CHAPTER SEVEN

TITLE 1: MINIMUM REQUIREMENTS FOR SEAFARERS TO WORK ON A SHIP

General Introductory Note¹

Chapters 7 to 11 examine each of the regulations and associated Code provisions in Titles 1 to 5 of the MLC, 2006 highlighting points of particular interest or difficulty. The annotated version of the Convention (see Appendix 2) provides additional information regarding the ILO conventions and recommendations that are consolidated in the MLC, 2006. Additional interpretive resources² for the MLC, 2006 include the Article 22 Report,³ which provides supplementary information on the expectations of the ILO’s international supervisory system⁴ regarding ratifying States’ obligations to implement the Convention. The Guidelines for Flag State Inspections under the Maritime Labour Convention, 2006⁵ and the Guidelines for Port State Control Officers Carrying Out Inspections under the Maritime Labour Convention, 2006⁶ address the more practical implementation and matters, such as ‘how to check’ for compliance, at the shipboard level, with national legislation or other measures implementing the MLC, 2006.

¹ This introductory note is included in Chapters 7 to 11 as an aide-memoire to summarize key information about the structure and approach adopted in the MLC, 2006. Chapters 5 and 6 explore these issues in detail.
² See Chapter 1 at p. 11.
⁴ See Chapter 7.
⁶ International Labour Office, Guidelines for Port State Control Officers Carrying Out Inspections under the Maritime Labour Convention, 2006 (Geneva: ILO, 2009), available at http://www.ilo.org/wcmsp5/groups/public/-ed_norm/-normes/documents/publication/wcms_101787.pdf. These guidelines are called for in the MLC, 2006 (Guideline B5.2.1, para. 3), and both guidelines are the result of resolutions adopted by the 94th ILC in 2006 when it adopted the Convention
This chapter examines the regulations and the provisions in Part A (Standards) and Part B (Guidelines) of the Code of the MLC, 2006 in Title 1. As discussed in Chapter 5 of this book these provisions are organized in a topical and vertically integrated manner with each Title comprising a number of regulations and the associated Parts A and B of the Code setting out more detailed requirements to implement the relevant regulations. Each regulation has a purpose clause indicating its objective in ‘plain language’. In turn, these regulations and the Code provisions set out more detailed specific implementation of the social and employment rights (and related obligations) generally set out in Article IV and the implementation and enforcement obligations under Article V. The provisions in the Titles are, as a matter of international law, directed to States, primarily as flag States, with an international obligation to regulate conditions on board ships that fly their flag. As applicable, regulations are also directed to coastal or port State or States that have a labour-supplying interest and require that the State take implementing action at the national level. It will be recalled that under Article IV, paragraph 5, unless specified otherwise States, can use various approaches to implement these obligations, including adopting legislation or through collective bargaining agreements or other measures.

The provisions in Titles 1 to 4 and, in part, Title 5 are ‘regulatory’ in that they set specific minimum requirements for working and living condition for seafarers, primarily on board ships. In this way the Convention operates at two

(See: Reports of the Selection Committee, Second Report, ILC, 94th (Maritime Session), Geneva, 2006, ILO Doc. No. PR3–1 (Rev.), pp. 3–1/3–1/4 and 3–1/9–1/10). Initially it was thought that the port State control guidance would be adopted as a priority, with adoption of flag State guidance following. However, it became clear that the flag State guidance needed to be developed first as it provided the basis for port State control.

7 Regulations, like articles, are not subject to amendment using the more rapid tacit acceptance procedure in Article XV, nor are they subject to substantial equivalence under Article VI. Thus any analysis of the obligations, particularly in connection with exercising flexibility, must carefully consider the obligation in the regulations relative to the mandatory obligations in Parts A and B of the Code that must be given ‘due consideration.’ Chapters 5 and 6 discuss the structure of the Convention in detail, as well its effect on future approaches to amendments (Chapter 5).

8 Although the approach to interpretation of the application of the concept of substantial equivalence is not yet settled, presumably this would be one source to consider when evaluating whether a measure is “conducive”, as required under Article VI, paragraph 4(a), of the “general object and purpose” of the provision or provisions. See Chapter 6, footnote 124.

9 As discussed in Chapter 6, the articles mainly comprise general statements of principles and rights and obligations directed specifically to ratifying States.

10 See Chapter 6, pp. 209–211.

11 It must also be recalled that Article II of the Convention regarding the definitions of seafarer and ship represents a fundamental change in the scope of the Convention, which in turn affects national implementation. A much wider group of workers, indeed all persons working at sea with very few exclusions for categories of ships, are now covered as ‘seafarers’ under the MLC, 2006