

GIBRALTAR MARITIME ADMINISTRATION
(Ministry of Maritime Affairs)



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Maritime Labour Notice (MLN) – 006

To: Ship Owners, Operators, Masters, Officers and Classification Societies

MLC Title 1.4 Recruitment and placement

This MLN provides guidance on compliance with Gibraltar regulations which give effect to MLC 2006 Title 1.4. Implementation of these guidelines will be taken as evidence of compliance with the Gibraltar regulations.

The guidelines do not preclude an organisation from demonstrating an equivalent or higher standard as an “alternative method” of evidence of compliance.

Documents referred to in this notice:

Maritime Labour Convention 2006

Gibraltar Merchant Shipping (Maritime Labour Convention) Regulations 2012. Reg. 9 and 10

Most regulations and notices are available on the Gibraltar Government website; www.gibraltarship.com

Recruitment and placement

Key points

1. MLC Article II.1(h) defines a *Seafarer recruitment and placement service* as any person, company, institution, agency or other organization, in the public or the private sector, which is engaged in recruiting seafarers on behalf of ship-owners or placing seafarers with ship-owners;
2. The regulations and guidelines only apply to companies operating in Gibraltar, though they may be carrying out recruitment and placement of seafarers to serve on various flagged ships, not just Gibraltar registered ships.

3. Companies carrying out recruitment and placement services of seafarers will be inspected annually for compliance with the Gibraltar requirements and issued with a certificate of compliance, valid for 5 years.
4. Certified companies will be listed on the Gibraltar website for the information of other flag states and port state control organisations.
5. There are three different types of businesses that deal with recruitment and placement and within the regulations there are requirements that apply, or don't apply, depending on the function that the business carries out. The three types of businesses are:
 - 5.1. "Employment business" **(EB)** is a business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) which supplies persons in the employment of the EB, to act for, and under the control of, other persons in any capacity (i.e. the seafarer is employed by the EB but is contracted to work on a ship owner's ship or ships).
 - 5.2. "Employment agency" **(EA)** means a business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) which provides services (whether by the provision of information or otherwise) for the purpose of finding workers employment or of supplying employers with workers for employment. (i.e. they have details of seafarers lodged with them and they put them in contact with a ship-owner, or a ship owner's representative, who then employs the seafarer on ships.)
 - 5.3. "Placement business" **(PB)** is a business engaged in working on behalf of a ship-owner and ensures that seafarers from either an EB or EA, or employed directly by a ship-owner, are allocated to and travel to and from ships operated by the ship-owner in line with the ship owner's requirements. While the Gibraltar regulations covered by this MLN do not apply to a PB they may request inspection and certification and the PB would need to show how they comply with the areas for inspection highlighted below.

Areas for inspection

6. The certification process is a sampling of the records and procedures used by the recruitment and placement service in meeting the requirements of the regulations. The following parts of the regulations are areas for inspection:
 - 6.1. maintaining an up-to-date register of all seafarers recruited or placed through the business; **(EB,EA,PB)**
 - 6.2. prohibiting mechanisms or lists intended to prevent or deter seafarers from gaining employment for which they are qualified; **(EB,EA)**
 - 6.3. verifying that no fees or other charges for seafarer recruitment or placement or for providing employment to seafarers are borne directly or indirectly, by the seafarer other than:
 - 6.3.1. the cost of obtaining the required seafarer medical certificate;
 - 6.3.2. the cost of obtaining a national seafarer's book (discharge book, ID Card);
 - 6.3.3. the cost of obtaining a passport or other similar personal travel documents, however,
 - 6.3.4. the cost of visas shall be borne by the ship-owner; **(EB,EA,PB)**
 - 6.4. ensuring that seafarers are informed of their rights and duties under their employment agreements prior to or in the process of engagement; verifying proper arrangements are made for seafarers to examine their employment agreements before and after they are signed and for them to receive a copy of the agreements and that the seafarers' employment agreements, and any collective bargaining agreement that forms part of the employment agreement, are in accordance with applicable laws and regulations **(EB)**

- 6.5. verifying that seafarers recruited or placed by them are qualified and hold the documents necessary for the job concerned; **(EB,EA,PB)**
- 6.6. making sure, as far as practicable, that the ship-owner has the means to protect seafarers from being stranded in a foreign port; **(EB,PB)**
- 6.7. examining and responding to any complaint concerning their activities and advise the Gibraltar Maritime Administration of any unresolved complaint; **(EB,EA,PB)**
- 6.8. establishing a system of protection, by way of insurance or an equivalent appropriate measure, to compensate seafarers for monetary loss that they may incur as a result of the failure of the recruitment and placement service or the relevant ship-owner under the seafarers' employment agreement to meet its obligations to them; **(EB)**
- 6.9. determining, with due regard to the right to privacy and the need to protect confidentiality, the conditions under which seafarers' personal data may be processed by seafarer recruitment and placement services, including the collection, storage, combination and communication of such data to third parties; **(EB,EA,PB)**
- 6.10. Maintaining up-to-date lists of the ships for which the seafarer recruitment and placement services provide seafarers and ensuring that there is a means by which the services can be contacted in an emergency at all hours. **(EB,PB)**

Use of services not based in Gibraltar

7. There is a requirement in the DMLC part II for the ship-owner to detail how they carry out the recruitment and placement of seafarers on their ships and this is an item for inspection when onboard the ship.
8. In particular if they use recruitment and placement services in countries that have not ratified the Convention they must demonstrate how they ensure that the recruitment and placement service meets the requirements of MLC standard 1.4.
9. While there is no direct requirement for recruitment and placement services operating in Gibraltar to demonstrate how they do this with services not based in Gibraltar it would be recommended for an EB to be able to show how they control this function during the annual inspection.

Alan Cubbin
Maritime Administrator

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All notices are available through www.gibraltarship.com

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