

ANAVE - Circular de Régimen Interior

Madrid, 18 de septiembre de 2017
Ref. SMA 58/2017/MH

Asunto: Convenio de Lastre – Aplicación del Convenio a los buques abanderados en Malta.

Muy Srs. nuestros:

Como continuación de nuestra circular del pasado jueves de ref: [SMA 57/2017/MH](#), y en relación a la reciente ratificación del Convenio de Gestión de Agua de Lastre por parte de Malta, les adjuntamos (en inglés) la respuesta que hemos recibido de la Administración de Malta con las dudas que les habíamos planteado.

En su respuesta confirman que los buques registrados en Malta que entren dentro del ámbito de aplicación del Convenio deben cumplir con sus requisitos desde el pasado 8 de septiembre y no 3 meses después de la ratificación, como prevé el artículo 18.3 del Convenio.

Asimismo, nos informan de que tienen previsto aplicar la circular de la OMI, BWM.2/Circ.40 para facilitar la aplicación del Convenio. En resumen:

- **Buques que dispongan de un *Statement of Compliance* expedido por una Sociedad de Clasificación reconocida antes del 8 de septiembre:** La Administración ya ha instruido a las Sociedades de Clasificación para que sustituyan este documento por un Certificado Internacional de Gestión de Aguas de Lastre lo antes posible y, en cualquier caso, antes del 8 de diciembre de 2017.
- **Buques que hayan presentado el Plan pero aún no lo tengan aprobado:** En este caso se aplicará lo dispuesto en la circular de la OMI, BWM.2/Circ.40 que permite a los Estados Parte del Convenio expedir Certificados provisionales de agua de lastre incluso aunque el Plan no esté aún aprobado, permitiendo al buque operar durante 3 meses con un Plan a bordo sin aprobar. Este Certificado, en el caso de Malta, tendrá una validez máxima hasta el 8 de diciembre de 2017.

Como consecuencia, rogamos a todas las empresas que operen buques abanderados en Malta, que se aseguren de que los mismos disponen a bordo de los documentos necesarios que confirman el cumplimiento de los requisitos del Convenio. Les remitimos a la [zona de socios](#) de nuestra página web y les recordamos que estamos a su disposición para intentar ayudarles a aclarar cualquier duda en relación con este convenio.

Muy atentamente

Manuel Carlier
Director General

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Ballast Water Management Convention Questions to the Administration of Malta

Article 18.3 of the BWMC establishes:

'Any instrument of ratification, acceptance, approval or accession deposited after the date on which this Convention enters into force shall take effect three months after the date of deposit.'

So we can understand that the entry into force of the Convention may be 12 December 2017.

But there is a document in your web called '*Merchant Shipping Notice 138*' about implementation of the International Ballast Water Management Convention that establishes the entry into force from 8 September 2017.

Question:

Is your Administration going to use this three months period to prepare the Maltese fleet (approve the BWM Plan and obtain the International BWM Certificate)?

Or on the contrary, all the ships must send their Ballast Water Management Plan to the Administration in order to get the International BWM Certificate and the Statement issued to the company to allow the vessel to trade for three months as established by BWM.2/Circ.40.

Until they obtain the certificate, vessels will not be able to travel on international voyages, which can mean delays. Is that true?

In reply to your first question, whilst your statement and reference to Article 18.3 of the International Ballast Water Management Convention is correct, however for Malta Flagged vessels the requirements of the Convention have been already transposed into our national law as from the 8 September 2017, in order to coincide with the entry into force of the IMO instrument, hence facilitating the implementation of the requirements of the Convention.

With regards to the second question, in view of ratification by Malta of the International Ballast Water Management Convention, with the consequence that any Statements/Document of Compliance with the IBWM that have been issued prior to the 8 September 2017, will have to be administratively replaced with IBWM certificates as per Appendix I of the Convention.

Recalling the IMO circular BWM.2/Circ.40 on Issuance of Ballast Water Management Certificates prior to entry into force of the BWM Convention and in view of the impracticability related to excessive workload that such a process entails, we have instructed ROs that any existing Statements/Documents of Compliance shall be replaced with International Ballast Water Management Certification at the first available opportunity however not later than the 08/12/2017.

This process will be controlled by means of a statutory memoranda.

It must be reminded this Administration would like to reaffirm its intention to apply the solutions contained in the above mentioned IMO circular so as to facilitate the fair and consistent implementation of the Convention.

As from 8 September 2017, all recognized organization have been authorized to issue the International Ballast Water Management Certificate (IBWM) following;

- The review and approval of the BWM plan on behalf of the Administration taking into consideration the guidelines developed by the Organization (IMO).
- Initial survey ascertaining compliance with the requirements of the Convention.

In instances where the Ballast Water Management Plan has not yet been approved on behalf of the Flag Administration, again it must be reminded that a Statement to that effect will be issued by the vessel's Class confirming that a copy of the BWM plan has been submitted for eventual review and approval. Further to that a ST IBWM certificate with a validity till but not later than the 8 December 2017 will be issued hence allowing the vessel to continue trading without any impediments.

What will happen when a Maltese ship arrives to a Party Port from 8 September 2017?

Question

Is the three months period established by the Article 18.3 of the Convention valid? The PSC Authority can't survey him until 12 December 2017 or on the contrary the transposition of the Convention to your legislation implies that the ship can be subject to a survey from 8 September 2017.

With regards to PSC inspections of Malta Flagged vessels, it needs to be clarified that under Article 3.3 of the Convention, there is the no more favourable treatment clause similar to that enshrined in the MARPOL Convention, stating that *"with respect to ships of non-Parties to this Convention, Parties shall apply the requirements of this Convention as may be necessary to ensure that no more favourable treatment is given to such ships"*.

So as long that a coastal/port state is a Party to the Convention, that State has the obligation to enforce such requirements to all vessels irrespective whether the vessel flag registration is a Party or not to the Convention.