



**The Climate on Crewing Has Changed:
The Maritime Labor Convention 2006 Enters Into Force
Newport Charter Yacht Show
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I. What is the Maritime Labor Convention?

The International Labor Organization's Maritime Labor Convention ("MLC") – is also known as the Seafarers' Bill of Rights. The MLC's stated purpose is to set out the minimum rights that seafarers should expect. Once the MLC is in force, every ship over 500 gross tonnage operating in international waters or between ports of different countries is expected to have a maritime labor certificate to confirm that it complies with the MLC.

The MLC has been described as the first of a new generation of international labor standards "with teeth".

The MLC incorporates and builds on 68 existing maritime labor conventions and recommendations, as well as other fundamental principles, to ensure decent working and living conditions for all seafarers. The MLC is designed to sit alongside other regulations such as the IMO standards on ship safety, security and quality ship management (such as SOLAS, STCW and MARPOL). Where those instruments deal more with the vessel and its operation, the MLC deals with seafarers' rights.

It should be remembered that the MLC sets out minimum requirements. Many states that ratify the Convention may have higher standards.

II. Legal Systems Compared Generally

Justice systems differ among various countries around the world. Following are some broad comparisons among the predominant systems: common law and civil law.

Common law systems, exemplified by the United States and the United Kingdom, are adversarial-based where the defendant is generally represented by an attorney from the beginning. These systems rely on prior court decisions to establish legal precedent. Of course in the United States, there exists an entire body of law devoted to civil procedure establishing how civil laws are to be enforced. Defendants can demand their rights to due process, and where criminal issues are concerned, exercise their right to remain silent, require a speedy trial and be represented by legal counsel.

Conversely, under civil law systems such as those in France, Germany and Japan, a defendant typically receives fewer legal rights in comparison. These legal systems adopt an inquisitorial model where the sovereign's search for justice is guided by strict application of written law. An examining, or investigating, judge conducts an inquiry into the case and where a criminal

matter is involved, the defendant is charged only after the inquisition phase--questioning witnesses, interrogating suspects—is completed. The goal of the judicial investigation is to gather evidence, whether incriminating or exculpatory, and is only conducted with the authorization of the prosecutor's office (when a criminal case is involved). If the examining judge finds a valid case against a person, then a defendant then has to stand trial.

While accident investigation agencies in common law countries generally take a safety-based approach, the judicial investigation in these civil law countries takes an assign-blame approach. Nonetheless, the vagaries of the criminal and civil legal process will depend on the country in which it is conducted.

Seafarer's rights in different countries vary widely, even if two persons happen to have the same injury. Compensation to the seafarer is dependent on different factors, including the nationality of the seafarer, the contract the seafarer may have signed, the place of incident, the flag of the ship and the nationality of the ship owner. Furthermore, the applicable law and articles of agreement (if any) need to be considered. There are numerous possible combinations that would all lead to different compensation rights for the same incident.

The United States has a court system which allows every seaman who becomes ill or injured during his employment, regardless of any fault of the owner or operator, to be entitled to maintenance, cure and unearned wages as a matter of right. "Maintenance" is the seaman's reasonable expenses of room and board while ashore, until he is fit for duty or until maximum benefit of treatment is reached. "Cure" is the reasonable medical expenses incurred by the seaman for curative treatment. "Unearned wages" are the wages he would have received if he had not become sick or injured to the end of the voyage.

If the seaman's injury or death was caused by negligence of the seaman's employer or his fellow employees, then, under the Jones Act, a seaman can recover from his employer, in addition to maintenance, cure and unearned wages, damages including compensation for all past and future loss of income, expenses of medical care (exceeding cure paid by the employer), pain and suffering and disability (loss of enjoyment of activities of normal life). In addition, if a seaman's injury or death was caused by unseaworthiness of the vessel, the seafarer can recover loss of income, medical expenses, pain and suffering, and compensation for disability, similar to the remedies available under the Jones Act.

Outside the context of *bona fide* collective bargaining agreements, in the U.S., the general rule is that a seaman cannot abrogate his rights to maintenance and cure, or to unearned wages, and provisions in an employment contract which would unrealistically limit these remedies are unenforceable. However, courts have reached differing results on enforcement of choice of venue clauses in seaman's employment agreements. A split of authority exists as to the enforceability of contractual venue provisions in seafarer's employment agreements relative to claims for maintenance, cure and tort damages for personal injury under the Jones Act and the unseaworthiness doctrine. If it is determined the U.S. law should be applied to a seaman's claim for personal injury, an issue arises whether a pre-injury contractual choice of forum, such as is found in many seaman's employment contracts, is enforceable.

Claiming against shipowners is popular in the U.S., as nearly all personal injury lawyers work on a “no cure, no pay” basis. This is contrasted with most civil law countries, where lawyers are not allowed to work on a “no cure no pay” basis. In Europe, recovery agents are allowed to work on a “no cure no pay” basis and charge between 10-20% of the settlement; in Asia, recovery agents charge about 20-30% of the settlement. This is contrasted with the U.S., where American lawyers take approximately 30% of the settlement pre-suit and 40% after suit is filed.

The U.S. is further contrasted from other countries in that U.S. plaintiffs are entitled to a jury trial. In a jury trial in the U.S., ordinary people without any education in the law decide the liability and subsequent damages the seafarer is entitled to. Arguably, the jury is not limited by contract or conventions as to the amount of damages that may be awarded to the seafarer.

This is contrasted generally with most countries that hire seafarers under an employment contract, have detailed workers’ compensation-schemes to remunerate ill or injured seafarers or otherwise rely on conventions they have ratified limiting liability for seafarers’ damages. Regardless of the system in place, these countries tend to have more things in common than not. These countries generally make sure the seafarer gets compensation in case of disability and the seaman’s beneficiaries get compensation in case of death. These countries generally provide some scheme for sick pay, medical treatment pay, and medical expenses pay. Where these countries differ are on quantum, time of entitlement and other finer points of entitlement.

For example, under the German seaman’s contract, a ship owner is only liable until the seafarer is repatriated to Germany and the health insurance company starts its benefits, whereas under other employment contracts, the ship owner is liable for medical expenses in the seafarer’s home country until the seafarer has recovered from his injury or illness or until no improvement of the condition can be reached by further medical treatment. This example is to illustrate that regardless of the country, there is generally some basic framework for the care and remuneration of the seafarer after illness or injury.

Of course, there may be some countries that provide no real recourse to the ill or injured seafarer. Where this is the case, those seafarers generally turn to the country of the ship’s flag or of the tort injury (such as foreign crew seeking damages in the U.S.) to attempt to effectuate a recovery.

III. How the MLC Changes the Framework

Because the MLC incorporates and builds on existing conventions and is designed to sit alongside other shipping regulations, it signals a sea change of seafarers’ rights. It is a comprehensive set of basic maritime labor principles and rights with a strong enforcement regime backed by a certification system with seafarers that will be better informed of their rights and remedies.

However, the whole structure of MLC differs from the traditional International Labor Organization Conventions. It consists of the basis provisions, *i.e.*, the Articles and Regulations, followed by a two-party Code and divided into five Titles, one of which is devoted to compliance and enforcement. The Regulations and the Code, which contains Standards and guidelines, are organized under the five Titles:

- Title 1: Minimum requirements for seafarers to work on a ship.
- Title 2: Conditions of employment
- Title 3: Accommodation, recreational facilities, food and catering
- Title 4: Health protection, medical care, welfare and social security protection
- Title 5: Compliance and enforcement

There is also an Explanatory note to further assist Member States in implementing the Convention. The Convention uses a new “vertically integrated” format with a numbering system that links the Regulations, Standards and Guidelines. Thus, under each Regulation, there is a Standard, Part A, and a Guideline, Part B. The Regulation and Part A Standard are mandatory and Part B Guidelines are not mandatory. This was done as it was thought that if the Part B Guidelines were made mandatory, the Convention could never aspire to wide-scale ratification. The Convention seeks to be “firm on rights and flexible on implementation.” This point is important to remember in discussing the ramifications of the Convention.

A. Title 1. Minimum Requirements for Seafarers to Work on a Ship

MLC Title 1 sets out the regulations and associated standards (which are mandatory) and guidelines (which are not mandatory) regarding the minimum age for persons employed on board a ship, medical certification, training and qualifications, and recruitment and placement.

In broad terms, the requirements are as follows:

- Any employment, engagement or work on board a ship of any person under the age of 16 is prohibited, as is night work for those under 18.
- The employment, engagement or work of seafarers under the age of 18 is prohibited where the work is likely to jeopardize their health or safety.
- All seafarers must be medically fit for sea service and certification shall be in English by a duly qualified medical practitioner.
- All seafarers must be trained or certified as competent or otherwise qualified to perform their duties on board the ship. All training and certification must be in accordance with the mandatory instruments adopted by the IMO.
- All seafarers shall have access to an efficient, adequate and accountable system for finding employment on board ship without charge to the seafarer.
- Seafarer recruitment and placement services in a Member’s territory shall conform to the standards set out in the Code.
- Each Member State shall require, in respect of seafarers who work on ships that fly its flag, that ship owners who use seafarer recruitment and placement services that are based in countries or territories in which the Convention does not apply, that those services conform to the requirements set out in the Code.

B. Title 2. Conditions of Employment

Title 2 sets out the regulations, standards and guidelines regarding seafarers' employment agreements, wages, hours of work and rest, entitlements to leave, repatriation, compensation for the ship's loss or foundering, manning levels and career and skill development and opportunities for seafarers' employment.

In terms of the actual protection afforded to seafarers, the MLC contains a number of key provisions relating to working conditions and pay:

(1) Regulation 2.1—Seafarer's Employment Agreements

- Seafarers shall be provided with a fair employment agreement, a clearly written, legally enforceable agreement consistent with the standards set out in the Code.
- Letters of employment shall incorporate any applicable collective bargaining agreement and shall be signed by both the seafarer and the shipowner or a representative of the shipowner.
- Seafarers shall be given an opportunity to examine and seek advice on the agreement before signing.
- The employment conditions, including any collective bargaining agreement, shall be available on board to seafarers, including the ship's master and shall be available for review by the relevant inspecting authorities. Contract terms shall generally be available in the English language.

(2) Regulation 2.2—Wages

- Seafarers shall be paid for their work regularly and in full in accordance with their employment agreements. Payment of wages shall be made at no greater than monthly intervals.
- Seafarers shall be given a monthly account of payments due and the amounts paid, including wages, additional payments and the rate of exchange used where a payment has been made in a currency or at a rate different from the one agreed to.
- Seafarers shall be provided with means to transmit all or part of their earnings to their families, dependents or legal beneficiaries.

(3) Regulation 2.3—Hours of Work and Hours of Rest

- Member States shall insure that the hours of work and rest are regulated. In determining the national standards, each Member State shall take account of the danger posed by fatigue of seafarers, especially those whose duties involve navigational safety and secure operation of the ship.
- A normal working day is eight hours with one day or rest per work and rest on public holidays.

- The maximum hours of work shall not exceed fourteen hours in any twenty-four hour period and seventy-two hours in any seven day period.
- The minimum hours of rest may be divided into no more than two periods, one of which shall be at least 6 hours in length, and the intervals between consecutive periods of rest shall not exceed 14 hours.
- The master of a ship may require a seafarer to perform any hours of work necessary for the immediate safety of the ship, persons on board or cargo, or for the purpose of giving assistance to other ships or persons in distress at sea.

(4) Regulation 2.4—Entitlement to Leave

- All seafarers shall be given annual leave with pay entitlement calculated on the basis of a minimum of 2.5 calendar days per month of employment. Justified absences from work shall not be considered as annual leave.
- Seafarers shall be granted shore leave to benefit their health and well-being and with the operational requirements of their positions.

(5) Regulation 2.5—Repatriation

- Seafarers have a right to be repatriated at no cost to themselves in the circumstances and under the conditions specified in the Code.
- Each Member State shall require ships that fly its flag to provide financial security to ensure that seafarers are duly repatriated in accordance with the Code.

C. Title 3. Accommodation, Recreational Facilities, Food and Catering

Title 3 sets out the regulations, standards and guidelines regarding accommodation and recreational facilities and food and catering.

Regulation 3.1 provides that each Member States shall ensure that ships that fly its flag provide and maintain decent accommodation and recreational facilities for seafarers working or living on board. Particular emphasis is given to the size of accommodation spaces, heating and ventilation, noise and vibration and other ambient factors, including sanitary facilities, lighting and hospital accommodation. The requirements in the Convention implementing this regulation which relate to ship construction and equipment apply only to ships constructed on or after the date when the Convention comes into force for the Member State concerned. A ship shall be deemed to have been constructed on the date when its keel is laid or when it is at a similar stage of construction.

Regulation 3.2 provides that each Member State shall ensure that ships that fly its flag carry on board and serve food and drinking water of appropriate quality, nutritional value and quantity that adequately covers the requirements of the ship and takes into account the differing cultural and religious backgrounds of the seafarers and prepared by trained and qualified cooks. Seafarers shall be provided with food free of charge during their period of engagement. No seafarer under the age of eighteen shall be employed or engaged to work as a ship's cook.

D. Title 4. Health Protection, Medical Care Welfare and Social Security Protection

MLC Title 4 consists of five regulations, associated standards and guidelines regarding health protection, medical care, welfare and social security protection. The MLC seeks to protect the health of seafarers and ensure prompt access to medical care on board ship and ashore.

Under Regulation 4.1, Member States are required to ensure that all seafarers on ships that fly its flag are covered by adequate measures for the protection of their health, including essential dental care, at no cost to them and that they have access to prompt and adequate medical care while working on board. Member States are also required to ensure that seafarers on board ships in its territory who are in need of immediate medical care are given access to medical facilities on shore. Seafarers are to be afforded health protection and medical care as comparable as possible to that which is generally available to workers ashore, including prompt access to the necessary medicines, medical equipment and facilities for diagnosis and treatments and to medical information and expertise. Seafarers must be given the right to visit a qualified medical doctor or dentist without delay in ports of call, where practicable.

All ships are required to carry a medicine chest, medical equipment and a medical guide. Ships carrying 100 or more persons and ordinarily engaged on international voyages of more than three days duration shall carry a qualified medical doctor who is responsible for providing medical care. Ships which do not carry a medical doctor are required to have either at least one seafarer on board who is in charge of medical care and administering medicine as part of their regular duties or at least one seafarer on board competent to provide first aid. Any seafarer designated to provide first aid shall have training that meets the requirements of the STCW. Ships are also required to have access to 24/7 medical support, including specialist advice by radio or satellite communication.

Regulation 4.2 aims to protect seafarers and their dependents from the financial consequences of sickness, injury or death occurring in connection with their employment. Ship owners shall be liable for the costs of seafarers working on their ships in respect of sickness and injury occurring between the date of commencing duty and the date upon which they are duly repatriated, or arising from their employment between those dates. Ship owners are required to provide financial security to assure compensation in the event of death or long term disability of seafarers due to an occupational injury, illness or hazard, as set out in national law, the seafarers' employment agreement or collective agreement. Ship owners shall also be liable to defray the expense of medical care, including medical treatment and the supply of the necessary medicines and therapeutic appliances, and board and lodging away from home until the sick or injured seafarer has recovered, or until the illness or incapacity has been declared of a permanent character. In addition, ship owners shall be liable to pay the cost of burial expenses in the case of death occurring on board or ashore during the period of engagement. National laws or regulations may limit the liability for the ship owner to defray the expense of medical care and board and lodging to a period which shall not be less than sixteen weeks from the day of the injury or the commencement of the illness.

Where the illness or injury results in incapacity for work, the ship owner shall be liable to pay full wages as long as the sick or injured seafarer remains on board or until the seafarer is repatriated. Thereafter, the ship owner shall also pay wages in whole or in part as prescribed by national laws or regulations or provided for in collective agreements from the time when the seafarer is repatriated or landed until their recovery or, if earlier, until they are entitled to cash benefits under the legislation of the Member State. National laws or regulations may exclude the ship owner from liability in cases where the injury occurred otherwise than in the service of the ship or where the injury or illness was due to the willful misconduct of the sick, injured or deceased seafarer or where the illness or infirmity was intentionally concealed when the engagement was entered into.

Regulation 4.3 seeks to ensure that seafarers' work environment on board ships promotes occupational safety and health. Member States are required to develop and promulgate national guidelines for the management of occupational safety and health on board ships that fly its flag, after consultation with representative ship owners' and seafarers' organizations and taking into account applicable codes, guidelines and standards recommended by international organizations, national administrations and maritime industry organizations. There is also a requirement that each Member State shall adopt laws and regulations and set standards for occupational safety and health protection and accident prevention on ships that fly its flag. In particular, Regulation 4.3 requires, *inter alia*, the adoption and effective implementation and promotion of occupational safety and health policies and programs, including risk evaluation as well as training and instruction of seafarers. Reasonable precautions to prevent occupational accidents, injuries and diseases on board ship, including measures to reduce and prevent the risk of exposure to harmful levels of ambient factors and chemicals as well as the risk of injury or disease that may arise from the use of equipment and machinery on board ships must be taken and implemented.

In addition, there are requirements for inspecting, reporting and correcting unsafe conditions and investigating and reporting on board accidents. The competent authority should undertake investigations into the causes and circumstances of all occupational accidents and occupational injuries and diseases resulting in loss of life or serious personal injury, and such other cases as may be specified in national laws or regulations.

In accordance with Regulation 4.4, Member States shall ensure that seafarers working on board a ship have access to shore based facilities and services to secure their health and well-being.

Under Regulation 4.5, Member States must ensure that measures are taken with a view to providing seafarers with access to social security protection. Seafarers and (to the extent provided for in the national law of the flag State) their dependents are entitled to benefit from social security protection on terms no less favorable than that enjoyed by shore workers. The protection shall include medical care, sickness benefit, unemployment benefit, old age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivors' benefit. The signatory state shall establish fair and effective procedures for the settlement of disputes.

E. Title 5. Compliance and Enforcement

Member States are responsible for ensuring enforcement of the Convention on ships that fly its flag. Under Regulation 5.1, the Member State shall establish an effective system for the inspection and certification of maritime labor conditions and have in place authorized public institutions or other organizations, which have been recognized as competent and independent, carrying out inspections or issuing certificates, or both. This is where the Certificate system is implemented.

A Maritime Labor Certificate, complemented by a DMLC, shall constitute *prima facie* evidence that the ship has been duly inspected by the Member State whose flag it flies and that the requirements of the Convention relating to working and living conditions of the seafarers have been met to the extent so certified. On board procedures for the fair, effective and expeditious handling of seafarer complaints alleging breaches of the requirements of the Convention must be documented and implemented. Member States shall prohibit and penalize any kind of victimization of a seafarer for filing a complaint. Complaints should be addressed to the head of the department of the seafarer in the first instance or to the seafarer's superior officer. If these individuals cannot resolve the complaint to the satisfaction of the seafarer, the latter may refer it to the master, the ship owner or directly to competent authorities. In addition to a copy of the employment agreement, all seafarers shall be provided with a copy of the on board complaints procedures.

Under Regulation 5.2, any foreign ship calling at a port of a Member State may be subject to inspection by the port authorities. Inspections that may be carried out in accordance with this Regulation shall be based on an effective port state inspection and monitoring system to help insure that working and living conditions for seafarers on ships entering a port of the flag State concerned meet the requirements of the Convention (including seafarers' rights).

Nevertheless, each Member State shall accept the Maritime Labor Certificate and the DMLC as *prima facie* evidence of compliance with the requirements of the Convention and thus, inspection shall be limited to an inspection of the Certificates. However, if a ship is not found to conform to the requirements, the authorize inspection officer shall take steps to ensure that the ship shall not proceed to sea until the non-conformities have been rectified or until the authorized officer has accepted a plan of action to rectify the non-conformities and is satisfied that the plan will be implemented in an expeditious manner. The inspector shall bring the deficiencies to the attention of the appropriate seafarers' and ship owners' organizations and may, if considered necessary, notify the flag State and the competent authorities of the next port of call with the relevant information.

IV. What Does This All Mean to the Yachting Community?

A. Who is Covered Under the MLC?

(1) Ships Include Yachts

All ships are covered except:

- Ships navigating exclusively in inland waters, close to the coast, in sheltered waters or areas where port regulations apply
- Fishing vessels
- Ships of tradition build, such as dhows or junks
- Warships and naval auxiliaries

Ships below 200 gross tons that are not carrying out international voyages can be excluded by the flag state from some of the requirements if the seafarers' rights concerned are already covered by national laws, collective agreements, or other measures.

The ships must be "ordinarily engaged in commercial activities". The MLC does not have a definition of this phrase and its determination is a matter for good faith determination by the country concerned and subject to the usual oversight role taken by the ILO supervisory system. Therefore, unless a yacht is of traditional build¹ or otherwise expressly excluded by MLC or is not ordinarily engaged in commercial activities, it is arguably covered under the MLC. Where there is any doubt as to whether the MLC applies to a specific ship, the national competent authority must make a determination on the question and information about any national determinations that have been made must be filed with the Director-General of the ILO.

(2) Seafarers Defined

Any person who is employed, engaged or working in any capacity onboard a ship to which the Convention applies is a seafarer under MLC. This includes riding gangs—anyone working onboard. If there is any doubt as to whether a category of ship or person is covered by the Convention, the situation has to be clarified between the state authorities in consultation with the ship owner and the seafarer organization concerned (if there is one).

(a) Minimum Age Requirements

- (i) Cannot be less than 16 years of age
- (ii) If under 18 years of age, no night work (unless for an approved training program)
- (iii) If under 18 years of age, cannot be employed in work that jeopardizing health and safety

(b) Medical Certificates Required

- (i) Cannot work onboard a ship unless certified medically fit for duties
- (ii) Certificates must meet accepted international standards, such as STCW and recommended certificates follow ILO/WHO Guidelines for Conducting Pre-sea and Periodic Medical Fitness Examinations for Seafarers
- (iii) Must cover hearing, sight and color vision (if it affect the work)
- (iv) Must confirm seafarer not suffering from condition that would:

¹ A dhow or junk.

- (1) Be made worse by work at sea
- (2) Make the seafarer unable to perform the job
- (3) Make the seafarer a danger to others onboard
- (v) For international voyages, medical certificates must be in English

(c) Training and Qualifications

- (i) Seafarer must have completed training necessary to carry out duties on board (per STCW)
- (ii) Seafarer must have completed training for personal safety onboard

(d) Recruitment and Placement

- (i) Crewing agencies cannot charge seafarers for finding work
- (ii) Can charge seafarers for obtaining national medical certificate, seafarer's book, passport or other personal travel documents
- (iii) Cost of visas must be paid for by ship owner
- (iv) Creation of blacklists that could prevent qualified seafarers from finding work is forbidden
- (v) Flag states must make sure that if seafarers are recruited from a crewing agency in a country that has not ratified the Convention, the ship owner recruiting them must ensure that the agency meets with the MLC's standards. Crewing agencies must:
 - (1) Keep an up-to-date register of all seafarer placements
 - (2) Keep up-to-date lists of ships and company contact details where their seafarers are placed
 - (3) Inform seafarers of their rights and duties under an employment agreement and give the seafarer enough time to examine it before sign up
 - (4) Give the seafarer a copy of the employment agreement
 - (5) Make sure the seafarer agreements comply with applicable national laws and CBAs
 - (6) Check seafarer's qualifications for the job
 - (7) Make sure that ship owners or companies they work for are financially secure
 - (8) Have an effective complaints procedure in place
 - (9) Have an insurance system (or other equivalent measures) in place in case they need to compensate the seafarer for any failure to meet their obligations under the recruitment and place service, or if the ship owner fails to meet its obligations
- (vi) There must be a process in place to enable seafarers to make a complaint if a manning agency is not run properly and is in breach of the requirements of the Convention

(e) Employment Agreements

- (i) Seafarers are entitled to an employment agreement that sets out the terms and conditions of employment

- (ii) Must be signed by the seafarer and employer²
- (iii) Must be available on board for inspection in port
- (iv) English version must be available on board for ships operating in international waters
- (v) Seafarer also entitled to record of employment or discharge book
- (vi) Employment agreements must include:
 - (1) Seafarer's full name, date of birth/age and place of birth
 - (2) Ship owner's name and address
 - (3) Place where and date when the agreement was entered into
 - (4) Position onboard
 - (5) Amount of wages or formula used for calculating them
 - (6) Amount of paid annual leave or formula for calculating it
 - (7) Conditions for terminating the contract, including notice period for agreements of indefinite length³
 - (8) Expiry date⁴
 - (9) Port of destination⁵
 - (10) Health and social security benefits provided by the ship owner
 - (11) Details of entitlement to repatriation
 - (12) Reference to the CBA (if applicable)
 - (13) Any other details required by national law

(f) Wages

- (i) Right to be paid regularly, at least monthly
- (ii) In accordance with employment agreement and CBA
- (iii) Employer must provide monthly account setting out payment due and amounts paid⁶
- (iv) Basic pay or wages means pay for normal hours of work, normally no more than eight (8) hours per day and not more than forty-eight (48) hours per week
- (v) Seafarer to decide how to spend wages
- (vi) Overtime
 - (1) Rate of pay one and one quarter times basic rate
 - (2) Records kept by captain and endorsed by seafarer
 - (3) If seafarer has to work on day of rest or public holiday, seafarer entitled to overtime payment or time off in lieu

² It can be signed by the ship owner, ship owner's representative, or another person acting as the ship owner, such as the ship manager, agent or bareboat charterer.

³ Notice for seafarer must not be less for the ship owner than for the seafarer, *i.e.*, seafarer cannot be asked to give two (2) months' notice if the ship owner only has to give one (1) month.

⁴ If contract is for a fixed term, seafarer entitled to know when he/she will be discharged.

⁵ If contract for a specific voyage, seafarer should be advised how long it will be after his/her arrival before he/she will be discharged.

⁶ This includes wages, additional payments, rate of exchange if currency is different from that set out in employment agreement.

(g) Hours of Work and Rest

- (i) Maximum hours of work
 - (1) No more than fourteen (14) hours in any twenty-four (24) hour period
 - (2) No more than seventy-two (72) hours in any seven (7) day period
- (ii) Minimum hours of rest
 - (1) Ten (10) hours of rest in any twenty-four (24) hour period
 - (2) Seventy-seven (77) hours of rest in any seven (7) day period
- (iii) Hours of rest can be divided into no more than two (2) periods, one (1) of which must be at least six (6) hours long
- (iv) Seafarers cannot work for more than fourteen (14) hours without taking rest
- (v) Most flag states use the calculation based on minimum hours of rest, to give the ship owner more flexibility to require seafarers to work up to ninety-one (91) hours in any seven (7) day period
- (vi) All ships are required to display a table with shipboard working arrangements which shall include:
 - (1) Schedule of service at sea and service in port
 - (2) Maximum hours of work or minimum hours of rest required by law or by the applicable CBA
- (vii) Records must be kept of hours of work and rest to be check for compliance
- (viii) Seafarers entitled to endorsed copy of hours of work/rest

(h) Entitlements to Leave

- (i) Seafarers entitled to paid annual leave and shore leave
- (ii) Annual leave entitlement calculated on basis of 2.5 days for every calendar month of employment

(i) Repatriation

- (i) Maximum period seafarer can be expected to service onboard before being entitled to repatriation at ship owner's expense is twelve (12) months
- (ii) Ship owners not entitled to ask seafarer for contribution, unless seafarer has committed a material breach of the employment agreement. Ship owner pays the following costs:
 - (1) Passage to place of repatriation
 - (2) Accommodation and food for the duration of the journey
 - (3) Pay and allowances for the duration of the journey, if specified by CBAs or national laws
 - (4) Transportation of 30 kg of luggage
 - (5) Medical treatment where necessary to make seafarer fit for travel
- (iii) All ships flying flags of Member States must carry onboard the flag state's provisions on repatriation
- (iv) Seafarers have right to repatriation at no cost under the following circumstances:

- (1) Employment agreement expires while seafarer is on board
- (2) Ship owner terminates the contract
- (3) Seafarer terminates contract for justifiable reasons
- (4) Seafarer unable to carry out duties under the agreement, for reasons such as illness, injury, shipwreck, trading in a war zone or if the ship owner fails to fulfill its legal obligations to the seafarer

(j) Medical Care on Board Ship and Ashore

- (i) Seafarers entitled to access:
 - (1) Outpatient treatment for sickness and injury
 - (2) Hospitalization if necessary
 - (3) Facilities for dental treatment, especially in cases of emergency
 - (4) Hospitals and clinics for the treatment of disease
- (ii) All ships to have a medical chest, medical equipment and medical guide
- (iii) Contents of medical chests to be inspected every 12 months and look at labelling, expiration dates, condition of storing and correct functioning of equipment
- (iv) Where there is no doctor on board, at least one (1) seafarer must be in charge of medical care as part of their regular duties and training to be completed as specified in STCW
- (v) Training should be based on the contents of the following publications, as well as national guidance:
 - (1) International Medical Guide for Ships
 - (2) Medical First Aid Guide for Use in Accidents Involving Dangerous Goods
 - (3) Document for Guidance—An International Maritime Training Guide
 - (4) International Code of Signals (medical sections)

(k) Ship Owner Liability

- (i) Ship owners responsible for any costs resulting from sickness, injury or death connected to the seafarer's employment or seafarer can claim medical benefits under an insurance/compensation scheme
- (ii) If the seafarer needs medicine, medical treatment, or has to stay away from home while the condition is being treated, the ship owner is responsible for paying any bills until the seafarer has recovered or has been signed off as permanently disabled⁷
- (iii) If seafarer unable to work as a result of the illness/injury, he/should entitled to full wages while on board
- (iv) When seafarer returns home, national laws and CBAs apply, which will determine whether seafarer gets full pay, part pay or a cash settlement
- (v) In the event of death or long-term disability due to occupational illness or injury, the ship owner must provide compensation as set out in national law, the employment agreement or the CBA

⁷ The ship owner's responsibility may be limited to 16 weeks from the day of injury/sickness, if stated in national law/regulation.

- (vi) Ship owners liable for burial expenses if seafarer dies, whether onboard or shore, during the period of employment
- (vii) A ship owner is not liable
 - (1) If the crewmember was injured while not in the service of the ship
 - (2) If the crewmember was injury or became sick as a result of willful misconduct
 - (3) If the crewmember intentionally hid the fact they were sick when engaged

(l) Health and Safety Protection and Accident Prevention

- (i) The following has to be on board:
 - (1) Health policy and program, including risk evaluation and training
 - (2) Precautions to prevent accidents, injuries and the spread of disease, including the effects of handling chemicals and the use of machinery and equipment onboard
 - (3) Involvement of seafarers' representatives in programs to improve occupational safety and health and accident prevention
 - (4) A process for inspecting, reporting and correcting unsafe conditions, and for investigating and reporting onboard accidents
 - (5) Investigation and reporting must ensure that seafarer personal data is protected

(m) Other Rights

- (i) Access to shore based welfare facilities
 - (1) Ship owners should inform seafarers of facilities available to crew and be advised of any local laws or customs that, if broken, could endanger seafarer freedom
 - (2) Consulates
- (ii) Social security⁸

(n) Safeguarding of Rights

- (i) Flag state responsibilities
 - (1) Each flag state that has ratified MLC responsible for ensuring that MLC requirements are implemented onboard ships flying its flag
 - (2) Each flag state will decide how to comply with MLC, so conditions will vary from flag state to flag state
 - (3) Ships flying a flag of a state that has signed the Convention must have a copy of the MLC onboard
 - (4) Maritime Labor Certificate
 - (a) Minimum age
 - (b) Medical certification
 - (c) Qualifications of seafarers
 - (d) Seafarers' employment agreements

⁸ Based on national legislation and beyond the scope of this paper.

- (e) Use of any licensed or certified or regulated private recruitment and placement service
 - (f) Hours of work and rest
 - (g) Manning levels for the ship
 - (h) Accommodation
 - (i) Onboard recreational facilities
 - (j) Food and catering
 - (k) Health and safety and accident prevention
 - (l) Onboard medical care
 - (m) Onboard complaint procedures
 - (n) Payment of wages
- (5) Declaration of Maritime Labor Compliance--has two (2) parts:
- (a) Part I lists the way in which the flag state's laws and regulations implement the Convention
 - (b) Part II is drawn up by the ship owner to show how the vessel is compliant with Part I
- (6) Inspection and enforcement
- (a) Inspections
 - (i) Initial inspection for compliance
 - (ii) Cases not involving serious breach, inspector may order deficiency rectified by a set date
 - (iii) If vessel has good history and inspector considers breach not serious, may give advice instead of action
 - (iv) Inspectors will not tell if complaint came from crew
 - (v) Reports of inspections sent to flag state with copy given to master and copy posted onboard
 - (vi) Flag state has responsibility to ensure that breaches are rectified and decide the system of penalty
 - (b) Onboard complaint procedures
 - (i) Complaints must be handled fairly, effectively and promptly
 - (ii) When they join ship, seafarers are provided a copy of the onboard complaint procedure, with contact details of the responsible person onboard, flag state and the country's administration
 - (iii) If complaint cannot be resolved onboard, seafarer entitled to refer the matter ashore, either directly to the ship owner, flag state or port state inspectors
- (ii) Port state responsibilities
- (1) Inspections in port
 - (a) Check that documents⁹ are in order
 - (b) More detailed inspections can be carried out under the following circumstances:
 - (i) Documents are not produced, are invalid or have been falsified

⁹ The Maritime Labor Certificate and the Declaration of Maritime Labor Compliance

- (ii) Inspector has grounds for believing that the working and living conditions are substandard in terms of the Convention
- (iii) The ship has changed flag in an attempt to avoid compliance with the Convention
- (iv) A complaint has been made about a specific working/living condition onboard by a seafarer, a trade union, or any person with an interest in the safety and health of seafarers and their ship

(2) Detentions

- (a) Hazardous to safety, health or security of seafarers onboard
- (b) Repeated breaches of the Convention requirements
- (c) Examples of kinds of circumstances which could warrant a detention:
 - (i) The presence of any seafarer under the age of 16
 - (ii) The employment of any seafarer under the age of 18 in work likely to jeopardize their health or safety
 - (iii) Insufficient manning
 - (iv) Any other deficiencies constituting a violation of fundamental rights and principles of seafarers' employment and social rights¹⁰
 - (v) Any non-conformity applied in a way that violates those fundamental rights
 - (vi) Repeated cases of seafarers without valid certificates confirming medical fitness for duties
 - (vii) Seafarers onboard the same ship repeatedly not in possession of valid seafarers' employment agreement or seafarers with employment agreements containing clauses constituting a denial of seafarers' rights
 - (viii) Seafarers repeatedly working beyond maximum hours of work or having less than the minimum hours of rest
 - (ix) Ventilation and/or air conditioning and/or heating that is not working adequately
 - (x) Accommodation, including catering and sanitary facilities that are unhygienic or where equipment is missing or not functioning
 - (xi) Quality and quantity of food and drinking water not suitable for the intended voyage
 - (xii) Medical guide or medical chest or medical equipment, as required, not onboard
 - (xiii) Repeated cases of non-payment of wages or the non-payment of wages over a significant period, or the falsification of wage accounts or the existence of more than one set of wage accounts
- (iii) Labor responsibilities: Make sure that recruitment and placement services through which labor is contracted are properly regulated

¹⁰ These fundamental rights are: the right to freedom of association (right to join a trade union); effective recognition of the right to collective bargaining (obtaining a CBA); elimination of all forms of forced or compulsory labor (right to work of own free will and to be paid for that work); effective abolition of child labor; elimination of discrimination in respect of employment and occupation (treated in the same way as fellow seafarers doing the same work regardless of race, religion, national origin, gender, etc).

B. Substantial Equivalence

The MLC allows for a certain amount of flexibility as to how it is put into practice. If a flag state can prove that its approach is substantially equivalent to the MLC's requirement, *i.e.*, it covers the basic principles but in a different way from that set out in the MLC, this can be acceptable for the Part A requirements in Titles 1 to 4. However for Title 5, there can be no substantial equivalence; the measures for compliance and enforcement must be followed according to the Convention.

V. Conclusion

As the MLC represents a significant change to the regulation of employment terms and working conditions for seafarers, it is strongly recommended that action steps for yachts now subject to the MLC include:

- Amending charter parties to ensure compliance by owners and redress in the event of failure;
- Drafting new on board complaint and other procedures as required under the Convention;
- Drafting new compliant employment contracts and crew management agreements; and
- Training masters and senior officers in ensuring that the ship is compliant with MLC, including dealing with crew complaints and monitoring working time limits.