



**Figure 1.6: Shipboard shop staff, who are designated as seafarers under the MLC, serving passengers on a ferry**

Source: ICS Flickr/UK Chamber of Shipping

A flag state should not automatically exclude a person or a category of persons from the definition of seafarers just because they fall into one or more of the categories listed above. These lists are simply illustrative of situations where doubts may arise.

## 1.6 Links between the MLC, the STCW Convention and the ISM Code

Several provisions in the ILO MLC are also covered by the requirements of other global maritime regulatory requirements, namely IMO's International Safety Management (ISM) Code, which is mandatory under IMO's SOLAS Convention, chapter IX and the IMO STCW Convention.

Since the entry into force of the 2010 amendments to the IMO STCW Convention (the Manila Amendments), flag states may choose either IMO STCW or the ILO MLC requirements as their primary reference point. There are, however, a number of gaps in IMO STCW and the IMO ISM Code, which the ILO MLC addresses.

There is also some degree of overlap between the well-established enforcement procedures of the IMO SOLAS and ISM Code requirements and those of the ILO MLC. For example, documentation relating to compliance with the following MLC requirements should already be broadly covered by the safety management system, which is required under the IMO ISM Code:

- Medical certification;
- Training and qualifications;
- Hours of work and rest;
- Crewing levels; and
- Medical care on board and ashore.



Figure 1.7 shows common topics covered in the ILO MLC, IMO STCW and IMO ISM Codes.

	MLC	STCW	ISM Code
Seafarer training, qualifications and certification	✓	✓	✓
Career and skill development	✓		
Minimum age of seafarers	✓	✓	
Crewing levels	✓	✓	✓
Medical examinations and certification	✓	✓	✓
Minimum rest hours	✓	✓	
Entitlement to leave	✓		
Medical care on board and ashore	✓		✓
Health, safety and accident prevention	✓		✓
Accommodation and food and catering	✓		

**Figure 1.7: Overview of overlapping jurisdiction and provisions between ILO MLC, IMO STCW and IMO ISM Codes**

While the MLC and the STCW Codes both contain provisions for the hours of work and rest for watchkeepers, the MLC contains additional provisions on seafarers’ wages and compensation for overtime worked (in relation to hours of work), as well as rest days. For more information on hours of work and rest, see section 7.4 of these ICS Guidelines.

Some flag states may use the existence of a valid safety management system certificate, issued under the IMO ISM Code, as evidence of compliance with the MLC. However, other flag states may decide to take a different approach. Many other requirements of the MLC are not covered by the ISM Code and therefore require a separate inspection on board the ship. It is possible that some flag states, or ‘Recognised Organisations’ (such as classification societies) acting on their behalf, may permit shipboard MLC related inspections alongside the IMO ISM Code inspections to be conducted, in the interest of avoiding unnecessary duplication.

The following inspections must be conducted for both ILO MLC and IMO ISM certification:

- External audits or inspections every five years; and
- Intermediate inspections between the second and third years.

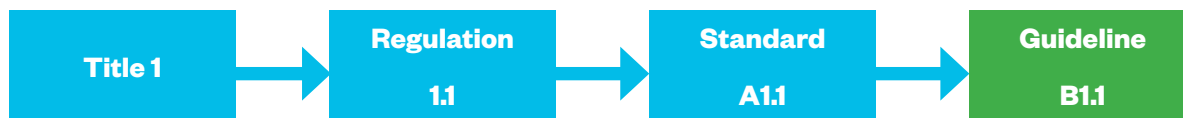
A maritime labour certificate for the ILO MLC (see section 3.4.1 of these ICS Guidelines) and a safety management certificate for the ISM Code, should only be issued once a flag state is fully satisfied that a ship is compliant.

### 1.7 MLC explanatory note

The explanatory note in the MLC is a general guide to the Convention and does not form part of the MLC. The explanatory note explains the purpose of, and interrelationship between, the parts.

The Regulations and the provisions of Part A of the MLC Code are mandatory, while the provisions of Part B of the Code are not mandatory.

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.



**Figure 1.8: How the requirements on minimum age are set out in the Convention**

Every ILO member state that ratifies the MLC is required to adhere to the rights and principles set out in the Regulations and to implement each Regulation in the manner set out in the corresponding provisions of Part A of the Code. In addition, the state needs to consider its responsibilities in the manner provided for in Part B of the Code.

An ILO member state which is not able to implement the rights and principles in the manner set out in Part A of the Code may, unless expressly provided otherwise in the Convention, implement Part A through provisions in its laws and regulations or other measures which are 'substantially equivalent' to the provisions of Part A.

Ratifying countries must adopt national laws or take measures to ensure that the principles and seafarers' rights set out in the Regulations and the Part A Standards are implemented in a substantially equivalent way. In determining details of laws or other implementing measures, ratifying countries must also consider the Part B Guidelines. Once considered, ratifying countries may implement mandatory provisions differently to suit national circumstances but may need to explain to the ILO supervisory bodies why they did not follow the Part B Guidelines.

Flexibility in implementation is provided by formulating the mandatory requirements of many provisions in Part A in a more general way, leaving a wider scope for discretion as to the precise action to be provided for at the national level. Guidance on implementation is given in the non-mandatory Part B of the Code. Members which have ratified the MLC can decide on the 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) to ensure that the contents of the chest are properly stored, used and maintained.

Implementation of Part B is not verified by port state control inspectors. Part B recognises that the principles and rights need to be combined with flexibility in their implementation to facilitate the achievement of wide-scale ratification.

Many existing provisions in other ILO Conventions that were created to implement basic seafarer rights were transferred to the MLC Guidelines, to help ensure they were implemented by states who had not ratified the other ILO Conventions.

The explanatory note to the Regulations and Code, placed after the articles, is also not binding but provides an explanation for better understanding of the relationship between differing sections and the nature of the various obligations.



An example of the Regulations, followed by the Guidelines, are featured below:

**Standard A1.1 – Minimum age**

1. The employment, engagement or work on board a ship of any person under the age of 16 shall be prohibited.

[...]

**Guideline B1.1 – Minimum age**

1. When regulating working and living conditions, Members should give special attention to the needs of young persons under the age of 18.



## Chapter 2

# Fundamental seafarer rights

## 2 Fundamental seafarer rights

MLC article III requires states to ensure that they respect and adhere to the following ILO fundamental rights when implementing and applying the provisions of the Convention:

- Freedom of association;
- Recognition of the right to collective bargaining;
- The elimination of all forms of forced or compulsory labour;
- The abolition of child labour; and
- The elimination of discrimination in respect of employment and occupation.

Compliance with the MLC ensures the avoidance of compulsory labour and child labour, while the Convention also includes detailed requirements for contracts of employment, repatriation and minimum age.

However, freedom of association, collective bargaining and prevention of discrimination involve more considerations, as outlined in the next sections.

### 2.1 Freedom of association

The right to freedom of association is addressed by the separate ILO Freedom of Association and Right to Organise Convention, 1948 (No. 87), which applies to all industries, including shipping.

Freedom of association means that seafarers should have the right to join a properly representative local union of their choice. However, the decision of seafarers whether or not to join such a union should be respected by other unions.

The payment of union membership subscriptions should be the responsibility of the seafarer concerned. If employers have established long-term and mutually beneficial relationships with unions representing the seafarers they employ, they may have also agreed to deduct union membership fees and to transfer these subscriptions directly to the union. Unions should also provide benefits to seafarers proportionate to the level of membership fees required.

Employers should respect the right of unions to manage their affairs and pursue lawful activities, including joining or affiliating with union organisations or confederations, e.g. the ITF, without interference. The same principle applies to seafarers' unions respecting an employer's right to do the same, e.g. by joining a national shipowners' association.

### 2.2 Collective bargaining

Collective bargaining is addressed by the separate ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98), which also applies to all industries, including shipping.

This covers the principle that the regulation of terms of seafarers' conditions of employment by collective agreements should be promoted through voluntary negotiations between employers and unions.

Employers or groups of employers may choose to negotiate collective agreements with unions representing the seafarers they employ. They may also choose to enter into individual contracts with seafarers.