



ILO's Bills of Rights for Seafarers

OPTIONS for Malaysia

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Introduction

- Maritime Labour Convention (MLC), 2006 adopted in Feb. 2006;
- Consolidates 68 international labour standards (C & R) since 1920;
- Aimed to have same standing as SOLAS, MARPOL and STCW Conventions – the 4th pillar of international maritime regulatory regime.

Maritime Labour Standards

- Standards consists of 42 Conventions and 28 Recommendations;
- Conventions – binding obligations on member States;
- Recommendations – provides guidance on policy, legislation and practice;
- MLC 2006 consolidates 68 of these Standards;
- Universal acceptance;
- Ensure rapid compliance.

Structure of MLC 2006

- Articles – defines the core rights and obligations of member States;
- Regulations – lists and sets the core rights and obligations of member States;
- The Code:
 - Part A [Standards] – mandatory; and
 - Part B [Guidelines] – non-mandatory.

Application of MLC 2006

- Applies to all seafarers and all ships other than fishing, traditional ships and warships;
- Use of “Declaration of Maritime Labour Compliance” and “Maritime Labour Certificate” as mandatory proof of compliance;
- Ships subject to PSC inspections.

Malaysia & maritime labour standards

- Out of 42C & 28R, Malaysia ratified only the following:
- **C138 Minimum Age Convention, 1973.** Ratified 9 Sept. 1997 replacing C7 Minimum Age (Sea) Convention, 1920 denounced by Malaysia (Sarawak) on 9 Sept. 1997;
- **C16 Medical Examination of Young Persons (Sea) Convention, 1921.** Ratified by Malaysia (Sabah & Sarawak) on 3 March 1964; and
- **C98 Right to Organize and Collective Bargaining Convention, 1949.** Ratified by Malaysia on 5 June 1961.

Fundamental rights & principles

Requirements	Malaysia's status
Freedom of association	Malaysian Seafarers Union (MSU) registered in 1999 and affiliated to the ITF ^[i] and MTUC; Malaysia Maritime Associate, an association registered on 23 August 2004 ^[iii] .
Right to collective bargaining	No specific act or rules.
Elimination of forced or compulsory labour	Yes – MSO Sec. 93 & 98.
Elimination of discrimination of employment	No specific instruction on discrimination based on race or religion.

[i] NA Osnin. (2006). Briefing notes on Malaysian seafarers union: Seminar on union awareness & seafarers rights. Kuala Lumpur: MIMA.

[iii] MMA. (2006). Persatuan Maritim Malaysia: Pengenalan. [Retrieved 15 June 2006 from <http://www40.brinkster.com/mma06/visi.asp>]

Implementation & Enforcement

Requirements	Malaysia's status
Administration to enforce regulations and exercise jurisdiction and control over ship that fly its flag	MARDEP MMEA
No favourable treatment for ships not party to the Convention	Yes
Consultation with ship-owners and seafarers association	MASA MSU, IKMAL

Recruitment & Placement

Requirements	Malaysia's status
Manning agencies must be regulated	Yes – MSO Sec. 95 – 97.
Prohibition to use means or mechanism that may prevent seafarers from gaining employment, i.e. blacklists	No specific regulations.
Seafarers should not be charged for manning services	Yes – MSO Sec. 97. IKMAL seamen's exchange. ^[i]
Supervision, monitoring and investigation of complaints by competent authority	Yes – MSO Sec. 169.

[i] IKMAL. (2006). IKMAL Seamen Exchange. [Retrieved 14 June 2006 from <http://www.ikmal.org.my/ise.cfm>]

Employment agreements

Requirements	Malaysia's status
Seafarers to have employment agreement and the opportunity to review and seek advice on its terms and conditions	Yes – MSO Sec. 99.
A copy of the employment agreement and if applicable, collective agreement to be carried on board	Yes – MSO Sec. 100 – 105. Kept by Master on board ship.
Must also include minimum notice periods for termination of agreement	Yes – MSO Sec. 99 ^[i] .

[i] MARDEP. (2006). Crew Agreement: JL/HEPP/D/05-147. Kuala Lumpur: PNMB.

Seafarer wages

Requirements	Malaysia's status
To be paid regularly and according to employment agreement	Yes – MSO Sec. 119.
No greater than monthly intervals	Yes – MSO Sec. 120.
Monthly accounts of payments	Yes – JL/HEPP/D/05-147.
Possibility of transmission of earnings	Yes – MSO Sec. 128 – 133.
Establish minimum wages to be not less than that set by the ILO	No

Hours of work and rest

Requirements	Malaysia's status
Hours of work and rest to be regulated	Yes ^[1]
Take account of fatigue	Yes
Max. hours of work: 14 hours in 24 hours and 72 hours in 7 day period	Yes
Min. hours of rest: 10 hours in 24 hours and 77 hours in 7 day period	Yes
Hours of rest may be divided into no more than 2 periods each at least 6 hours	Yes
Intervals between rest periods no more than 14 hours	Yes
Shipboard working arrangements to be posted	Yes
Records of working hours or rest to be posted	Yes

^[1] MSO. (1999). The Merchant Shipping (Manning, Hours of Work and Watch keeping) Rules 1999. Kuala Lumpur: PNMB.

Accommodation & Recreation

Requirements	Malaysia's status
Decent accommodation and recreation	Yes and No – MSO Sec. 168.
Inspections required by competent authority and frequently by master	Yes – MSO Sec. 169.
Requirements for ventilation, lighting and sanitary facilities	Yes – MSO Sec.168.
Minimum dimensions of berths, cabins and sleeping rooms	Not adequate – MSO Sec. 168.

Social security

Requirements	Malaysia's status
Ensure same level of social security as that enjoyed by shore workers	No
Must provide at least 3 out of 9 branches of social security i.e. medical care, age old benefit and maternity benefit	Partial compliance
Bilateral or multilateral agreements or contribution based social security protection	Partial compliance
Flag states to ensure seafarers on their ships are covered	Partial compliance

Summarizing

- MLC 2006 voted 314 for (incl. Malaysia) & 0 against – universal acceptance;
- ILO lists Malaysia as having substantial tonnage and a major supplier of seafarer;
- Once enforced, Malaysian ships and seafarers will be affected;
- Failure to comply will cause the ship to be labeled as sub-standard.

Actions

- Identify authority hierachy for ratification & implementation of MLC 2006;
- Clarify role of MOHR & MOT;
- Address & clarify policy on:
 - Collective bargaining;
 - Recruitment & placement;
 - Minimum wage;
 - Accommodation requirements; and
 - Social security.

Options ?

- Once enforced MLC 2006 will be the 4th regulatory pillar for merchant ships;
- Malaysia have to comply for the sake of uninterrupted trade;
- Malaysia should take immediate steps to prepare for ratification and implementation.

Terima Kasih

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