

INTERIM GUIDANCE RELATING TO COVID-19 CIRCUMSTANCES

Note

This guidance is only **advisory/recommendatory** for member Authorities and PSCOs should follow their national procedures taking account of this guidance.

Introduction

1 The Port State Control Committee has considered and agreed that, noting the global impact of COVID-19, there is the practical need to apply flexibility under these special circumstances. Within the Asia-Pacific region, national measures will be implemented by government authorities and agencies which are, to a large extent affecting the port State control regime. While COVID-19 remains an issue, it is important to adopt a common approach for implementing inspection activities, notwithstanding any possible national measures. In view of the continued effects of the COVID-19 crisis, and ongoing impact of national measures, the following guidelines should be applied on a case by case basis by member Authorities of the Tokyo MOU.

2 This guidance focusses on the effect of the COVID-19 crisis on the Tokyo MOU in relation to:

- preventive measure to halt the spread of COVID-19
- ship certification issues and COVID-19
- crew related issues and COVID-19

Preventive measure to halt the spread of COVID-19

3 PSCOs should be guided by the preventive measures adopted by their own Authorities, including the use of appropriate personal protective equipment (PPE) in order to protect themselves as well as the ship's crew. Reference should be made to IMO Circular Letter No.4204/Add.15 "Coronavirus (COVID 19) - Personal protective equipment".

4 When developing preventive measures, it is considered that the following common aspects may be taken into account:

- Health and hygiene instruction/recommendation (e.g. good hygiene including hand washing, good social distancing practices, etc.)
- Personal protective equipment (PPE) (e.g. masks, face shield, gloves, protective suits, etc.)

5 When member Authorities deciding which ships are to be subject to PSC inspections, P1 ships and ships with overriding priority (as referred to in paragraph 3.3.2 of the MOU) are expected to be selected as far as possible.

Ship Certification Issues and COVID-19

6 In relation to the COVID-19 situation, it may occur that a ship cannot fulfill the requirements of the relevant Instruments or the follow-up on inspection results as would normally be required. Although, as a basic principle, the primary responsibility regarding compliance with the relevant instruments remains with the shipowner and flag State, in the case where the shipowner and flag State have demonstrated to take that responsibility, but due to the current situation cannot carry out those duties that normally would be required, the Tokyo MOU members should adopt a pragmatic approach and also be flexible as this is a rapidly developing situation, while keeping in mind the principles of elimination of substandard shipping.

Interval of surveys and audits required by Conventions

7 In the event that a ship has not complied with the requirements of the surveys, inspections and audits contained in the relevant convention requirements (e.g. SOLAS Chapter I Regulation 7-10 and 14, etc.), the ship must provide evidence to the port State that the flag State has agreed to an exceptional delay specific to COVID-19. Further guidance regarding the extension of the interval of surveys and audits can be found in IMO Circular Letter No.4204/Add.19 – “Guidance for flag States regarding surveys and renewals of certificates during the COVID-19 pandemic”.

Duration of statutory certificates

8 Giving consideration that an exceptional extension of validity of certificates specific to COVID-19 would be inevitable for certain ships, the flag State or RO, acting on behalf of the flag State, may extend the validity of certificates to an appropriate and proportional grace period specific to COVID-19. Further guidance regarding the extension of validity of certificates can be found in IMO Circular Letter No.4204/Add.19.

Installation of Ballast Water Management System

9 In the event that a ship cannot meet the requirements of Regulation B-3 of the Ballast Water Management Convention (ballast water management instead of ballast water exchange) due to delay of dry-docking caused by disruption from COVID-19, the port State Authority should seek confirmation that the flag State has agreed to an exceptional delay specific to COVID-19. There should also be evidence that the ship has a plan that covers how the ship will comply with the requirements of Regulation B-3 of BWM.

10 Where, under paragraphs 7 to 9, the required evidence from the flag State is missing, the ship should be treated in the normal manner. This also applies to any vessel operating beyond any indicated grace period.

11 The pragmatic relaxation of requirements, which may include the acceptance of copies of certificates of which the validity can be verified, should be applied by port States on ships which have not exceeded the requirements by the appropriate and

proportional grace period specific to COVID-19, unless it is evident that the COVID-19 pandemic is used as an excuse to breach the Convention requirements.

Crew related issues and COVID-19

MLC 2006

12 Following the outbreak of the pandemic, the Port State Control Committee considered that there was a need to apply flexibility in the region under the circumstances on the issue of extending periods of service on board ships. Given, the current upsurge in COVID19 cases in some parts of the world, some national authorities are finding it necessary to apply restrictive measures that consequently limit this flexibility. Reports indicate almost 400,000 seafarers long overdue for repatriation. As a result, issues of fatigue and mental health of seafarers, who have been onboard for extended periods, may have deteriorated to a point that they may endanger health and safety. To alleviate this situation all member states have been urged to take actions as identified in the joint statement by the ILO, IMO, UNHCR, FAO, ICAO, UNCTAD, UN Migration Agency and the UN Global Compact (published under IMO Circular Letter No.4204/Add.30). Although local lockdowns in port States could still be considered necessary by national authorities in specific cases, with respect to MLC issues, specifically on overdue periods of service on board, the Tokyo MOU will work towards more stringent adherence to the fundamental requirements of MLC, 2006.

13 With respect to the issue of the application of flexibility, with regard of the duration of service on board, the port State should be provided by the MLC shipowner and/or the shipmaster with evidence that crew changes have been undertaken in accordance with the national law of the flag State to ensure the seafarers leave and repatriation rights are protected and the relevant crew members and relevant seafarer organizations (if applicable) have been involved in the process. Furthermore, where there are clear grounds to believe that crew members are suffering from fatigue or otherwise not fit for duty, the port State should require appropriate corrective action and liaise with the flag State seeking their assistance in investigating the situation and to taking action to resolve the issue. The flag State will be responsible for working with the relevant port State and will promptly instruct MLC ship owner to take action bring the situation into compliance with the MLC requirements where non-compliance is found.

14 Further guidance regarding what the port State should look at in case of non-compliance with MLC due to COVID-19, could be found in ILO's "Information note on maritime labour issues and coronavirus (COVID-19) – revised version 3.0", which is available at:

https://www.ilo.org/global/standards/maritime-labour-convention/WCMS_741024/lang-en/index.htm.

15 The Information note does not specify a maximum extension of the period of service on board, however, highlights that the extension of the period of service on board beyond the default 11 months should be authorized only on a case-by-case basis and when strictly necessary to face the emergency situation created by the pandemic and only with the seafarer's consent. Even though many ship-owners do not

notify their flag State of overdue crew, flag States remain responsible for enforcing compliance with the MLC. Port States are therefore urged, in applying the ILO's guidance, to require written evidence of the flag State's authorization including the corrective plan of action for any seafarer staying onboard beyond the default 11 months or approach to the flag State to confirm the above mentioned corrective plan. It is recalled that a valid seafarers' employment agreement must remain in force until the seafarer is duly repatriated in accordance with Regulation 2.5 of the MLC, 2006.

16 If repatriation is not possible through scheduled ports of call, the possibility to divert the ship to a port where repatriation is possible should be taken into account. Circumstances rendering repatriation more difficult or burdensome do not constitute a case of force majeure. Repatriation must still be arranged wherever it is possible. The fact this may be a burden does not remove this responsibility. Extensions beyond the 11 months default maximum should only be considered where there is no other practical option. The cooperation of other parties in facilitating crew changes may also be necessary for this to be achievable. Such action is required of member states under article 1, paragraph 2 of the MLC.

17 In view of the large number of seafarers long overdue for repatriation, port States are urged to apply an enhanced focus on MLC issues and in particular SEAs, irrelevant of the inspection type. If possible deviations are found, in particular regarding repatriation and/or crew rotations for any crew, port State control response will take into account the following general principles:

1. Where contract extensions are necessary and fall within the eleven-month default maximum, they should be undertaken in accordance with the national law of the flag State.
2. Contract extensions beyond the eleven-month default maximum should be avoided unless circumstances beyond the control of the ship owner or operator prevent repatriation. In such cases, the ship owner or operators should maintain evidence of actions taken to avoid extending the contracts and details of planned measures to repatriate the seafarers. This documentation should include evidence that the flag State has been advised of the repatriation plan.
3. Port State control authorities should be aware of restrictions within their own jurisdiction that may prevent crew changes, and take this into account when considering port State control action.
4. Port State control authorities should pay particular attention to situations where the eleven-month default maximum period of service has been or is likely to be exceeded. A pragmatic approach to port State control should be taken.
 - a. Where there is objective evidence that the shipowner or operator has complied with the principles above, having done their best to repatriate seafarers and continue to work on achieving this aim, but circumstances beyond their control prevent this, port State control action should be aimed at assisting in resolving the situation in accordance with paragraph 2 of Article 1 of MLC, 2006.

- b. Where there is objective evidence that the shipowner or operator has made no, or inadequate, effort to repatriate the seafarers, then port State control action should be taken prior to departure to bring the vessel into compliance.

In addition, in such cases, the port State should notify the port State control authorities in upcoming ports of call of the agreed plan and consider entering an appropriate ship-related message in APCIS. Any crewmember who has already spent more than the default 11 months on board should be prioritized for repatriation. A vessel should be treated in the normal manner where an SEA is expired.

STCW Certification

18 The Port State Control Committee/MOU-SWG has considered cases where seafarers have faced issues with completing refresher courses for the renewal of personal certification. This could be caused by cancelled courses, quarantine or travel bans. In such cases the maritime administration may have extended the validity of such certificates and this should be accepted as a case of force majeure. For foreign certificates if the flag administration has granted an extension due to force majeure then this should be accepted as similarly extending the endorsement of the flag state of the ship on which the seafarer is serving.

Medical Certificates

19 In cases where it has been difficult for seafarers to extend their medical certificate the flag administration may allow seafarers to remain on-board. PSCO should accept documents produced by flag States which acknowledges seafarers extended stay on board due to force majeure associated with COVID-19.

Review of the guidance

This guidance will be reviewed, as appropriate, to keep aligned with developments of the COVID-19 virus and future initiatives by relevant stakeholders.