO decides not to carry out a more detailed inspection and the complaint has been made by the seafarer with respect to his or her individual case, it should be handled in accordance with Regulation 5.2.2 (see chart in Chapter 6, step 2, and paragraph 110 below).
83. The inspection carried out in response to a complaint must generally be limited to matters within the scope of the complaint. However, as noted in Standard A5.2.1, paragraph 3, information in the complaint itself or gained during its investigation may give the PSCO clear grounds for believing that the working and living conditions on the ship do not conform to the requirements of the Convention. In such a case, the PSCO *may* (or *must*, in the circumstances referred to above) decide to carry out a more detailed inspection (see paragraph 71 above). In addition, where the results of the investigation seriously contradict information provided in the ship's documentation, including with respect to ongoing compliance in Part II of the DMLC, this may constitute evidence that the required documents are falsely maintained, warranting a more detailed inspection on the basis of Standard A5.2.1, paragraph 1(a).

Chapter 4. More detailed inspection of maritime labour conditions on ships

4.1. General

84. This chapter is intended to provide a practical tool for guidance concerning the subject matter of a more detailed inspection under the MLC, 2006. However, for an authoritative statement of requirements on any issue, reference should be made to the text of the MLC, 2006, and – in so far as they are outlined in a valid Maritime Labour Certificate and attached DMLC – to the national laws or regulations or collective bargaining agreements or other measures implementing the Convention that are applicable to the ship concerned.
85. Where a ship is not carrying a Maritime Labour Certificate and DMLC (because it is a ship for which certification is not mandatory (Regulation 5.1.3, paragraph 1) and has not requested a certificate or it is a ship of a non-ratifying State), or where the national law requirements stated in the DMLC **clearly** do not implement the Convention, PSCOs will need to use their professional judgement when evaluating compliance with the specific requirements. This will be particularly necessary where a requirement of the MLC, 2006, may be stated in general terms in the Standards (Part A of the Code). Guidance as to the general expectations regarding this requirement may be found in Part B of the Code, but this guidance should be considered with care since Part B is not mandatory and is not itself the subject of port State control; however, it provides information on the intention of the mandatory provisions. In cases of perceived non-conformity, the master should be given an opportunity to produce evidence of the national requirements concerned and provide any necessary explanations.
86. With respect to inspections that are initiated by the PSC Authority, information is provided below on the basic requirements to be complied with, accompanied by suggestions concerning sources of information for ascertaining compliance, as well as by examples of deficiencies or non-conformities, in the 14 areas for port State inspection that are specified in Appendix A5-III of the Convention. Since these are the same as those that are to be the subject of flag State certification under Appendix A5-I (see paragraph 38 above), this guidance is based on the relevant parts of Chapter 3 of the *Guidelines for flag State inspections under the Maritime Labour Convention, 2006*. The guidance below may also be relevant to inspections initiated upon a complaint pertaining to one or more of the 14 areas, within the limits of the scope of the complaint.
87. It should, however, be borne in mind that, except in the case of ships that are evidently substandard or of aspects of working or living conditions on a ship for which the PSCO already has clear grounds to believe that they are not in compliance with MLC, 2006, requirements, the more detailed inspection by the PSCO may be much less extensive than that carried out in the flag State. If, after visiting the main spaces on the ship and talking to seafarers, the PSCO finds that the ship appears to be well maintained and operated and the seafarers appear to be satisfied with their general conditions of work, the PSCO may decide to choose two or three of the 14 areas of the requirements for a closer scrutiny, with a view to ascertaining whether the flag State inspections of the ship have been carried out and can be relied upon and whether the shipowner's measures for ensuring ongoing compliance are adequate and are being adequately implemented. Depending upon the results, the PSCO may decide to end the more detailed inspection, or to extend it to more or even all of the other areas referred to in Appendix A5-III.

4.2. The basic requirements; sources of information; examples of deficiencies or non-conformities

Regulation 1.1 – Minimum age

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).

Sources of information

- A crew list, a birth certificate or other official document confirming seafarers’ birth dates.
- Work schedule with respect to seafarers aged 16–18 to determine hours and nature of work.
- Accident reports and safety committee reports to determine whether seafarers 18 years or below were involved.
- Interviews with 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

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. **

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- The period of validity for a certificate is determined under the national law of the flag State 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).

Sources of information

- The crew list.
- The medical certificates.
- Colour vision certificates.
- Work schedules and interviews to determine 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.
- The authorization or permit (subject to a maximum validity of three months) where the competent authority of the flag State has permitted a seafarer to work without a valid, or with an expired, certificate in urgent cases.
- Flag State's list of duly qualified medical practitioners.

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

Basic requirements

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

Sources of information

- Minimum safe manning document (SMD) to verify the qualifications of the seafarers.
- Certificates for STCW personnel confirming seafarer's competency with respect to their duties (as well as the crew list for determining duties).
- 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).
- Evidence confirming that seafarers have successfully completed training for personal safety on board ship.
- Training material that is issued to the crew.
- Interview with seafarers to confirm training.

Examples of deficiencies

- Seafarer's qualifications not in accordance with the SMD.
- Seafarer working on the ship who is 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

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).

Sources of information

- National web sites of the flag State regarding the licensing of seafarer recruitment and placement services (manning agencies).
- If seafarers were engaged through a seafarer recruitment and placement service based in a State or territory to which the MLC, 2006, does not apply, documentation which should be available to show that the shipowner has verified, as far as practicable, that the service is operated consistently with the MLC, 2006.

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- Interviews with seafarers to determine 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.
 - Interviews with seafarers to determine that the recruitment and placement service used does not operate a blacklist.

Examples of deficiencies

- 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 license or certificate or any other similar document is no longer valid.
- Use of a private recruitment and placement service requiring the seafarer to pay a fee or other charge for employment services.
- 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

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).

Sources of information

- 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.
- Evidence, where possible, given the timing of the inspection relative to employment period, of possession by seafarers of a record of their employment (or records to be submitted to the inspector at a later date).
- Seafarers’ records of employment to determine that they do not contain statements as to the quality of their work or as to their wages.
- Interviews with seafarers to confirm that, on signing a SEA, they 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.

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- A seafarer, with a SEA that does not as 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 of the flag State.
 - 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

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.

* 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).

Sources of information

- The SEA and documentation, such as the payroll records to confirm that wages are being paid at intervals no greater than one month as specified in their SEA or relevant collective agreements.
- 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.
- 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 PSCOs at their request.
- Interviews with 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.

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- A seafarer is not given a monthly account (such as a wage slip) of wages.
 - 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

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)).

Sources of information

- 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, which should be posted in an easily accessible place on the ship (the table of working arrangements or schedule in the working language or languages of the ship and in English).
- 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 does not exceed 14 hours in any 24-hour period and 72 hours in any seven-day period.
- A table of working arrangements or schedule in the working language or languages of the ship and in English.
- 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.

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- 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 2.7 – Manning levels

Basic requirements

- There must be 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.
- Ships 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).

Sources of information

- SMD or applicable equivalent.
- Crew list to ascertain 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.
- On-board table of working arrangements to confirm that safe manning requirements are being implemented.
- Interviews with 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

- Ships must provide and maintain decent accommodation and recreational facilities for seafarers working or living on board, 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 that were in existence before entry into force of the MLC, 2006, for the flag State:

These ships may still be inspected in connection with seafarer's accommodation and recreational facilities to verify that the ship:

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- meets the standards set out in ILO Conventions Nos 92, 133 or 147 (if applicable in the flag State); and/or
 - 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.

Sources of information

- The construction plan of the ship showing dimensions and identifying the use to be made of each room or other area.
- The crew list for a comparison with the number of sleeping rooms and berths.
- 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); and
 - 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)).
- The on-board records to confirm that frequent inspections are being carried out by or under the authority of the ship's master.
- The DMLC Part II (for ships that carry a Maritime Labour Certificate) to check that other inspections or actions provided for in the shipowners' approved measures have been carried out.
- Evidence 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.

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- Recreational facilities do not conform to national standards implementing the MLC, 2006.
 - 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

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 must be 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).

Sources of information

- 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, evidence 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.

- 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 storerooms, to check that they are hygienic and fit for purpose.
- Evidence concerning how drinking water quality is monitored and the results of such monitoring.
- Menu plans together with visual observation of food supplies and storage areas to ensure that the food supplied is of an appropriate quality and quantity and nutritional value and is varied in nature.
- Interviews with seafarers to ensure 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 is not of appropriate quality, nutritional value and quantity, for the seafarers on the ship.
- Seafarers are charged for food and/or is not provided with drinking water.
- Seafarers who have responsibility for preparing food are 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 of the preparation, storage or handling areas, are not being carried out.
- Catering facilities are not hygienic or are otherwise unfit for their purpose.

Regulation 4.1 – Medical care on board ship and ashore

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 must be provided at no cost to the seafarer.

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- 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)).

Sources of information

- 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. *
- The DMLC Part II to check what provision the shipowner has made for access to medical facilities ashore.
- Records and equipment to confirm that general provisions on occupational health protection and medical care are being observed (Standard A4.1, paragraph 1(a)).
- 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.
- Documents (such as the SMD and crew list and training documents) to confirm that:
 - a qualified medical doctor is working on board (in the case of ships that carry 100 or more people and are ordinarily engaged in voyages of more than three days' duration); or
 - there is 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 (in the case of ships on which a medical doctor on board is not required).
- Evidence that medical report forms are carried on board the ship.
- Interviews with seafarers to confirm that they 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 PSCO 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.)

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.
- 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 4.3 – Health and safety protection and accident prevention

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 as 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)).
- Ships 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).

Sources of information

- 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.
- 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.
- 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;
 - appropriate personal protective equipment is being used and maintained correctly.
- Relevant occupational safety and health and accident prevention notices and official instructions with respect to particular hazards on the ship, which should be posted on the ship in a location that will bring it to the attention of seafarers (Standard A4.3, paragraph 7).
- Evidence that appropriate protective equipment is available for seafarers to use.
- Evidence that a reporting procedure for occupational accidents is in place.

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- Interviews with seafarers to confirm on-board occupational safety and health programmes and practices.
 - Evidence 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 firefighting;
 - 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.

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- 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 5.1.5 – On-board complaint procedures

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.

Sources of information

- The document outlining the on-board complaint procedures to confirm that:
 - the procedures are functioning on the ship;
 - seafarers have a right to be represented;
 - seafarers are safeguarded against victimization for making complaints;
 - seafarers are able to complain directly to the ship's master or to an external authority.
- Interviews with seafarers to confirm that they are given a copy of the on-board complaint procedures, 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

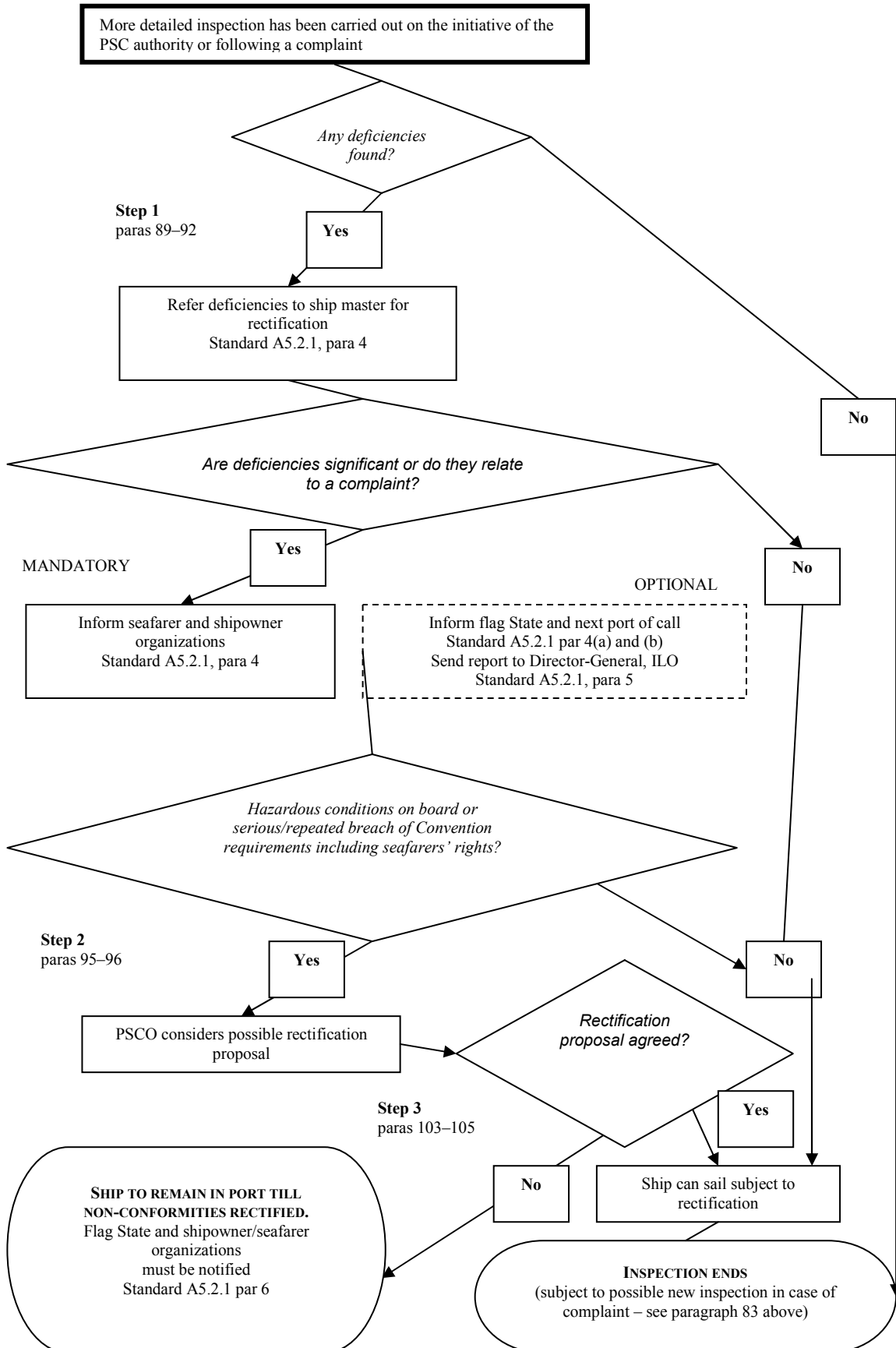
- No document setting out the on-board complaint procedures.
- Ship's on-board procedures are not operating.
- Victimization of a seafarer for making a complaint.
- Seafarer is not given a copy of the ship's procedures.

Chapter 5. Action to be taken by port State control officers when finding deficiencies or non-conformities

5.1. Actions to be considered when deficiencies are found

88. Where, following a more detailed inspection, the PSCO finds that the working and living conditions on the ship do not conform to the requirements of the Convention, certain action *must* or *may* be taken, depending upon the situation (Standard A5.2.1, paragraph 4). The **Chart** below describes the three main steps to be taken in connection with this final stage in a port State control inspection.

Port State Control procedure: Action to be taken



Step 1: Notification of any deficiencies

89. The following action *must* be taken:

- the deficiencies found must be brought to the attention of the master of the ship, with required deadlines for their rectification;
- if the deficiencies are considered by the PSCO to be significant, or if they relate to a complaint referred to in section 3.3 above, they must, in accordance with the MLC, 2006 (Standard 5.2.1, paragraph 4), be brought to the attention of the appropriate seafarers' and shipowners' organizations in the port State in which the inspection was carried out.

90. Whether or not deficiencies are determined to be significant will depend upon the professional judgement of the PSCO concerned. Deficiencies which, having regard to their nature or quantity or repetition, the PSCO would not expect to find on a well-run ship would be significant.

91. Where the deficiencies are significant or relate to a complaint, the PSCO may also:

- notify a representative of the flag State;
- provide the competent authority of the next port of call with the relevant information (Standard A5.2.1, paragraph 4).

92. The notifications referred to in paragraphs 89 and 90 above should draw attention to any non-conformities that need to be rectified before the ship can proceed to sea, stating (unless obvious) the reason why the non-conformities concerned fall within Standard A5.2.1, paragraph 6(a) and/or (b) (see paragraph 95 below). The notification of significant deficiencies should always be in writing.

93. A PSC authority may decide to send the PSCO's report to the ILO Director-General accompanied by any comments received by the flag State authorities (Standard A5.2.1, paragraph 5).

94. If information is provided to the competent authority of the next port of call, the PSCO in that port may decide to inspect the ship to verify that measures have been or are being taken by it to rectify the deficiency within the deadline given (see paragraph 102 below). If the rectification has not been made, the information may be considered as providing clear grounds warranting a more detailed inspection in accordance with Standard A5.2.1, paragraph 1(b) (see paragraph 71 above) and may eventually lead to the deficiency being considered a non-conformity constituting a repeated breach referred to in Standard A5.2.1, paragraph 6 (see below).

Step 2: Determining whether the ship can sail prior to rectification

95. Since all possible efforts must be made to avoid a ship being unduly detained or delayed (Standard A5.2.1, paragraph 8), the ship should be allowed to sail (on the understanding that all deficiencies identified will be rectified within the deadline given) unless:

- (a) the conditions on board are clearly hazardous to the safety, health or security of seafarers; or
- (b) the non-conformity or non-conformities found constitute a serious or repeated breach of the requirements of the Convention (including seafarers' rights, whose violation is

relevant for the consideration of the seriousness of a non-conformity) (Standard A5.2.1, paragraph 6; see also Guideline B5.2.1, paragraph 2).

96. In either case, the PSCO must take steps to ensure that the ship does not proceed to sea until all non-conformities corresponding to (a) or (b) above have been rectified, or until the PSCO has accepted a proposal or plan to rectify those non-conformities.

5.2. Examples of circumstances that may require detention of the ship

97. The following are examples only. Particular reference should be made to the guidance to be provided to PSCOs by their authority in accordance with Standard A5.2.1, paragraph 7. Additional guidance is provided to competent authorities in a port State in Guideline B5.2.1, paragraph 2, concerning non-conformities constituting a “serious or repeated breach” of the requirements of the Convention (including seafarers’ rights), referred to in Standard A5.2.1, paragraph 6(b), as one of the two justifications for detention of a ship.

98. Not every deficiency would be sufficiently serious to warrant preventing a ship from sailing. However repeated breaches may be a reason for detaining a ship. **The following are examples of the kinds of circumstances which could warrant a decision to keep the ship in port (in the absence of agreement on a proposal to rectify the deficiency either because they are repeated (in the sense of occurring several times on a voyage or recurring after a previous voyage in which the same deficiency was noted) or because of the seriousness of a single instance:**

- the presence of any seafarer on board under the age of 16 years (Standard A1.1, paragraph 1);
- the employment of any seafarer under 18 in work likely to jeopardize their health or safety (Standard A1.1, paragraph 4) or in night work (see Standard A1.1, paragraphs 2 and 3);
- insufficient manning (Regulation 2.7), including that caused by the removal from the SMD of under-age seafarers;
- any other deficiencies constituting a violation of fundamental rights and principles or seafarers’ employment and social rights in Articles III and IV;
- any non-conformity applied in a way that violates those fundamental rights (for example, the attribution of substandard accommodation based on the race or gender or trade union activity of the seafarers concerned);
- repeated cases of seafarers without valid certificates confirming medical fitness for duties (Standard A1.2);
- seafarers on board the same ship repeatedly not in possession of valid seafarers’ employment agreements (SEAs) or seafarers with SEAs containing clauses constituting a denial of seafarers’ rights (Regulation 2.1, paragraph 1);
- seafarers repeatedly working beyond maximum hours of work (Standard A2.3, paragraph 5(a)) or having less than the minimum hours of rest (Standard A2.3, paragraph 5(b));
- ventilation and/or air conditioning or heating that is not working or is inadequate (Standard A3.1, paragraph 7);

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- accommodation, including catering and sanitary facilities, that is unhygienic or where equipment is missing or not functioning (Standards A3.1, paragraph 11, and A3.2, paragraph 2; Regulation 4.3, paragraph 1);
 - quality and quantity of food and drinking water not suitable for the intended voyage (Standard A3.2, paragraph 2);
 - medical guide or medicine chest or medical equipment, as required, not on board (Standard A4.1, paragraph 4);
 - no medical doctor for passenger ships engaged in international voyages of more than three days, carrying 100 persons or more, or no seafarer in charge of medical care on board (Standard A4.1, paragraph 4(b) and (c));
 - repeated cases of non-payment of wages or the non-payment of wages over a significant period or the falsification of wage accounts or the existence of more than one set of wage accounts (Standard A2.2, paragraphs 1 and 2).

5.3. Factors to be considered by a PSCO in deciding whether to accept a rectification proposal

99. PSCOs should exercise professional judgement to determine whether to detain a ship until the non-conformities of the kind referred to in the above examples are corrected or to allow it to sail with some non-conformities, on the basis of an acceptable proposal for rectification. Before accepting the shipowner's or master's proposal for rectifying a deficiency, the PSCO must be satisfied that it will be implemented in an expeditious manner (Standard A5.2.1, paragraph 6). PSCOs should therefore not accept a proposal if they have reason to believe that it may not be implemented expeditiously, unless they have a means of ensuring, through the assistance of the flag State or other port States, that the ship will be prevented from any further sailing if rectification is not expeditiously implemented.

100. In deciding whether or not to accept a proposal for rectification, the following considerations may also be relevant:

- whether or not the non-conformities can be rapidly remedied in the port of inspection;
- the length and nature of the intended voyage or service;
- the nature of the hazard to seafarers' safety, health or security;
- the seriousness of the breach of the requirements of the MLC, 2006 (including seafarers' rights);
- any previous history of the non-conformities or similar ones on the ship;
- the size and type of ship and equipment provided;
- whether or not the appropriate rest periods for seafarers are being observed;
- safe manning requirements;
- the nature of the cargo;
- any non-conformities which have been discovered in previous ports of call;

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- the number of deficiencies found during the particular inspection.

5.4. Consultation prior to a decision concerning a rectification proposal

101. Detention of a ship is a serious matter involving many issues. It may be important for the PSCO to work with other interested parties. For example, the PSCO may request the shipowner's representatives or seafarers' representatives to propose a plan of action for correcting the situation. Since the flag State would have been notified of the concern, the PSCO may also consider cooperating with the flag State administration's representatives or the RO responsible for issuing the relevant certificate, and consulting them regarding the PSCO's or the shipowner's proposal for actions that will be taken to rectify the deficiency.

5.5. Form and content of a proposal for rectification

102. The proposal for rectification, which should be signed on behalf of the port State authority and the shipowner, should, in addition to specifying the actions to be taken and the related time frame, contain an undertaking by the shipowner to allow the ship to be inspected by PSCOs in other ports in order to verify that the plan has been properly implemented, as well as a warning that the ship may be prevented from further sailing if rectification does not occur as proposed.

Step 3: Notifying a decision to allow/not to allow the ship to sail

5.6. Action to be taken if a rectification proposal is agreed

103. If the PSCO allows the ship to proceed to another port, subject to its implementation of the proposal for rectification, the PSCO should ensure that the competent authority of the next port of call and the flag State are notified.

5.7. Action to be taken if the ship is not allowed to sail

104. Where an agreement is not concluded on rectification, including the time frame for it to be carried out, the ship must not be allowed to proceed to sea.

105. The PSCO must forthwith (through the fastest means of communication in writing):

- notify the flag State;
- invite a representative of the flag State to be present, if possible; and
- request the flag State to reply within a reasonable deadline (Standard A5.2.1, paragraph 6).

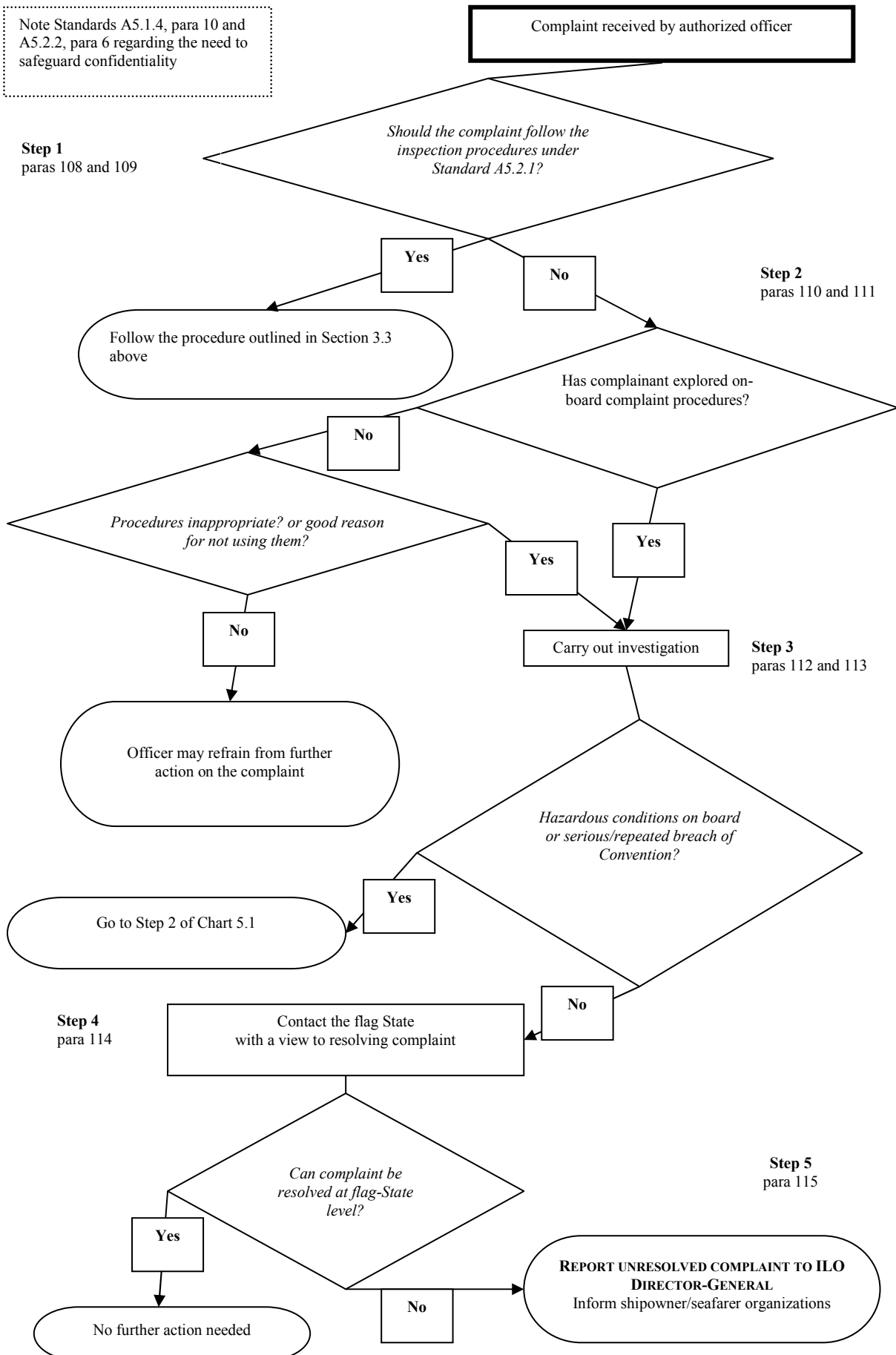
The PSCO must also inform forthwith the appropriate shipowners' and seafarers' organizations in the port State.

Chapter 6. Onshore complaints by seafarers

107. A complaint by a seafarer alleging a breach of the requirements of the MLC, 2006 (including seafarers' rights), may be made to an authorized officer in the port at which the seafarer's ship has called in accordance with Standard A5.2.2. Appropriate steps must be taken to safeguard the confidentiality of these complaints (Standard A5.2.2, paragraph 7) and the receipt of the complaint should be recorded by the authorized officer (see paragraph 78 above). A **chart** outlining the steps in the onshore complaints process and showing links with the PSC inspection process is set out below. The steps reference the paragraph numbers in this section.

Onshore complaints by seafarers

Note Standards A5.1.4, para 10 and A5.2.2, para 6 regarding the need to safeguard confidentiality



Step 1: Determining whether the complaint should be handled under the PSC inspection procedures

- 108.** If the complaint relates to the working and living conditions on the ship visiting the port and is of a general nature, concerning all seafarers on the ship or a category of them, the PSCO should consider whether to undertake a more detailed inspection, following the procedure for complaints set out in section 3.3 above (Standard A5.2.2, paragraph 2; Guideline B5.2.2, paragraphs 1 and 2). A more detailed inspection must be carried out (see Chapter 5, paragraph 75, above) if the working and living conditions alleged to be defective could constitute a clear hazard to the safety, health or security of seafarers or where there are grounds to believe that any deficiencies constitute a serious breach of the requirements of the Convention (including seafarers' rights).
- 109.** In cases not covered by the procedure set out in section 3.3 above, the PSCO or other officer authorized to handle complaints under Regulation 5.2.2 should follow the procedures set out below.

Step 2: Ascertaining whether on-board complaint procedures have been explored

- 110.** The authorized officer should carry out an initial investigation to find out the basic issues of the complaint.
- 111.** If the complaint relates to an individual case, the authorized officer must, where appropriate, seek to promote a resolution of the complaint at the shipboard level and the initial investigation should include consideration of whether the on-board complaint procedures provided under Regulation 5.1.5 have been explored (Standard A5.2.2, paragraphs 2 and 3). A seafarer is not required to use the on-board complaints procedures and there may be good reasons for not doing so. If those procedures have not yet been explored and the authorized officer concludes, having given due consideration to the guidance provided in Guideline B5.2.2, paragraph 3, that those procedures should first be explored, the officer may refrain from any further action on the complaint except to suggest that the complainant take advantage of those procedures.

Step 3: Carrying out an investigation

- 112.** In the investigation of the complaint, the master, the shipowner and any other person involved in the complaint should be given a proper opportunity to make known their views (see Guideline B5.2.2, paragraph 4).
- 113.** If the investigation reveals a non-conformity that falls within the scope of Standard A5.2.1, paragraph 6(a) and/or (b) (see paragraph 95 above), the procedure outlined in paragraphs 96–105 above should be followed (Standard A5.2.2, paragraph 4).

Step 4: Seeking advice and corrective plan of action from the flag State

- 114.** In other cases, where a complaint has not been resolved at the ship-board level, the authorized officer must notify the flag State and seek, within a prescribed deadline, advice and a corrective plan of action (Standard A5.2.2, paragraph 5). Where the flag State demonstrates that it will handle the matter and that it has effective procedures and has submitted an acceptable plan of action, the authorized officer may refrain from any further involvement in the complaint (see Guideline B5.2.2, paragraph 5).

Step 5: Reporting the unresolved complaint

- 115.** If the complaint has not been resolved at the flag State level and it is not demonstrated that the flag State is in a position to deal with the matter (see step 4), the authorized officer's report must be transmitted to the ILO Director-General, accompanied by any reply received from the flag State within the prescribed deadline. The appropriate shipowners' and seafarers' organizations in the port State must be similarly informed. After this step, no further action on the complaint should be taken in the port State. However if, during investigation of the complaint, clear grounds for believing that the working and living conditions on the ship do not conform to the requirements of the MLC, 2006, have arisen, a PSCO may decide to carry out a more detailed inspection (see Chapter 4, paragraph 83 above).