



EAGLE OCEAN MARINE

CIRCULAR

DECEMBER 19, 2016

TO ALL INSUREDS AND BROKERS

Dear Sirs:

MARITIME LABOUR CONVENTION 2006 AS AMENDED (MLC): FINANCIAL SECURITY REQUIREMENTS

The amendment to the Maritime Labour Convention 2006 (MLC) will enter into force on January 18, 2017. After this date, vessels which are subject to the MLC will be required to display certificates issued by an insurer or other financial security provider confirming that insurance or other financial security is in place for liabilities in respect of:

- outstanding wages and repatriation of seafarers together with incidental costs and expenses in accordance with MLC Regulation 2.5, Standard A2.5.2 and Guideline B2.5 (wording attached as Annex 1); and
- compensation for death or long-term disability in accordance with Regulation 4.2., Standard A4.2. and Guideline B4.2 (wording attached as Annex 2).

This Circular provides an update to Insureds regarding the steps which are being taken by Eagle Ocean Marine to enable them to meet the financial security requirements. It contains the most important information while more details are provided in the accompanying frequently asked questions (FAQs), attached as Annex 4.

Vessels requiring MLC Certificates

Vessels will require MLC Certificates if they are

- registered in a state where the MLC is in force; or
- calling at a port in a jurisdiction where the MLC is in force.

Details of states which are party to the MLC can be found in the [MLC Database](#) maintained by the International Labour Organization.

MLC Certificates are not required by ships registered in states which are not party to MLC and which will not call at states which are party to MLC.

More information about the categories of ships to which the MLC applies can be found on the American Club's website (www.american-club.com) and FAQs on the MLC. For reference, the American Club provides the security behind Eagle Ocean Marine.

Process

The Certificates will be sent to Insureds by Eagle Ocean Marine in PDF format based upon the wordings in Annexes 1 and 2 attached. Insureds must then print the Certificates and ensure that they are posted in a conspicuous place on board where they are available to seafarers no later than January 18, 2017.

Once the Certificates are issued, they will be recorded on the ship search facility on insurer's website.

The Certificates are facilitated by Eagle Ocean Marine and there is no need to apply for state issued Certificates. However, some states may require shipowners on their register to supply copies of the Certificates for their records.

Insurance

Some of the liabilities arising under the Certificates will fall within the scope of standard P&I cover for crew. For example, under Eagle Ocean Marine's General Terms and Conditions of Coverage 1/7/2016, Eagle Ocean Marine will normally cover compensation for death or long term disability. Similarly, repatriation costs and wages following a shipwreck form part of standard cover. However other liabilities fall outside the scope of P&I cover, in particular repatriation costs and wages arising from the abandonment provisions set out in Standard 2.5.2 of the MLC, as amended.

Eagle Ocean Marine is able to facilitate Certificates on the basis set out in the MLC Extension Clause which appears in Annex 3. This provides that Eagle Ocean Marine will pay claims advanced by seafarers which fall within the scope of the Regulations and Standards specified in the Certificates. The clause also provides that if such payments fall outside the scope of standard cover, Insureds will be obliged to reimburse Eagle Ocean Marine.

General

The MLC financial security requirements raise many challenges for shipowners, insurers, flag states and port states. Although there is some resemblance to the compulsory insurance system under IMO conventions, there are considerable differences. For example, the MLC does not stipulate a prescribed wording for the security. In addition, individual states have a degree of flexibility as to how they implement and enforce the MLC from both a flag state and a port state perspective.

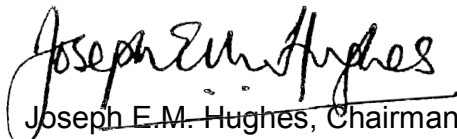
Insureds requiring MLC Certificates must apply using the application form attached as Annex 5. In this connection it should be noted that:

- Insureds may apply for MLC Certificates on a per vessel or fleet basis.
- Insureds are asked to indicate for which period the MLC Certificates should be issued.
- The application form should be sent to the Insureds' usual contact at Eagle Ocean Marine.

MLC Certificates will be sent to Insureds in PDF format based upon the wordings in Annexes 1 and 2. Insureds must then print the MLC Certificates and ensure that they are posted in a conspicuous place on board their vessels, so that they may be available for inspection by crew members no later than January 18, 2017. The MLC Certificates will also be listed in the Club's list of vessels on its website before this deadline.

If any further guidance is required, Insureds are invited to contact Eagle Ocean Marine who will be pleased to assist.

Yours faithfully,



Joseph E.M. Hughes, Chairman & CEO
Eagle Ocean Agencies, Inc.

Eagle Ocean Marine is an American Club fixed premium facility offering gold standard International Group club service, underpinned by the impeccable security of reinsurance at Lloyd's.



ANNEX 3

MARITIME LABOUR CONVENTION EXTENSION CLAUSE 2016

1. Subject only to the other provisions of this MLC Extension (“the Extension”), Eagle Ocean Marine shall discharge and pay on the Member’s behalf under the 2006 Maritime Labour Convention as amended (MLC 2006) or domestic legislation by a State Party implementing MLC 2006:
 - (a) Liabilities in respect of outstanding wages and repatriation of a seafarer together with costs and expenses incidental thereto in accordance with Regulation 2.5, Standard A2.5.2 and Guideline B2.5.2; and
 - (b) Liabilities in respect of compensating a seafarer for death or long-term disability in accordance with Regulation 4.2, Standard A4.2.1 and Guideline B4.2.
2. The Insured shall reimburse Eagle Ocean Marine in full:
 - (a) any claim paid under paragraph 1(a) save to the extent that such claim is in respect of liabilities, costs or expenses recoverable under Eagle Ocean Marine’s General Terms and Conditions, 1/7/2016, Part Two, Section I.1; and
 - (b) any claim paid under paragraph 1(b) save to the extent that such claim is in respect of liabilities, costs or expenses recoverable under Eagle Ocean Marine’s General Terms and Conditions, 1/7/2016, Part Two, Section I.1.
3. There shall be no payment under paragraph 1(a) or paragraph 1(b) if and to the extent that the liability, cost or expense is recoverable under any social security scheme or fund, separate insurance or any other similar arrangement.
4. Eagle Ocean Marine shall not discharge or pay any liabilities, costs or expenses under paragraph 1(a) or paragraph 1(b), irrespective of whether a contributory cause of the same being incurred was any neglect on the part of the Insured or the Insured’ servants or agents, where such liabilities, costs or expenses were directly or indirectly caused by or contributed to by or arise from:
 - (a) Any chemical, biological, bio-chemical or electromagnetic weapon
 - (b) The use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, computer virus or process or any other electronic system.
5.
 - (a) The Extension may be cancelled in respect of War Risks by Eagle Ocean Marine on 30 days’ notice to the Insured (such cancellation becoming effective on the expiry of 30 days from midnight of the day on which notice of cancellation is issued).
 - (b) Whether or not such notice of cancellation has been given the Extension hereunder shall terminate automatically in respect of the War Risks:

- (i) Upon the outbreak of war (whether there be a declaration of war or not) between any of the following:

United Kingdom, United States of America, France, the Russian Federation, the People's Republic of China;

- (ii) In respect of any ship, in connection with which cover is granted hereunder, in the event of such ship being requisitioned either for title or use.

- (c) The Extension excludes loss, damage, liability or expense arising from:

- (i) The outbreak of war (whether there be a declaration of war or not) between any of the following: the UK, the USA, France, The Russian Federation, the People's Republic of China;

- (ii) Requisition for title or use.

6. The Extension shall be subject to Eagle Ocean Marine General Cover Terms and Conditions 1/7/2016.

7. Without prejudice to paragraph 5, cover under the Extension shall cease 30 days after notice of termination in accordance with either Regulation 2.5, Standard A2.5.2.11 or Regulation 4.2, Standard A4.2.12.

8. Any dispute arising out of or in connection with the Extension shall be resolved in accordance with Part One, Section IV, Sub-sections 52 and 53 of the Eagle Ocean Marine General Terms and Conditions 1/7/2016.

9. For the purpose of the Extension:

“Insured” means any insured party who is liable for the payment of calls, contributions, premium or other sums due under the terms of entry

“Seafarer” shall have the same meaning as in MLC 2006.

“War Risks” means the risks set out in Part Three, Section I of the Eagle Ocean Marine General Terms and Conditions 1/7/2016.

Annex 4

MARITIME LABOUR CONVENTION 2006 AS AMENDED (MLC): FINANCIAL SECURITY REQUIREMENTS

FAQs for Insureds

IMPORTANT NOTE: The entry into force of the amendments to MLC raises a number of complex and novel questions. These FAQs are intended to provide guidance to assist Insureds and brokers in the run up to entry into force of the amendments on January 18, 2017. While efforts have been made to provide clarity, uncertainty remains on some aspects of the financial security requirements. There may also be differences in the way some states implement and enforce the amendments. Further updates will be given as and when necessary. These FAQs should not be regarded as providing definitive legal advice and Insureds should also consult their flag state authorities.

CERTIFICATION

1 What Certification is required?

From January 18, 2017, all ships which are subject to MLC will be required to carry and display on board two Certificates confirming that financial security is in place for

(a) shipowners' liabilities for repatriation of crew, essential needs such as food, accommodation and medical care and up to four months' outstanding contractual wages and entitlements in the event of abandonment (Regulation 2.5, Standard A2.5.2 Paragraph 9), and

(b) contractual payments for death or long-term disability due to an occupational injury, illness or hazard set out in the employment agreement or collective agreement (Regulation 4.2, Standard A4.2 paragraph 1(b)).

2. Which ships need Certificates?

Ships will require MLC Certificates if they are

- registered in a state where MLC is in force, or
- calling at a port in a jurisdiction where MLC is in force

Details of States which are party to MLC can be found in the [MLC Database](#) maintained by the International Labour Organisation (ILO).

MLC Certificates are not required by ships registered in States which are not party to MLC and which will not call at States which are party to MLC.

3. Will all states apply the financial security requirements?

The Amendments will apply in all States which are party to MLC. However, it is understood (although not confirmed) that some of these States will not be ready to implement the Amendments.

Insureds should proceed on the basis that the financial security requirements apply unless they have clear confirmation from their Flag State and the authorities of any MLC Port State that financial security Certificates are not required.

4. Which categories of ship does MLC apply to?

The MLC definition of a ship is very wide: “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”¹.

MLC applies to ships “ordinarily engaged in commercial activities, other than ships engaged in fishing or in similar pursuits and ships of traditional build such as dhows and junks”².

MLC States Parties are able to determine that MLC does not apply to certain categories of ship, including ships of less than 200gt not engaged in international voyages. States Parties are obliged to notify the ILO of such determinations which are recorded in the ILO database against the individual state as “National determinations”³.

5. What form do the Certificates take?

MLC sets out relevant information which must be provided on the Certificates but does not provide a prescribed form. The wording is similar to the “blue cards” facilitated by Eagle Ocean Marine under International Maritime Organisation (IMO) Conventions.

6. Who are the Certificates issued to?

They are sent to Insureds in PDF format and will be capable of verification on the ship search facility of Club websites. Insureds are responsible for printing the Certificates and ensuring that they are displayed in a conspicuous place on board where they will be available to the seafarers⁴.

Certificates are not issued by Flag States (in contrast to the blue card and certification procedure under IMO Conventions). However, some Flag States may require owners on their register to supply the competent authority with copies of certificates for their records.

7. Will States accept Certificates issued by Eagle Ocean Marine without carrying out financial controls?

It is anticipated that States will follow the practice for blue cards issued under IMO Conventions and recorded in the relevant IMO Guidelines. MLC Certificates facilitated by Eagle Ocean Marine will then be accepted without the need for additional financial checks.

¹ MLC Article II.1(i)

² Article II.1.4

³ Article II.5, 6 & 7.

⁴ Standards A2.5.2.6 & A4.2.11

8. Will ships which are flagged in a State which is not party to MLC need Certificates if calling at ports where MLC is in force?

States Party to MLC are required to implement it in a way which ensures that ships flying the flag of a State which has not ratified MLC do not receive more favourable treatment⁵. States are also obliged to have effective port state control to ensure that ships entering its ports meet the requirements of the Convention⁶. Eagle Ocean Marine has concluded that the best way of ensuring compliance is to provide the same form of financial security to ships registered in MLC States and to ships registered in non-MLC States, providing they call at ports in MLC States.

9. Can Eagle Ocean Marine rely on any insurance exclusions?

It has been accepted that certain limited exclusions can be relied upon. These are referred to in the MLC Extension Clause and relate to war, nuclear, bio-chem and cyber risks and sanctions.

INSURANCE

10. Is the risk covered by the policy terms and conditions?

Liability for disability due to occupational injury will normally fall within the scope of standard crew cover under the policy terms and conditions. Repatriation and unpaid wages will be covered under the policy terms and conditions in some cases, including when due to a shipwreck. However, repatriation and overdue wages fall outside the scope of P&I cover when arising from abandonment due to a shipowner's financial default.

11. How are wages and repatriation costs under Standard 2.5.2 covered, if outside the scope of cover provided under the policy terms and conditions?

The MLC Extension Clause provides that Eagle Ocean Marine will discharge and pay claims made by seafarers pursuant to the Certificates. The Clause imposes an obligation on Insureds to reimburse Eagle Ocean Marine if the claims which Eagle Ocean Marine has paid to seafarers fall outside the scope of cover provided by the policy terms and conditions. This is on the basis that Eagle Ocean Marine will want to take measures to minimise the risk of bearing the financial consequence of shipowners abandoning their crew.

12. Why is the cover limit “per fleet”?

It is likely that abandonment will be caused by insolvency and will affect a fleet rather than just a single ship in a fleet.

13. Can Certificates be provided when the P&I policy excludes crew risks?

The starting point should be that the insurers who provide owners with P&I cover for crew risks should also provide owners with MLC Certificates. Eagle Ocean Marine will **not** facilitate MLC Certificates where no P&I cover for crew risks is purchased.

⁵ Art V.7

⁶ Regulation 5.2.1

14. Are payments made to crew under MLC Certificates subject to deductibles?

No. Payments made to seafarers under certificates are not subject to deductibles. However, the cover provided by the Club to the owner remains subject to any deductibles, so after payment is made to seafarers the amount of any deductible is recoverable from the insured owner.

CREW MANAGERS

15. What is the position for a shipowner whose crew managers fail to pay wages?

Some shipowners outsource crew management to a crew manager. If a crew manager becomes insolvent and does not pay the seafarers' wages, the shipowner remains responsible for paying the crew. If Eagle Ocean Marine is required to meet claims by seafarers it will be entitled to seek reimbursement from the Insured. If the shipowner is also insolvent the loss will remain with Eagle Ocean Marine.

STATE SCHEMES

16. Can MLC cover be provided by a P&I insurer when crew risks are partly covered by a State scheme?

Yes. MLC acknowledges that financial security can be provided in the form of social security or a national fund or similar arrangement⁷. The financial security facilitated by Eagle Ocean Marine will respond to the extent that liabilities arise under the Certificates which are not included in the State scheme.

WAGES

17. What is the liability for wages?

The security required under Regulation 2.5.2 is for up to four months' owed contractual wages and entitlements. A claim may arise where the shipowner "has unilaterally severed their ties with the seafarer including failure to pay contractual wages for a period of at least two months", as described in Standard 2.5.2.2(c).

18. What is meant by "wages"?

Security is required for "outstanding wages and other entitlements due from the shipowner to the seafarer under their employment agreement, the relevant collective bargaining agreement or the national law of the Flag State, limited to four months of any such outstanding wages and four months of any such outstanding entitlements."

MLC contains definitions of "basic pay or wages" and "consolidated wage" in Guideline B.2.2 but neither of these terms is used in the context of financial security. The term "entitlement" indicates that the seafarer must have a legally enforceable right to recover the amounts claimed. Financial security would respond for wages and other items such as overtime where these are legally due but not otherwise.

⁷ Standards A2.5.2.3 & A4.2.2.2

SEAFARERS

19. Do seafarers have to be serving on board to claim under MLC Certificates?

Unpaid wages fall under "Regulation 2.5 - Repatriation" and Standard A.2.5.2 refers to financial security in the case of abandonment. A claim for wages under the financial security is therefore only available to seafarers serving on board.

Regulation 4.2 applies to contractual claims which relate to death or long-term disability of seafarers due to an occupational injury, illness or hazard occurring in the course of employment and until the date on which they are repatriated. The security responds to claims arising out of events occurring while the crew member is serving on board the vessel or being repatriated.

20. What category of seafarers can claim under the security?

The MLC definition is very simple: "any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies." In general terms MLC is intended to provide protection to persons whose principal place of work is on the ship. It will normally include hotel staff on a passenger ship and cadets. In cases of doubt, MLC States Parties can determine whether particular categories of persons are to be regarded as seafarers for MLC purposes. States are obliged to notify the ILO of such determinations which are recorded in the [ILO database](#) against the individual state as "National determinations"⁸.

TERMINATION

21. Can liability under MLC Certificates be terminated?

Yes. MLC permits the termination of the financial security on at least 30 days' notice by the issuer to the competent authority of the Flag State⁹.

INFORMATION

22. What information is to be provided in MLC Certificates?

Name, full address and website of the provider of insurance or other financial security

Details will be inserted of the insurer's head offices.

Contact details of the persons or entity responsible for handling seafarers' request for relief

Eagle Ocean Marine will provide a telephone number and e-mail address which will provide seafarers with immediate access.

Name of the shipowner

Eagle Ocean Marine will insert the name of the registered owner of the ship.

⁸ Art II.3 & 7.

⁹ Standards A2.5.211 & A4.2.12

Period of validity of the financial security

The period stated in the Certificates will mirror the period of cover stipulated on the Certificate of Insurance issued by Eagle Ocean Marine.

Annex 5

MLC CERTIFICATES

Application for Certificates of Financial Security under Regulation 2.5.2 Standard A2.5.2 and Regulation 4.2, Standard A4.2.1 paragraph 1 (b) of the Maritime Labour Convention 2006 (as amended) (“MLC Certificates”) pursuant to the Maritime Labour Convention Extension Clause 2016 (“MLC Extension Clause 2016”)

Details of Vessel(s)

Vessel Name:

Port of Registry:

Call Sign:

IMO Number:

Name of Registered Owner (applicant):

MLC Certificates Required:

Certificate for Shipowners’ Liability arising under Regulation 2.5.2 Standard A2.5.2 (repatriation costs, maintenance and contractual wages and entitlements)

Certificate for Shipowners’ Liability arising under Regulation 4.2 Standard A4.2.1 (b) (contractual payment for death or long-term disability)

Period of Validity of Certificates

Period January 18, 2017 to noon GMT on date of expiry of P&I cover afforded by Eagle Ocean Marine.

Undertakings

1. We hereby undertake and agree that in consideration of Eagle Ocean Marine agreeing to facilitate the above Certificates at our request
 - (a) We and all Co-insureds will be bound by the terms of the MLC Extension Clause 2016 which is deemed incorporated herein,¹⁰
 - (b) where any payment by Eagle Ocean Marine under any such certificate is in respect of war risks, we will indemnify Eagle Ocean Marine to the extent that such payment is recoverable under the Insured’s P&I war risks policy, or would have been recoverable if the Insured had maintained and complied with the terms and conditions of a standard P&I war risks insurance policy,

¹⁰ A copy of the MLC Extension Clause 2016 is to be found on the Insurer’s website

- (c) to assign to Eagle Ocean Marine all the rights of the Insured under any social security scheme, or other insurance or national fund or other similar arrangement where such scheme, insurance, national fund or arrangement applies in respect of all or any liabilities arising under the MLC Certificates;
- (d) 30 days from a notice to the Flag State of the termination thereof we shall take all necessary steps to remove the Certificates and any copies thereof from the Vessel(s) and return them to the Eagle Ocean Marine.

Dated:

Signed by

Insured on behalf of the Insured and all Co-insureds

(if not signed by Insured must be signed by authorized signatory of Insured)