

2006年海事劳工公约2014年修正案 常见问题解答

证书

1. 需要什么样的证书

自2017年1月18日起，所有适用《海事劳工公约》(以下简称MLC)的船舶均需在船携带并张贴两份证书，用以证明已就下述责任安排了适当的财务担保：

- a. 船东对于船员被遗弃情况下的遣返责任，以及基本生活需求，例如食品、住宿及医疗服务；以及至多四个月的船员合同工资和其他权益（参见规则2.5，标准A2.5.2第9段）；
- b. 因海员就业协议或船员集体协议中列明的其他事项而导致的死亡或长期残疾而产生的合同下的赔偿责任。（参见规则4.2，标准A4.2段落1（b））

2. 什么样的船舶需要配备证书

下述船舶需要配备MLC证书：

- 1) 如果该船舶在MLC成员国注册，或者
- 2) 如果该船舶挂靠MLC成员国的港口

关于成员国的具体信息，可在国际劳工组织(ILO)维护的MLC Database中进行查询。

对于在非成员国注册并且不挂靠成员国港口的船舶，无需配备相关证书。

3. 是否所有国家都适用财务保证的要求？

修正案适用于所有MLC成员国。不过据了解，一些国家可能尚未对修正案的实施做好准备。

除非收到船旗国及任何适用MLC国家的港口当局不要求提供财务担保证书的明确确认，否则会员应当按照要求为船舶办理相关证书。

4. MLC适用于什么样的船舶？

MLC对于船舶的定义十分广泛：“系指除专门在内河或在遮蔽水域之内或其紧邻水域或适用港口规定的区域航行的船舶以外的船舶。”

MLC适用于“通常用于商业活动的船舶，但渔船及从事相似用途的船舶以及以传统方法建造的船舶除外，例如单桅三角帆船及舢板。”

MLC成员国当局可以决定公约不适用于某种类型的船舶，包括200总吨以下并不从事国际航线的船舶。成员国当局有义务将相关决定通知国际劳工组织，并记录在其“国家决议（National determinations）”数据库内。

5. 第一份证书的有效期至2017年2月20日还是2018年2月20日？

协会可以签发有效期至2018年2月20日的MLC证书。但是，如果会员想要在2017年2月20日续保时更换协会，特别是如果船东计划投保在非IG协会的保险人时，那么其证书的有效期将到2017年2月20日止。

协会签发有效期至2018年2月20日的MLC证书时，将要求会员保证在2017年2月的续保季继续在该协会或者是国际保赔协会集团内的其他协会投保。

6. 需要什么格式的证书？

MLC规定了何种信息需要披露在证书之上，但是并未规定具体格式。证书的措辞已由国际保赔集团根据相关规定编写出来，并与非正式的缔约国“通信小组”进行了共享，该组织也曾对证书的措辞提出建议。措辞与协会在国际海事组织公约下签发的“蓝卡”措辞相类似。

7. 证书签发给谁？

证书将会以PDF格式发放给会员，并且可以通过协会网站的船舶搜索工具进行查证。会员有义务将证书打印后张贴在船舶上的醒目位置以便船员能够看到。

证书并非由船旗国签发（此点与IMO公约下的蓝卡及证书签发程序不同）。但某些船旗国可能会要求船东在登记时向有关当局提供有效的证书副本用于存档。

8. 缔约国是否不经财务审查即可接受国际保赔集团所签发的证书？

可以预见的是，实践中成员国将会仿照对于IMO公约下蓝卡的处理方式¹。由IG协会签发的MLC证书无需额外的财务审查即可被当局认可。

9. 对于悬挂非缔约国国旗的船舶，如果其需要挂靠适用MLC的港口，是否需要配备证书？

MLC要求各成员国在履行公约义务时，应以确保悬挂非成员国旗帜的船舶不会获得比悬挂成员国旗帜的船舶更多的优待。成员国同时有责任确保在其港口实行有效的管控，以确保进入其港口的船舶符合MLC的要求。国际保赔集团各协会总结后认为，如果船舶挂靠MLC成员国港口，应对履约要求的最佳方法是向其提供相同格式的财务保证，无论该船舶是否在MLC成员国注册。

10. 协会是否可以依据任何保险除外条款免除责任？

某些限制性的除外条款可以被接受。

这些条款包括在MLC的扩展条款中，主要涉及战争、核、生物化学以及网络风险和制裁风险。

¹ 参国际海事组织2014年7月2日发3464号通函

保险

11. 该风险是否属于协会保险条款承保范围

因工伤造成的伤残赔偿责任通常属于协会保险条款中船员责任的承保范围。船员的遣返费用以及未支付的工资报酬在一些案件中属于协会承保范围，包括因船舶失事引起的此类船东责任。然而，由船东的财务问题导致弃船而引起的船员遣返费用和未付工资报酬则不在保赔险承保范围之内。

12.

如果公约标准2.5.2项下的工资报酬以及船员遣返费用不在协会保险条款承保范围内，如何获得赔付？

MLC扩展条款规定，协会可以根据证书支付船员赔款。但是该条款也规定，如果支付给船员的赔款不属于协会保险条款承保范围，会员应将该赔款返还给协会。协会这样做的目的是希望尽量减少由于船东遗弃船员而带来的财务风险。

13. 协会承保风险和分摊协议以外的责任是否可以由各协会进行分摊？

不可以。各IG协会董事会已经决定不分摊此类责任，因此这些责任不能被分摊，也不能被国际保赔集团再保险计划所承保。

14. 协会是否已通过再保险安排保护其自身利益？

是的。集团正通过经纪公司安排再保险，再保险人已经给出1亿5千万美元的约束性承诺，但保赔集团希望每船队1000万美元以上的承保限额能达到1亿9千万美元。目前，合计每船队2亿美元的保险保障对大多数会员而言是足够的，但少数拥有大量船员的船队可能会有例外。

15. 为什么承保限额按照“每船队”设定？

船员被遗弃很大程度上是由于船公司破产造成的，这会影响到整个船队，而并非船队里单独一条船。再保人要求承保限额以每船队为基础，而不管该船队是如何在协会之间进行投保的。

16. 再保险中超额部分如何安排？

超额责任设定在每船队1000万美元以上。如果该船队只是单独加入一个协会，该协会要负担第一个1000万美元。如果该船队同时加入几个协会，那么每一个协会需要按照比例分担1000万美元。如果一次事故引起的索赔可能超过每船队1000万美元这个基础，则需要协会间共同合作解决。

17. 如果保赔保险保单中排除了船员责任，是否还可以出具证书？

MLC证书首先应该由承保保赔险下船员责任的保险人向船东提供。如果有些保险人不愿意

或者不能提供MLC证书，会员可以要求他们的保赔协会提供该证书。协会评估此类要求时，需要考虑一个事实，即签发证书就表示接受了本应该由其他保险人承担的赔偿责任。

18. 依据MLC支付给船员的索赔是否需要扣除免赔额？

不需要。依据MLC证书支付给海员的赔偿不应扣除免赔额。但是，由于协会提供给船东的保险需要扣除免赔额，因此在协会向船员支付赔款后可以向被保险船东追偿相应的免赔额。

船员管理公司

19. 船员管理公司不能支付工资时船东应怎么做？

有些船东把船员管理外包给船员管理公司。如果船员管理公司破产不能支付船员工资，船东依旧有责任支付给船员。如果船员要求协会进行赔付，则协会有权利向会员进行追偿。如果船东也破产，则该损失将最终由协会承担。

国家保障体系

20. 当国家保障体系可以为船员所面临的部分风险提供保障时，协会是否仍然会为海事劳工公约中涉及的风险提供保障？

是的。MLC确认，财务担保可以以社会保障、国家基金或者是类似的形式来提供。协会财务担保负责的是依据证书而产生但在国家保障体系之外的赔偿责任。

工资

21. 针对工资部分的责任是什么？

根据规则2.5.2的规定，财务担保的限额是四个月的船员合同工资和其他权益。根据标准A2.5.2.2（C）的规定，当船东“单方面断绝与船员联系，并且至少有两个月的合同工资未支付给船员”时，船员可依据MLC证书进行索赔。

22. “工资”意味着什么？

财务担保保证的是根据海员就业协议、船员集体协议或船旗国法律规定，船东未支付的船员工资和其他权益。但以四个月的船员工资和其他权益为限。

MLC导则B 2.2中包含了“基本报酬或工资”和“合并工资”的表述，但这些表述并未在财务担保中使用。“应得权益”一词表明，船员必须拥有依法可以执行的权利来获得索赔。财务担

保针对的就是未付工资和其他权益，例如加班费等，这些都是船员依法应得的。

船员

23.根据MLC证书，船员必须要在船上工作时才能进行索赔吗？

未付船员工资属于“规则2.5—遣返”的范畴，标准A2.5.2中规定了船员被遗弃情况下的财务担保要求。因此，依据财务担保进行的工资索赔仅适用于在船工作的船员。

船员受雇期间由于工伤、疾病或其他风险导致的死亡或长期残疾的索赔适用于规则4.2下的合同索赔，直到他们被遣返为止。船员在船工作或被遣返期间产生的索赔由财务担保来负责赔偿。

24.哪些船员可依据财务担保提出索赔？

MLC的定义非常简单：“在本公约所适用的船舶上以任何职务受雇或从业或工作的任何人员”。原则上来说，MLC意在为主要工作地点为船上的人提供保护。通常情况下，包括客轮的酒店工作人员和实习生。如果有疑问的话，MLC的成员国可决定某些特定人员是否可被认定为公约规定的船员。成员国有义务将此类决定告知国际劳工组织（ILO），这将作为个别国家的“国家决定”记载在ILO的数据库中。

终止

25.海事劳工公约证书产生的责任可以终止吗？

可以。MLC允许财务担保提供方至少提前30天向船旗国相关部门发出通知的情况下终止财务担保责任。

信息□

26.海事劳工公约证书上包含哪些信息？

保险提供方或者其他财务担保方的名称、地址和网址
保赔协会或其经理部总部的详细资料。

人员或机构中负责船员救济请求的部门的联系方式
保赔协会将提供联系电话和邮件地址，以便船员可立即联系到相关人员。

船东的名称

保赔协会将提供登记船东的名称。

财务担保的有效期限

证书中规定的期限是，自 GMT 时间 2017 年 1 月 18 日起，到 GMT 时间 2017 年 2 月 20 日中午 12 时止，或者是到 2018 年 2 月 20 日中午 12 时止。

27. 保赔协会网站上需要提供什么信息？

MLC 证书出具后，保赔协会要确保该证书能够在协会网站上的船舶搜索栏中查询到。国际保赔协会集团的网站上将列出可查询到证书的网址名单。

证书签发以后以及终止通知发出以后，都要立即在网站上予以更新。

MARITIME LABOUR CONVENTION 2006 AS AMENDED (MLC)
FINANCIAL SECURITY REQUIREMENTS
International Group FAQs for Members

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 Members and Clubs in the run up to entry into force of the amendments on 18 January 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 Members should also consult their flag state authorities.

CERTIFICATION

1. What Certification is required?

From 18 January 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.

Members 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. Will the first Certificates be valid until 20 February 2017 or 2018?

Clubs may be able to issue MLC Certificates which are valid until 20 February 2018. However, Members who intend to change Clubs at the 20 February 2017 renewal should only obtain Certificates which are valid up to 20 February 2017, particularly if they intend to move to an insurer outside of the International Group.

Clubs supplying Certificates which are valid to 20 February 2018 will require an undertaking from their Members to renew with them or another IG Club at the February 2017 renewal.

6. 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 of the Certificates has been developed by the International Group (IG) and shared with an informal Correspondence Group (CG) of States which has had the opportunity to comment. The wording is similar to the “blue cards” issued by Clubs under International Maritime Organisation (IMO) Conventions.

7. Who are the Certificates issued to?

They are sent to Members in PDF format and will be capable of verification on the ship search facility of Club websites. Members 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.

8. Will States accept Certificates issued by an IG Club 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 IMO Guidelines⁵. MLC Certificates issued by IG Clubs will then be accepted without the need for additional financial checks.

9. 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 treatment⁶. States are also obliged to have effective port state control to ensure that ships entering its ports meet the requirements of the Convention⁷. The IG Clubs have 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.

10. Can the Club 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

11. Is the risk covered by the Rules?

Liability for disability due to occupational injury will normally fall within the scope of standard crew cover under the Rules. Repatriation and unpaid wages will be covered under the Rules 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.

12. How are wages and repatriation costs under Standard 2.5.2 covered, if outside the scope of Club cover provided under the rules?

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

13. Will Clubs pool liabilities outside the scope of standard Club cover and the Pooling Agreement?

No. The boards of IG Clubs have decided against pooling these risks. They are therefore not poolable and not covered by the IG reinsurance programme.

14. Have Clubs protected their position through reinsurance?

Yes. Reinsurance is being arranged through the IG's brokers. Binding commitments have been given by reinsurers for USD 150m and the IG expect to achieve USD 190m per fleet in excess of USD 10 million per fleet. The combined total of USD 200 million per fleet will be sufficient for all Members, with the possible exception of a small number of fleets with exceptionally high crew numbers.

15. 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. Reinsurers require the cover limit to apply on a per fleet basis regardless of how the fleet is split between Clubs.

16. What is the excess under the reinsurance?

The excess is USD 10 million per fleet. If a fleet is entered with a single Club, that Club will bear the first USD 10 million. If a fleet is split between clubs, then each Club will bear a proportion of USD 10 million calculated on a pro rata basis. Clubs will need to cooperate if an event gives rise to claims which may exceed USD 10 million on a fleet basis.

17. 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. If those insurers are unwilling or unable to provide MLC Certificates, Members may approach their Club to provide them. In assessing such request, the Club will need to take account of the fact that if it issues Certificates it is accepting responsibility for liabilities which are covered by another insurer.

18. 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

19. 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 the Club is required to meet claims by seafarers it will be entitled to seek reimbursement from the Member. If the shipowner is also insolvent the loss will remain with the Club.

STATE SCHEMES

20. Can MLC cover be provided by a Club 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 arrangement⁸. The Club financial security will respond to the extent that liabilities arise under the Certificates which are not included in the State scheme.

WAGES

21. 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).

22. 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.

SEAFARERS

23. 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.

24. 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"⁹.

TERMINATION

25. 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 State¹⁰.

INFORMATION

26. 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 Clubs' or Managers' head offices.

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

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

Name of the shipowner

The Club will insert the name of the registered owner of the ship.

Period of validity of the financial security

The period stated in the Certificates will commence on 18 January 2017 and end at noon GMT on either 20 February 2017 or 20 February 2018.

27. What information is to be provided on Club Websites?

Clubs will ensure that when MLC Certificates have been issued, they will be referred to on the ship search facilities on Club websites. These websites are listed here on the International Group website.

Certificates will be listed as soon as they have been issued and withdrawn as soon as notice of termination has been given.