

COVID-19; IMPLICATIONS ON STATUTORY SHIP CERTIFICATES, SURVEYS, INSPECTIONS AND AUDITS

Overview

BIMCO has collected statements from a number of flag states, port states and recognised organisations/classification societies (RO) and produced a regulatory analysis concerning COVID-19 and its possible implications on statutory ship certificates, surveys, inspections or audits under relevant International Maritime Organization (IMO) and International Labour Organization (ILO) instruments.

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Due to the COVID-19 pandemic, some ships may experience operational challenges such as shipyards or dry docks closing down. In addition, surveys and audits can in some cases not be conducted because surveyors are unable to attend the ships due to travel restrictions or quarantines.

The IMO has issued [Circular Letter No. 4204/Add.1](#), addressed to all its member states. In this circular, the IMO Secretary-General addresses COVID-19's impacts on the shipping industry, including implementation and enforcement of mandatory IMO requirements. The circular provides encouragement for flexibility. The IMO can only encourage co-operation and a pragmatic approach between flag and port states, and cannot issue a general exemption from the mandatory provisions of the relevant statutory conventions, nor delay implementation of mandatory regulations coming into force - not even in the current uncertain situation.

In line with the IMO Circular Letter, [Tokyo Memorandum Of Understanding](#) (Tokyo MOU) has on 12 March 2020 issued guidance on how they intend to deal with the impact of COVID-19:

“Recognizing that, due to the outbreak of the COVID-19, the industry is facing challenges in meeting statutory requirements stipulated in Maritime Labour Convention 2006 (MLC 2006) and relevant IMO conventions, member Authorities of the Tokyo MOU have agreed to adopt guidance for dealing with the circumstances (such as extending periods of service onboard of seafarers, delaying periods for surveys, inspections and audits, etc.) in a pragmatic and harmonized approach.

The guidance is prepared based on the general principle that requests/issues would be considered on a case-by-case basis by the relevant port State Authority. In accordance with the guidance, the port State Authority should request the operator concerned to confirm that flag State and/or RO, relevant seafarers organizations (if appropriate) have been involved in the process. For consideration of the request by the port State Authority, operators/companies concerned should provide a plan or process containing equivalent solutions to address the COVID-19 situation and letters of dispensation or exemption by the flag State or RO, under which the **period of grace for delaying surveys, inspections or audits should be no more than three months**, in accordance with the relevant regulations of conventions.”

[Indian Ocean MOU](#) (IOMOU) has in its press release from 20 March 2020 widened the wording to say 'at this moment':

"The Member Authorities of the IOMOU have agreed to adopt an important and pragmatic guidance in the most practical and harmonized approach.

This guidance is prepared based on the general principle that requests/issues from the operators/owners/managers would be considered on a case-to-case basis by the relevant port State Authority.

In accordance with the guidance, the port State Authority should request the operator/owner/manager concerned to confirm that the flag State and/or the RO, relevant seafarers' organizations (as appropriate) have been involved in the process. For consideration of the request by the port State Authority, operators/owners/ship managers concerned should provide a plan or process containing equivalent solutions to address the COVID-19 situation and letters of dispensation or exemption issued by the flag State or RO, under which the period of grace for delaying surveys, inspections or audits should be reflected, however, such period at this moment, shall not be exceeding more than three months from the date of expiry of the applicable certificates, in accordance with the relevant regulations of the conventions."

Interpretation by the BIMCO

The relevant conventions from IMO and ILO have not been worded in such a way that they take a global lengthy uncertain situation, like the current COVID-19 pandemic, into consideration. BIMCO hopes that the information provided herein gives shipowners the needed support to find a suitable solution together with the relevant flag state and RO.

As shown in the links below, several flag state administrations have issued guidance related to the current situation and possible extension of certificates. There are minor variations between the different guidance but in general, flag states seem to show willingness to cooperate and employ a pragmatic approach.

Also, ROs such as [ABS](#), [Bureau Veritas](#), [DNV GL](#), [Indian Register of Shipping \(IRClass\)](#) and [Lloyd's Register](#) have issued guidance for shipowners on how to apply for extension of statutory certificates or, if possible, remote surveys.

In BIMCO's view, as clarified in the regulatory analysis, due to the prevailing force majeure, flag states should be able to extend the validity of all statutory certificates for a period of three months – including the Safety Management Certificate, the International Ship Security Certificate and the Maritime Labour Certificate.

If the pandemic continues to hinder the normal operation of shipyards or dry docks and restricts surveyors from travelling, it can become necessary to find additional commonly supported ways forward, especially as a bottleneck may be expected after the current COVID-19 pandemic has been handled. This could for instance be to issue 'Short Term Certificates' based on confirmations such as statements, photos and/or remote surveys, with an additional validity. This may be done on a case-by-case basis, based on a planned approach using alternative solutions. These may include alternative dry docks or survey locations subject to availability of surveyors.

In the end, and in line with IMO regulatory instruments such as regulation 14(e) of SOLAS Chapter I, when a renewal survey is completed, the new certificate shall be valid:

- (i) for a passenger ship, a date not exceeding 12 months from the date of expiry of the existing certificate before the extension was granted.
- (ii) for a cargo ship, a date not exceeding 5 years from the date of expiry of the existing certificate before the extension was granted.

Instructions from flag states providing ways forward beyond three months

Flag states such as Belgium, Denmark, Netherlands, Norway and Marshall Islands have, as some of the first, already provided initial instructions on possible ways forward in cases where statutory certificates need to be extended beyond the three months already commonly accepted – either by enabling extension of the validity to medio September or letting shipowners, in cooperation with the RO, propose a period of extension needed. BIMCO expects that flag states continuously will have to review their instructions to shipowners and ROs to ensure that the world fleet can continue to sail and service the global supply chains.

[Belgium](#) information as of 18 March 2020:

“Where surveys are due on ships and it becomes difficult for attendance by a surveyor either Belgian Maritime Inspectorate (BMI) or RO due to difficulties caused by the COVID-19 outbreak, the BMI will consider the extension of mandatory statutory survey windows by issuance of a dispensation or short-term certificates, on a case by case basis.

Also postponement of bottom inspections or postponement of servicing of equipment, especially annual or five-year thorough examination and operational tests due to unavailability of authorized service providers, BMI should be contacted.

All request must be supported with objective evidence supporting the impossibility of survey or the unavailability of the service concerned, together with a plan that covers how the ship will be brought back into compliance with the regulations, or applicable survey or audit cycle afterwards.”

[Denmark](#) instructions as of 20 March 2020:

“Recognizing however, that need may arise for further postponement and extension, i.e. beyond limits specified in the Conventions, the Danish Maritime Authority (DMA) will generally look positively upon such requests considering situations of force majeure. In any such case the RO/RSO must forward to the DMA a written application justified by a motivated proposal for period of extension. The application must include a plan describing how the ship will be brought back into regular survey or audit cycle once the force majeure situation is over.”

[Netherlands](#) contingency plan and guidelines as of 19 March 2020:

“The Human Environment and Transport Inspectorate has decided that all ships’ certificates which expire before June 19th 2020 will remain valid for 3 months without approval from the Human Environment and Transport Inspectorate or the RO.

The extension will also apply to certificates issued by service providers conducting services on behalf of the Administration or RO, including, but not limited to service providers re-certifying life-saving equipment, fire-fighting equipment or radio equipment.

The subject ship certificates are not required to be replaced by new certificates on which the extended date of expiry is stated.

The above also applies in relation to expiration of the validity of certificates due to the fact that required annual / periodical / intermediate / renewal surveys cannot be held within the expiry of the window by June 19th 2020. In such cases where surveys are to be held / completed outside the time window, Human Environment and Transport Inspectorate will agree with that. The appropriate text for restore shall be used in these cases. The scope of survey that is to be used, may be the same as if subject survey would have been held within the original window.

Furthermore, the annual ISM internal audits are postponed for 3 months, as described in paragraph 12.1 of the ISM Code in cases where audits cannot be carried out due to travel restrictions imposed by COVID19.”

[Norway](#) instructions as of 13 March 2020:

“While all reasonable steps should be taken to ensure that certificates are kept valid and inspections are performed, the Norwegian Maritime Authority (NMA) will accept that for vessels for which the time frame of endorsement or renewal of certificates is before 12 June 2020, a 3-month extension may be granted without further approval from the NMA.”

[Marshall Islands](#) information as of 24 March 2020:

“4.1 For extensions due to extreme extenuating circumstances, provided there is evidence suggesting best efforts have been made to secure dry-dock space, the Administrator will consider extensions to intermediate and renewal dry-docking beyond three months. The current limit of this extension will be up to six months. This will be kept under review as the result of the efforts to tackle the pandemic become clearer. The operator should apply to the RO for an extension and prepare the ship to allow a survey to the maximum extent possible while out of a dry-dock. The extent of this preparation must be agreed with the RO prior to commencement of surveys.

4.2 The ship's Classification Society (Class) must also be willing to consider the validity of the main Class certificate, since in accordance with International Maritime Organization (IMO) Circular MSC-MEPC.5/Circ.1, “*the extension period of the relevant statutory certificate(s) should not exceed the period of validity of the certificate which may be issued to document compliance with the structural, mechanical and electrical requirements of the recognized classification society.*”

4.3 All Class and statutory surveys must have been progressed as far as practicable while afloat, leaving only the minimum pending items to be checked in dry-dock. Where it is relevant to the age and type of ship, and safe to do so, the scope of the survey should also give consideration to the enhanced survey program. Any minor deficiencies can be recorded as Conditions of Class, or Statutory Conditions, as appropriate, with due date until dry-docking. Major deficiencies must be rectified. Class and short-term statutory certificates should be issued to reflect the pending items that remain to be tested and surveyed.”

Regulatory analysis of statutory IMO Conventions and mandatory IMO Codes

According to article 19 of the International Load Line Convention, regulation 14(e) of SOLAS Chapter I, regulation 10.5 of MARPOL Annex I and II, regulation 8.5 of MARPOL Annex IV, regulation 9.5 of MARPOL Annex VI and regulation E-5.5 of the Ballast Water Management Convention, the flag state may extend the period of validity of relevant certificates for up to three months.

When it comes to the ISM Code, under SOLAS Chapter IX, a Safety Management Certificate (SMC) shall according to regulation 6.2 of SOLAS Chapter IX be treated as a certificate issued under regulation I/12 or I/13 (Ship Safety Construction/Equipment/Radio Certificates).

Furthermore, in accordance with the International Code for the Security of Ships and of Port Facilities (ISPS Code), under SOLAS Chapter XI-2, an International Ship Security Certificate (ISSC) shall be issued, and in accordance with section 19.3.5 of the ISPS Code, the flag state may extend the period of validity of the ISSC for up to three months.

However, neither the SMC nor the ISSC are mentioned in the IMO's Survey Guidelines under the Harmonized System of Survey and Certification (HSSC Survey Guidelines), since these guidelines focus on surveys and not audits.

According to the current version (2017) of [HSSC Survey Guidelines](#) (Res. A.1120(30)), the general approach allowing flag states to extend the period of validity of relevant certificates for up to three months is widened to also include mandatory IMO Codes, and applies to the following 13 types of certificates:

1. International Load Line Certificate,
2. Ship Safety Construction Certificate,
3. Ship Safety Equipment Certificate,
4. Ship Safety Radio Certificate,
5. International Oil Pollution Prevention Certificate (IOPP),
6. International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk,
7. International Sewage Pollution Prevention Certificate,
8. International Air Pollution Prevention Certificate (IAPP),
9. International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk,

10. International Certificate of Fitness for the Carriage of Liquefied Gases in Bulk,
11. International Ballast Water Management Certificate,
12. Polar Ship Certificate,
13. Passenger Ship Safety Certificate

“5.9.1 In SOLAS 74/88 and other mandatory IMO instruments the following provision applies: If a ship at the time when a certificate expires is not in a port in which it is to be surveyed, the Administration may extend the period of validity of a certificate but this extension should be granted only for the purpose of allowing the ship to complete its voyage to the port in which it is to be surveyed, and then only in cases where it appears proper and reasonable to do so. **No certificate should be extended for a period longer than three months**, and a ship to which an extension is granted should not, on its arrival in the port in which is to be surveyed, be entitled by virtue of such extension to leave that port without having a new certificate.”

In line with SOLAS and the above quote from the HSSC Survey Guidelines, IMO has in 2005 issued circular MSC-MEPC.5/Circ.1 containing recommended conditions for extending the period of validity of a certificate, which include eight considerations which flag states should take into consideration. The circular can be downloaded [here](#).

“If a ship is in a port where the required survey cannot be completed, and where the Convention allows the Administration to extend the certificate when it is proper and reasonable to do so, the Administration should be guided by the following:

1. an additional survey, equivalent to at least the same scope of an annual survey required by the relevant certificate(s) should be carried out;
2. the renewal survey should be progressed to the maximum extent possible;
3. in cases where a dry docking is required, but cannot be carried out, an underwater inspection of the ship's bottom should be carried out;
4. in cases where an underwater inspection is not possible (e.g. poor water visibility, draft restrictions, excessive current, refusal by the port Authority), an internal inspection of the ship's bottom structure, to the maximum extent practicable, should be carried out;
5. the ship should be allowed to sail directly to a named final agreed cargo discharge port and then directly to a named agreed port to complete the survey and/or dry docking;
6. the extension period should be for the minimum amount of time needed to complete the survey and/or dry docking under the relevant certificate(s);
7. the condition of the ship found by the surveys indicated above should be considered in determining the duration, distance and operational restrictions, if any, of the voyage needed to complete the survey and/or dry docking; and
8. the extension period of the relevant statutory certificate(s) should not exceed the period of validity of the certificate which may be issued to document compliance with the structural, mechanical and electrical requirements of the recognized classification society.”

IACS's [Recommendation](#) on duties of surveyors under statutory conventions and codes (Rec no.98 Rev.3) specifies that a 'Interim certificate' can be valid for up to five months and a 'Conditional certificates', also known as 'Short Term certificates', is valid only for a period long enough to permit the ship to proceed to the port or dry dock:

“2.2. An 'Interim certificate' is a certificate issued by the attending surveyor upon satisfactory completion of a survey in order to permit the ship to trade while the permanent/full term certificate is prepared. **An interim certificate is usually valid for five months from the date of issuance.**

2.3. ‘Conditional certificate’ or a “conditionally issued certificate” is a certificate with the appropriate expiry dates that is issued by the attending surveyor when deficiencies/defects exist which cannot be corrected in the port of survey. **A conditional certificate is valid only for a period long enough to permit the ship to proceed to the port where the correction will be made.”**

Regulatory analysis of the statutory ILO Maritime Labour Convention (MLC)

According to paragraph 4 in [Standard A5.1.3](#) of the MLC Convention, the competent authority of the flag state may extend the validity of the Maritime Labour Certificate for a period not exceeding five months:

“4. Notwithstanding paragraph 1 of this Standard, where, after a renewal inspection completed prior to the expiry of a maritime labour certificate, the ship is found to continue to meet national laws and regulations or other measures implementing the requirements of this Convention, but a new certificate cannot immediately be issued to and made available on board that ship, the competent authority, or the recognized organization duly authorized for this purpose, may extend the validity of the certificate for a further period not exceeding five months from the expiry date of the existing certificate, and endorse the certificate accordingly. The new certificate shall be valid for a period not exceeding five years starting from the date provided for in paragraph 3 of this Standard.”

Links to instructions from various flag states

- › [Bahamas: Technical Alert as of 24 March 2020](#)
- › [Belgium: Circular 2020/002 as of 18 March 2020](#)
- › [Isle of Man: Technical Advisory Notice as of 13 March 2020](#)
- › [Liberia: Marine Advisory as of 24 February 2020](#)
- › [Liberia: Marine Advisory as of 12 March 2020](#)
- › [Malta: Merchant Shipping Notice as of 17 March 2020](#)
- › [Marshall Islands: Marine Safety Advisory as of 20 March 2020](#)
- › [Marshall Islands: Marine Safety Advisory concerning the validity of ship certificates as of 24 March 2020](#)
- › [Marshall Islands: Marine Safety Advisory concerning ISM, ISPS and MLC as of 20 March 2020](#)
- › [Marshall Islands: Website on implications of COVID-19](#)
- › [Netherlands: Contingency Plan and Guidelines as of 19 March 2020](#)
- › [Norway: News on extended deadlines for ISM audits as of 16 March 2020](#)
- › [Panama: Press Release as of 23 March 2020](#)
- › [Panama: Marine Notice as of March 2020](#)
- › [Singapore: Shipping Circular as of 26 February 2020](#)
- › [United Kingdom: Marine Information Note 612 \(M+F\) as of 17 March 2020](#)

More instructions from various flag states to the RO's can be found on Lloyd's Registers webpage concerning COVID-19 [here](#).

Disclaimer

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