



# **The Maritime Labour Convention – theory and practice**

Gard provides certificates of insurance covering abandonment of seafarers as required by the MLC. In this article, Gard claims handlers share their first-hand experience with an abandonment case.

Published 23 April 2025

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## Introduction

The Maritime Labour Convention, 2006 (MLC) entered into force on 20 August 2013. The convention establishes minimum working and living standards for all seafarers working on ships and aims to ensure seafarers' rights to decent employment conditions at sea. The MLC has been ratified by 82 International Labour Organization (ILO) member states – together “ [responsible for regulating conditions for seafarers on more than 90% of the world's gross tonnage of ships](#) ”.

In April 2014, the ILO agreed several amendments to the MLC (the 2014 amendments) which entered into force on 18 January 2017.

Pursuant to the 2014 amendments, all ships subject to MLC are required to display two certificates issued by an insurer or other financial security provider confirming that insurance or other financial security is in place for:

- repatriation of crew, essential needs of the seafarer and up to four months' outstanding wages and entitlements

### **in the event of abandonment**

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- shipowners' liabilities for compensation in the event of death or long-term disability due to occupational injury, illness or hazard as set out in national law, employment agreement or collective agreement

Shipowners' liabilities for compensation in the event of death or long-term disability is covered under [Gard's Rule 27](#) . The abandonment risks, however, are not covered under Gard's Rules. Pursuant to the MLC Extension Clause 2016 (incorporated into Gard's Rules via Rule 27.4) the Member is obliged to reimburse the Club for any costs paid under the certificates which are not covered. A similar provision is found in the Rules of all the Clubs in the International Group of P&I Clubs (IG).

As the Boards of all the IG Clubs decided that the Clubs should provide the necessary certification, Gard has provided its Members with the required certificates for more than one year.

For further information about the MLC in general and the certification process, please see

[Maritime Labour Convention](#) and [Gard Member Circular 10/17](#).

## Handling an abandonment case

According to the MLC, the crew is considered as abandoned if the shipowner

- fails to cover the cost of the seafarer's repatriation, or
- has left the seafarer without the necessary maintenance and support, or
- has otherwise unilaterally severed its ties with the seafarer including failure to pay contractual wages for a period of at least two months.

It may be that a shipowner in financial difficulty will abandon crew and it is also likely that such a shipowner will neither alert the crew nor their club. That was the situation when a club correspondent relayed to Gard the Master's message that over 30 crew members were running out of water, food and fuel and had not been paid for several months. At the time, the Gard Member was already in liquidation and no longer controlled the company's funds.

Gard established contact with both the Member and the official liquidator with the aim of getting them to honor their obligations towards the crew. As the owner was already in liquidation and there were several other creditors involved, the process of releasing funds for the necessary supplies proved to be more difficult than anticipated. To avoid a blackout on the ship, Gard stepped in and arranged for the necessary supplies to be brought to the crew. Subsequently, Gard managed to convince the Company Court and liquidators to provide necessities for the safety and well-being of the crew.

One of the challenges often faced by the clubs and the crew is getting the crew off the ship. Pursuant to the MLC, the financial security provider undertakes to pay for repatriation expenses, but is not obliged to maintain the safe manning of the vessel. This obligation remains with the manager, or owners, of the vessel. Even though Gard in this case was willing and able to repatriate the crew, the court and the port authorities did not allow the crew to leave as there were no one to replace them and the ship could not be left unmanned.

As the ship had more crew than the safe-manning requirements stipulated, Gard suggested that the crew exceeding the said requirements should be signed-off. Almost 1.5 months after Gard received the first notification, 18 crew members were finally signed off. The crew was met by Gard's local correspondent and provided with food and housing until our correspondent had gone through and confirmed the validity of the crew's claims for outstanding wages.

There were still crew members onboard and they were becoming increasingly frustrated. However, they could not abandon the vessel as they could in such case be held personally responsible for the consequences.

Almost two weeks later the remaining crew members were finally able to sign off. The vessel had been in blackout for almost 24 hours and the Master feared for the safety of the crew. At the last minute, the owners instructed the crew to sign off on humanitarian grounds and provided personnel to safeguard the vessel.

The remaining crew were met by Gard's local correspondent and received their outstanding wages after verification of their claim.

Even though the crew has been signed-off and paid their outstanding wages, the case is far from over. As mentioned above, the Member is obliged to reimburse the Club for any costs paid under the certificates which are not covered under the clubs' Rules. Furthermore, the crew has a maritime lien over the vessel for their unpaid wages. Local applicable law in compliance with the MLC assigns the rights of the crew to the Club after payment of wages and Gard is currently involved in a recovery process in the local courts.

Courts around the world have varying expertise in handling maritime matters and only time will tell how long it will take for the crew to get the balance of the wages due above what has been paid by Gard. Indeed, the advice to seafarers from the ITF is to not wait to make contact with the clubs as the limit of the club's obligation is four months and that may be the entirety of what they may recover.

### **Lessons learned**

In Gard's experience, early engagement with authorities, Flag State as well as the Port State where the abandonment of the seafarers takes place, is crucial for a swift outcome. We are hopeful that Gard's outreach program to governments has helped us in developing good relationships which may also assist in the prompt resolution of abandonment claims.

For the authors, the handling of MLC claims proved to be different from handling P&I crew claims because we worked directly with the abandoned seafarers who were suffering in inhumane conditions. We are pleased to see that the MLC certification and insurance requirement now supported by the clubs did ultimately provide the seafarers the assistance they needed to get off the ship and to recover four months of outstanding wages guaranteed under the MLC.