



## ARMA Update: 15 December 2021

*(English Version)*

### Minister of Transportation No. PM 58 of 2021 Concerning Maritime Labour Convention 2006 Certification

#### General Overview

Maritime Labour Convention 2006 (“**MLC**”) is a convention organized by the International Labour Organization (“**ILO**”) in 2006 in Geneva, Switzerland. MLC aims to ensure the rights of seafarers around the world are protected and provide standard guidelines for each country and ship owner to provide a comfortable working environment for seafarers.

Indonesia is one of the member states participating in the MLC, to provide protection for seafarers and ship crews working on ships, the Government of Indonesia is committed to ratifying the MLC, which begins with the establishment of the ratification in Law No.15 of 2016 Concerning MLC Establishment (“**Law 15/2016**”), after the ratification then it needs a derivative regulations so that the substance of MLC can be implemented, these regulations are Government Regulation No.31 of 2021 regarding the implementation of the Shipping Sector (“**GR 31/2021**”) and Minister of Transportation Regulation No. PM 58 of 2021 concerning MLC Certification (“**MoT 58/2021**”).

This ARMA update will discuss the substance of the MLC and the technical requirements for obtaining MLC Certification as regulated in MoT 58/2021.

#### Maritime Labour Convention 2006

MLC is part of the International Labour Convention (“**ILC**”), or also known as the seafarers bill of rights, is an important instrument for seafarers around the world to ensure that they get the minimum rights to their work including the work environment and wages that are good. The existence of the MLC as an instrument indicates that international regulations regarding Maritime are now more comprehensive and progressing.

The basic principle of the MLC is that each member state must ensure that the provisions of its national laws and regulations, must respect the basic rights of:<sup>1</sup>

- 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;
- d. The elimination of discrimination in respect of employment to work occupation.

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<sup>1</sup> Article 3 of MLC



In addition, it is regulated regarding work and social rights for crew members that member countries are obliged to guarantee:<sup>2</sup>

- a. Every seafarer has the right to a safe and secure workplace that complies with safety standards;
- b. Every seafarer has a right to fair terms of employment;
- c. Every seafarer has a right to decent working and living conditions on board of the ship;
- d. Every seafarer has a right to health protection, medical care, welfare measures and other forms of social protection;
- e. Each Member state 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 this 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.

### **How to obtain MLC Certificate**

Through MoT 58/2021, the Government of Indonesia is trying to implement its commitment to the welfare of Indonesian ship crews, one of which is by implementing the obligation to obtain a 2006 MLC Certificate for Indonesian-flagged vessels that will sail abroad.<sup>3</sup>

In the process of obtaining the MLC Certificate, MoT 58/2021 stipulates that there are several certificates that must be obtained, namely:

- a. DMLC Certificate Part I: The Declaration of Fulfilment of Maritime Labour Provisions Part I is a declaration issued by the Director General of Sea Transportation stating that the Ship has complied with the provisions of the MLC 2006 and its amendments.
- b. DMLC Certificate Part II: The Declaration of Compliance with Maritime Labour Requirements prepared by the Shipowner or Ship Operator which certifies that the ship has complied with the provisions of MLC 2006 and its amendments.

The DMLC Part I and DMLC Part II must contain information including but not limited to, among others:<sup>4</sup> (i) Minimum Age; (ii) Hours of work or rest; (iii) Accommodation; (iv) Food and catering; (v) Health and safety and accident prevention; (vi) Payment of wages and financial guarantees for repatriation or repatriation; etc.

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<sup>2</sup> Article 4 MLC

<sup>3</sup> Article 3 (1) MoT 58/2021

<sup>4</sup> Article 12 MoT 58/2021



## The Fulfilment of Seafarer's Rights

Various kinds of fulfilment of rights that must be given to seafarer MoT 58/2021 including but not limited to, among others:

- a. Young seafarer has working hours of not more than 8 (eight) hours a day and 40 (forty) hours a week and overtime work can be carried out if there are unavoidable conditions for shipping safety reasons;<sup>5</sup>
- b. Young seafarer as having a break of 15 (fifteen) minutes after 2 (two) hours of continuous work;<sup>6</sup>
- c. Bedrooms have no direct openings from cargo spaces, mess rooms, kitchens, storage rooms, drying rooms, or shared sanitation areas, the part of the insulation separating the premises from the bedrooms and the external insulation must be constructed of steel or other water-resistant and gas;<sup>7</sup>
- d. Separate bed for each seafarer;<sup>8</sup>
- e. Recreational facilities must be provided by the Ship Owner or Ship Operator in accordance with the needs of the Crew who live and work on the Ship;<sup>9</sup>
- f. Food and catering facilities must be provided by the Ship Owner or Ship Operator with good quality and quantity and hygienic.<sup>10</sup>

## Sanctions

Where a ship flying a flag of a certain country that does not ratify the MLC, such will be subject to Port State Control inspection in the destination country, which there is a customary law known as the principle of "No More Favourable Treatment" which will be applied by the Port State Control of the destination country. The principle of "No More Favourable Treatment" is a principle whereby not complying with a certain convention rule, the ship in question will get less favourable treatment compared to a ship that has complied with a convention. In certain cases, ships that do not meet the minimum standards of a convention may be detained by the Port State Control of the destination country.

Regarding the sanctions in MoT 58/2021, there are two administrative sanctions, namely the first administrative sanction in the form of a written warning that is imposed if the Shipowner or Ship Operator as the holder of the MLC Certificate and DMLC Part I who violates the MLC obligations,<sup>11</sup> the second sanction is the revocation of the MLC certificate, given in the terms of:<sup>12</sup>

- a. The ship does not fulfil the requirements of the 2006 MLC and its amendments and required corrective actions are not implemented;

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<sup>5</sup> Article 27 (1) MoT 58/2021

<sup>6</sup> Article 27 (2) MoT 58/2021

<sup>7</sup> Article 31 (1) (f) MoT 58/2021

<sup>8</sup> Article 31 (1) (k) MoT 58/2021

<sup>9</sup> Article 34 (1) MoT 58/2021

<sup>10</sup> Article 36 (1) MoT 58/2021

<sup>11</sup> Article 52 (1) MoT 58/2021

<sup>12</sup> Article 54 (2) MoT 58/2021



- b. The information in the ship document used for the issuance of the MLC and DMLC Part I Certificates does not match the actual situation; and or
- c. MLC and DMLC Part I certificates obtained illegally

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For more information, please contact Aryo Baskoro ([aryo.baskoro@arma-law.com](mailto:aryo.baskoro@arma-law.com)).

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