

# Maritime Labour Convention



**How Will it Affect Superyachts?**



**Döhle Yachts**

Our Service. Your Advantage.

# The Maritime Labour Convention

## Are You Prepared?

Given the imminent ratification (expected 2012) of the ILO Maritime Labour Convention 2006 (MLC or Convention) and the much-hyped implications for builders, owners, managers and crew of superyachts we have drafted this guide to highlight some of the more pertinent elements of the MLC for the superyacht industry.

The Convention is complex and in some areas, crew accommodation being one of them, it will be especially challenging to plan for, design and build yachts in certain size ranges until such time as individual Flag States define how they will interpret the Convention, particularly in an industry where vessel design is, by its very nature, often unique.

However, responsible owners, yacht managers, recruiters, support companies and employers should already be complying with at least 80% of what the Convention will require. As such, the final changes (to well-run yacht, company and supplier operations) need not be as dramatic, or costly, as many seem to believe.

Flag States have been working hard to interpret the Regulations and to get legislation in place in time for the ratification. We work closely with most of the Flag States active in registering large yachts and see no great changes to our current working practises as a result of their interpretation of the MLC.

In this necessarily brief guide we highlight the sections of the MLC that are most likely to impact the owning and operating of commercially registered super yachts, these include:

- Crew accommodation
- Yacht owners liability
- Seafarer Employment Agreements
- The use of regulated recruitment and placement agencies
- The hours of work and rest and holiday entitlement
- Health protection, medical care and welfare
- Complaint procedures available to seafarers
- Shipowners' and shipmasters' supervision of conditions on their ships
- Flag States' jurisdiction and control over their ships
- Port State inspections of foreign ships

The on-board administration of ISM and ISPS will also be affected by the introduction of the MLC and our Compliance and Technical Support department is making appropriate changes to ensure compliance with the MLC in our normal effective and efficient manner, whilst minimising the administrative burden on-board.

We will welcome the ratification of the MLC as a means of ensuring standardisation, and where required, the improvement of working conditions for all those employed afloat.

I hope that you will find this a useful guide to illustrate some of the ramifications and complexities of the MLC and prepare you for the challenges ahead.

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Director, Döhle Private Clients Limited

# MLC and Superyachts

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# The Maritime Labour Convention and Superyachts

## Introduction

In 2012 it is expected that the Maritime Labour Convention 2006 (MLC) will be ratified and it will come into force twelve months after the ratification date.

This will have a profound effect on all commercial shipping, including commercial superyachts. It is possible that some vessels of less than 200 gross tons may not have to comply with all the MLC requirements, but this will be down to the discretion of individual Flag States.

In this guide we outline the sections of the MLC which will have the most affect on the owning and operating of superyachts.

At the end of this booklet is a concise summary of the MLC. Full details of the MLC and the latest news are available on the Döhle Yachts website: [www.dohle-yachts.com](http://www.dohle-yachts.com) .

### Overview

The International Labour Organisation's (ILO) Maritime Labour Convention 2006 consolidates and updates over 65 international labour standards related to seafarers adopted over the last eighty years, in order to secure the right of all seafarers to decent employment. It has been designed to become a global instrument known as the "fourth pillar" of the international regulatory regime for quality shipping, along with three other key maritime Conventions of the International Maritime Organization (IMO) namely safety at sea (SOLAS), training, certification and watchkeeping standards (STCW) and on environmental protection (MARPOL).

It has two primary purposes:

- To bring the system of protection contained in existing labour standards closer to the workers concerned, in a form consistent with the rapidly developing globalised sector
- To improve the applicability of the system, so that shipowners (including superyacht owners) and governments interested in providing decent conditions of work do not have to bear an unequal burden in ensuring protection

The Convention was adopted in February 2006. The Convention will come into force once either 30 MLC members or members representing at least 33% of the world's gross tonnage ratify it.

The new Convention is intended to achieve increased compliance by operators and owners of ships and to strengthen enforcement of standards through mechanisms which operate at all levels.

For example, it contains provisions for:

- Crew accommodation
- Complaint procedures available to seafarers
- Shipowners' and shipmasters' supervision of conditions on their ships
- Flag States' jurisdiction and control over their ships
- Port State inspections of foreign ships
- By requiring ratifying Members not only to implement the Convention in the national laws but also to document their implementation, the Convention should also enhance the effectiveness of the supervision carried out at the international level, especially by the competent bodies of the ILO

# How Will The MLC Affect Owners, Operators and Crew of Superyachts?

## Accommodation and Recreational Facilities

Commercial yachts built prior to the implementation of the MLC will not be subject to the MLCs regulations in respect of crew accommodation and recreational facilities. However those built after the implementation of the MLC will be subject to these regulations.

These changes will have a significant impact on the design and construction of new superyachts and are too complex to detail in this booklet. For example, one such change increases the size of accommodation available to crew, which will either increase the size, and cost, of the yacht, or reducing the size of accommodation available to the owner and guests.

We recommend that you contact our Compliance and Technical Support department for more information and advice.

## Revision of The Large Yacht Code (LY2)

When the MLC is implemented it is proposed that the Large Yacht Code (LY2) will be revised. A new section of LY2 will incorporate the substantially equivalent requirements of Title 3 of the MLC; Accommodation, recreational facilities, food and catering.

Also it is widely recognised that it may be very difficult for large yachts in the 200gt - 500gt bracket to comply with the full crew accommodation provisions under the Convention. Several organisations including the UK Maritime and Coastguard Agency and The Professional Yachtsmen's Association are working with representatives from the sector to agree a revised version of Ch 21 of the Large Yacht Code (MSN 1792(M)) which meets the objectives, and as far as possible complies with the MLC 2006 standards, but recognises the particular constraints on this sector.

## Seafarer Employment Agreement (SEA)

When ratified the MLC will bring in Seafarers Employment Agreements (SEA). Every seafarer<sup>1</sup> working on a commercial yacht will need to have a Flag State approved SEA between themselves and the yacht owner, or the representative of the ship owner/ yacht owner<sup>2</sup>. This is a major change replacing any existing employment contracts, and it will also mean there is no longer a requirement for crew agreements and signing-on articles, as a SEA will replace both of these.

1 Definition of a seafarer: "A seafarer means any person, including the master, who is employed or engaged or works in any capacity on board a seagoing ship to which MLC 2006 applies".

2 Definition of a Shipowner by MLC: "Shipowner means the owner of the ship or another organisation or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with the Convention, regardless of whether any other organisations or persons fulfil certain of the duties or responsibilities on behalf of the shipowner".

## **Who Needs a SEA and What Are the Requirements?**

- The shipowner and the seafarer shall each have a signed original of the SEA
- The shipowner has given the seafarer enough time to review and take advice on the content and conditions of the agreement before the seafarer signs the SEA
- That the shipowner has informed the seafarer of their rights and duties under their employment agreement prior to or in the process of engagement
- The seafarer enters the agreement freely having a sufficient understanding of their rights and responsibilities.

Crew contracts or agreements will need to be very specific on items such as pay, health insurance, leave and working hours. (All our Crew Contracts will be MLC compliant and Flag State approved).

## **Employment Agencies**

The MLC will require that seafarers have access to efficient and well-regulated seafarer recruitment and placement system and that seafarer recruitment and placement services operating in a Member's territory shall conform to the standards set out in the Code.

What will be required and what does a recruitment and placement agency need to demonstrate under the MLC?

- No blacklists to prevent seafarers from gaining employment
- Do not charge the seafarer for providing them with employment or to register for employment
- Ensure that seafarers recruited or placed by them are qualified for the job concerned
- Maintain an up-to-date register of all seafarers recruited or placed through them
- That the seafarers' employment agreements are in accordance with flag state laws and regulations, as is any Collective Bargaining Agreement (CBA) that forms part of the employment agreement
- Inform seafarers of their rights and duties under their employment agreements prior to engagement
- Examine and respond to any complaint concerning their activities and advise the competent authority of any unresolved complaint
- Make sure, as far as practicable, that the shipowner has the means to protect seafarers from being stranded in a foreign port
- Have by way of insurance or a similar measure, a scheme to compensate seafarers for monetary loss from the failure of the recruitment and placement service, or the relevant shipowner under the SEA, to meet its obligations to them
- Protect the confidentiality of seafarers' personal data
- Maintain up-to-date lists of the ships for which they provide seafarers and ensuring that there is a means by which the services can be contacted in an emergency at all hours

Döhle Yacht Crew will comply with these requirements when the MLC is implemented and fully support the changes.

## **Seafarers Wages**

Payment shall be at not less than monthly intervals and there shall also be a monthly account of the payment the seafarer is due.

Allotment notes are one area where changes may be required as MLC requires that shipowners take measures to provide seafarers with a means to transmit all or part of their earnings to their families or dependants or legal beneficiaries. This is standard practice in commercial shipping and is in place with our crew payment system.

## **Hours of Work and Rest**

Each Member state shall ensure that the hours of work or hours of rest for seafarers are regulated.

Each Member state shall establish maximum hours of work or minimum hours of rest over given periods that are consistent with the provisions in the Code.

## **Entitlement to Leave**

Each Member state shall require that seafarers employed on ships that fly its flag are given paid annual leave under appropriate conditions, in accordance with the provisions in the Code.

## **Repatriation**

Seafarers have a right to be repatriated at no cost to themselves in the circumstances and under the conditions specified in the Code.

Seafarers will be entitled to repatriation in the following circumstances:

- If the seafarers' employment agreement expires while they are abroad
- When the seafarers' employment agreement is terminated:
  - by the shipowner; or
  - by the seafarer for justified reasons; and also
- When the seafarers are no longer able to carry out their duties under their employment agreement or cannot be expected to carry them out in the specific circumstances

## **Health Protection, Medical Care, Welfare and Social Security Protection**

Each Member state shall ensure that all seafarers on ships that fly its flag are covered by adequate measures for the protection of their health and that they have access to prompt and adequate medical care whilst working on board.

The protection and care under the Regulation shall, in principle, be provided at no cost to the seafarers.

Each Member state shall ensure that seafarers on board ships in its territory who are in need of immediate medical care are given access to the Member's medical facilities on shore.

Each Member state shall ensure that shore-based welfare facilities, where they exist, are easily accessible. The Member shall also promote the development of welfare facilities, such as those listed in the Code, in designated ports to provide seafarers on ships that are in its ports with access to adequate welfare facilities and services.

Each Member state shall ensure that all seafarers and, to the extent provided for in its national law, their dependants have access to social security protection in accordance with the Code without prejudice however to any more favourable conditions.



## **Certification and Compliance**

Certification comes as two documents, a Maritime Labour Certificate and the Declaration of Maritime Labour Compliance Certificate.

Ships of 500gt and over engaged in international voyages must have a Maritime Labour Certificate and a Maritime Labour Compliance Certificate and ships under 500gt may be issued with one on request of the shipowner. This doesn't mean that ships or commercial yachts under 500gt escape as all ships of 200gt or over will be inspected for compliance but do not require a certificate.

The certification period has the same requirement as the ISM and ISPS Code with a five year validity and an intermediate inspection between the 2nd and 3rd anniversary date.

## **Shipowners Liability**

The MLC's regulations seeks to deal with the shipowners responsibilities and liability for the economic consequences of sickness, injury or death suffered by seafarers during their engagement.

Under the regulations shipowner's liability should,

- Provide coverage for the costs of seafarers sickness or injury occurring during their engagement until the date when they are duly repatriated
- Provide compensation in the event of death in service or long term disability caused by an occupational injury, illness or hazard occurring during their engagement
- Defray expenses of medical care and board and lodging until the seafarer has recovered or the sickness/incapacity declared permanent. Such liability will be limited to not less than 16 weeks
- Pay the costs of burial expenses for death occurring on board or ashore during the period of engagement
- Pay wages in whole or in part where the sickness or injury results in seafarers incapacity to work. Again, such liability will be limited to not less than 16 weeks
- Pay to each seafarer on board an indemnity against unemployment arising from the ships loss or foundering. The total indemnity payable to any one seafarer will be limited to 2 months wages
- Provide financial security to ensure that seafarers are repatriated

## **Inspections**

Every foreign ship calling, in the normal course of its business or for operational reasons, in the port of a Member state may be the subject of inspection for the purpose of reviewing compliance with the requirements of this Convention (including seafarers' rights) relating to the working and living conditions of seafarers on the ship.

## **Complaints Procedures**

- **Onshore seafarer complaint handling procedures**

Each Member state shall ensure that seafarers on ships calling at a port in the Member's territory who allege a breach of the requirements of this Convention (including seafarers' rights) have the right to report such a complaint in order to facilitate a prompt and practical means of redress.

- **On-board complaint procedures**

Each Member state shall require that ships that fly its flag have on-board procedures for the fair, effective and expeditious handling of seafarer complaints alleging breaches of the requirements of this Convention (including seafarers' rights).

Each Member state shall prohibit and penalize any kind of victimization of a seafarer for filing a complaint.

## **ISM and ISPS**

ISM and ISPS will be affected by the introduction of the MLC. We recommend that you contact our Compliance and Technical Support department for more information and advice.

## **Our Experience**

Döhle Yachts and Döhle Yacht Crew have considerable experience regarding the implementation, compliance and crew issues of the MLC.

For our clients we will conduct pre MLC inspections as part of our regular ISM and ISPS audits.

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# MLC Inspection Requirements For Commercial Yachts

## Checklist

	>500gt Commercial Yacht	<500gt Commercial Yacht
Minimum age	Yes	Yes
Medical certificate	Yes	Yes
Qualifications of seafarers	Yes	Yes
Recruitment & placement	Yes	Yes
SEA's	Yes	Yes
Leave (will be part of SEA inspection)	Yes	Yes
Repatriation (will be part of SEA inspection)	Yes	Yes
Wages	Yes	Yes
Hours of work and rest	Yes	Yes
Manning levels	NA	NA
Accommodation and recreational facilities	*	*
Food and catering	Yes	Yes
On-board medical care	Yes	Yes
Shipowners' liability (will be part of SEA inspection)	Yes	Yes
Health and safety protection and accident prevention	Yes	Yes
On board complaint procedures	Yes	Yes
Use of licensed private recruitment and placement agencies	Yes	Yes

Notes:

1. This checklist is based on the full MLC inspection requirements for all vessels
2. Yes: Inspection required
3. NA: not applicable
4. \*: Does not apply to yachts built prior to implementation of MLC, though they may be subject to ILO 178 inspection. For yachts built after the implementation of the MLC this will be dependent on the requirements of the MLC

# Summary of The MLC Regulations

Please note that this is summary of the full 110 pages and not all MLC Regulations apply to Superyachts, for example; Manning Levels.

Full details of the MLC and the latest news may be obtained from the Döhle Yachts website: [www.dohle-yachts.com](http://www.dohle-yachts.com).

## Minimum Requirement for Seafarers to Work on a Ship

*Purpose: To ensure that no under-age persons work on a ship*

- No person below the minimum age shall be employed or engaged or work on a ship
- The minimum age at the time of the initial entry into force of this Convention is 16 years
- A higher minimum age shall be required in the circumstances set out in the Code

## Medical Certificate

*Purpose: To ensure that all seafarers are medically fit to perform their duties at sea*

- Seafarers shall not work on a ship unless they are certified as medically fit to perform their duties
- Exceptions can only be permitted as prescribed in the Code

## Training and Qualifications

*Purpose: To ensure that seafarers are trained or qualified to carry out their duties on board ship*

- Seafarers shall not work on a ship unless they are trained or certified as competent or otherwise qualified to perform their duties
- Seafarers shall not be permitted to work on a ship unless they have successfully completed training for personal safety on board ship
- Training and certification in accordance with the mandatory instruments adopted by the International Maritime Organization shall be considered as meeting the requirements of paragraphs 1 and 2 of this Regulation
- Any Member which, at the time of its ratification of this Convention, was bound by the Certification of Able Seamen Convention, 1946 (No. 74), shall continue to carry out the obligations under that Convention unless and until mandatory provisions covering its subject matter have been adopted by the International Maritime Organization and entered into force, or until five years have elapsed since the entry into force of this Convention in accordance with paragraph 3 of Article VIII, whichever date is earlier

## Recruitment and Placement

*Purpose: To ensure that seafarers have access to an efficient and well-regulated seafarer recruitment and placement system*

- 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 operating in a Member's territory shall conform to the standards set out in the Code
- Each Member shall require, in respect of seafarers who work on ships that fly its flag, that shipowners who use seafarer recruitment and placement services that are based in countries or territories in which this Convention does not apply, ensure that those services conform to the requirements set out in the Code

# Conditions of Employment

## Seafarers Employment Agreements (SEAs)

*Purpose: To ensure that seafarers have a fair employment agreement*

- The terms and conditions for employment of a seafarer shall be set out or referred to in a clearly written and legally enforceable agreement and shall be consistent with the standards set out in the Code
- Seafarers' Employment Agreements shall be agreed to by the seafarer under conditions which ensure that the seafarer has an opportunity to review and seek advice on the terms and conditions in the agreement and freely accepts them before signing
- To the extent compatible with the Member's national law and practice, seafarers' employment agreements shall be understood to incorporate any applicable collective bargaining agreements

## Wages

*Purpose: To ensure that seafarers are paid for their services*

- All seafarers shall be paid for their work regularly and in full in accordance with their employment agreements
- Each Member shall require that payments due to seafarers working on ships that fly its flag are made at no greater than monthly intervals and in accordance with any applicable collective agreement
- Seafarers shall be given a monthly account of the payments due and the amounts paid, including wages, additional payments and the rate of exchange used where payment has been made in a currency or at a rate different from the one agreed to
- Each Member shall require that shipowners take measures, such as those set out in paragraph 4 of this Standard, to provide seafarers with a means to transmit all or part of their earnings to their families or dependants or legal beneficiaries

## Hours of Work and Hours of Rest

*Purpose: To ensure that seafarers have regulated hours of work or hours of rest*

- Each Member shall ensure that the hours of work or hours of rest for seafarers are regulated
- Each Member shall establish maximum hours of work or minimum hours of rest over given periods that are consistent with the provisions in the Code

## Entitlement to Leave

*Purpose: To ensure that seafarers have adequate leave*

- Each Member shall require that seafarers employed on ships that fly its flag are given paid annual leave under appropriate conditions, in accordance with the provisions in the Code
- Seafarers shall be granted shore leave to benefit their health and well-being and with the operational requirements of their positions
- Each Member shall adopt laws and regulations determining the minimum standards for annual leave for seafarers serving on ships that fly its flag, taking proper account of the special needs of seafarers with respect to such leave

## **Repatriation**

*Purpose: To ensure that seafarers are able to return home*

- 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 shall require ships that fly its flag to provide financial security to ensure that seafarers are duly repatriated in accordance with the Code
- Each Member shall ensure that seafarers on ships that fly its flag are entitled to repatriation in the following circumstances:
  - if the Seafarers' Employment Agreement expires while they are abroad;
  - when the Seafarers' Employment Agreement is terminated:
    - by the shipowner; or
    - by the seafarer for justified reasons; and also
  - when the seafarers are no longer able to carry out their duties under their employment agreement or cannot be expected to carry them out in the specific circumstances

## **Seafarer compensation for the ship's loss or foundering**

*Purpose: To ensure that seafarers are compensated when a ship is lost or has foundered*

- Seafarers are entitled to adequate compensation in the case of injury, loss or unemployment arising from the ship's loss or foundering

## **Manning levels**

*Purpose: To ensure that seafarers work on board ships with sufficient personnel for the safe, efficient and secure operation of the ship*

- Each Member shall require that all ships that fly its flag have a sufficient number of seafarers employed on board to ensure that ships are operated safely, efficiently and with due regard to security under all conditions, taking into account concerns about seafarer fatigue and the particular nature and conditions of the voyage

## **Career and skill development and opportunities for seafarers' employment**

*Purpose: To promote career and skill development and employment opportunities for seafarers*

- Each Member shall have national policies to promote employment in the maritime sector and to encourage career and skill development and greater employment opportunities for seafarers domiciled in its territory

# Accommodation, Recreational Facilities, Food and Catering

## Accommodation and Recreational Facilities

*Purpose: To ensure that seafarers have decent accommodation and recreational facilities on board*

- Each Member shall ensure that ships that fly its flag provide and maintain decent accommodation and recreational facilities for seafarers working or living on board, or both, consistent with promoting the seafarers' health and well-being
- The requirements in the Code implementing this Regulation which relate to ship construction and equipment apply only to ships constructed on or after the date when this Convention comes into force for the Member concerned. For ships constructed before that date, the requirements relating to ship construction and equipment that are set out in the Accommodation of Crews Convention (Revised), 1949 (No. 92), and the Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133), shall continue to apply to the extent that they were applicable, prior to that date, under the law or practice of the Member 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
- Unless expressly provided otherwise, any requirement under an amendment to the Code relating to the provision of seafarer accommodation and recreational facilities shall apply only to ships constructed on or after the amendment takes effect for the Member concerned

## Food and Catering

*Purpose: To ensure that seafarers have access to good quality food and drinking water provided under regulated hygienic conditions*

- Each Member 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
- Seafarers on board a ship shall be provided with food free of charge during the period of engagement
- Seafarers employed as ships' cooks with responsibility for food preparation must be trained and qualified for their position on board ship

# Health Protection, Medical Care, Welfare and Social Security Protection

## Medical Care on Board Ship and Ashore

*Purpose: To protect the health of seafarers and ensure their prompt access to medical care on board ship and ashore*

- Each Member shall ensure that all seafarers on ships that fly its flag are covered by adequate measures for the protection of their health and that they have access to prompt and adequate medical care whilst working on board
- The protection and care under this Regulation shall, in principle, be provided at no cost to the seafarers
- Each Member shall ensure that seafarers on board ships in its territory who are in need of immediate medical care are given access to the Member's medical facilities on shore
- The requirements for on-board health protection and medical care set out in the Code include standards for measures aimed at providing seafarers with health protection and medical care as comparable as possible to that which is generally available to workers ashore

## Shipowners Liability

*Purpose: To ensure that seafarers are protected from the financial consequences of sickness, injury or death occurring in connection with their employment*

- Each Member shall ensure that measures, in accordance with the Code, are in place on ships that fly its flag to provide seafarers employed on the ships with a right to material assistance and support from the shipowner with respect to the financial consequences of sickness, injury or death occurring while they are serving under a seafarers' employment agreement or arising from their employment under such agreement
- This Regulation does not affect any other legal remedies that a seafarer may seek

## Health and Safety Protection and Accident Prevention

*Purpose: To ensure that seafarers' work environment on board ships promotes occupational safety and health*

- Each Member shall ensure that seafarers on ships that fly its flag are provided with occupational health protection and live, work and train on board ship in a safe and hygienic environment
- Each Member shall develop and promulgate national guidelines for the management of occupational safety and health on board ships that fly its flag, after consultation with representative shipowners' and seafarers' organizations and taking into account applicable codes, guidelines and standards recommended by international organizations, national administrations and maritime industry organizations
- Each Member shall adopt laws and regulations and other measures addressing the matters specified in the Code, taking into account relevant international instruments, and set standards for occupational safety and health protection and accident prevention on ships that fly its flag



## **Access to Shore Based Welfare Facilities**

*Purpose: To ensure that seafarers working on board a ship have access to shore-based facilities and services to secure their health and well-being*

- Each Member shall ensure that shore-based welfare facilities, where they exist, are easily accessible. The Member shall also promote the development of welfare facilities, such as those listed in the Code, in designated ports to provide seafarers on ships that are in its ports with access to adequate welfare facilities and services
- The responsibilities of each Member with respect to shore-based facilities, such as welfare, cultural, recreational and information facilities and services, are set out in the Code

## **Social Security**

*Purpose: To ensure that measures are taken with a view to providing seafarers with access to social security protection*

- Each Member shall ensure that all seafarers and, to the extent provided for in its national law, their dependants have access to social security protection in accordance with the Code
- Each Member undertakes to take steps, according to its national circumstances, individually and through international cooperation, to achieve progressively comprehensive social security protection for seafarers
- Each Member shall ensure that seafarers who are subject to its social security legislation, and, to the extent provided for in its national law, their dependants, are entitled to benefit from social security protection no less favourable than that enjoyed by shoreworkers

# Compliance and Enforcement

## Flag State Responsibilities - General Principles

*Purpose: To ensure that each Member implements its responsibilities under this Convention with respect to ships that fly its flag*

- Each Member shall establish an effective system for the inspection and certification of maritime labour conditions, in accordance with Regulations 5.1.3 and 5.1.4 ensuring that the working and living conditions for seafarers on ships that fly its flag meet, and continue to meet, the standards in this Convention
- In establishing an effective system for the inspection and certification of maritime labour conditions, a Member may, where appropriate, authorize public institutions or other organizations (including those of another Member, if the latter agrees) which it recognizes as competent and independent to carry out inspections or to issue certificates or to do both. In all cases, the Member shall remain fully responsible for the inspection and certification of the working and living conditions of the seafarers concerned on ships that fly its flag
- A Maritime Labour Certificate, complemented by a declaration of Maritime Labour Compliance, shall constitute prima facie evidence that the ship has been duly inspected by the Member whose flag it flies and that the requirements of this Convention relating to working and living conditions of the seafarers have been met to the extent so certified

## Other Flag State Responsibilities

- *Maritime Labour Certificate and Declaration of Maritime Labour Compliance*

This Regulation applies to ships of:

- 500 gross tonnage or over, engaged in international voyages; and
- 500 gross tonnage or over, flying the flag of a Member and operating from a port, or between ports, in another country

For the purpose of this Regulation, “international voyage” means a voyage from a country to a port outside such a country.

This Regulation also applies to any ship that flies the flag of a Member and is not covered by paragraph 1 of this Regulation, at the request of the shipowner to the Member concerned.

Each Member shall require ships that fly its flag to carry and maintain a Maritime Labour Certificate certifying that the working and living conditions of seafarers on the ship, including measures for on-going compliance to be included in the declaration of maritime labour compliance referred to in paragraph 4 of this Regulation, have been inspected and meet the requirements of national laws or regulations or other measures implementing this Convention.

Each Member shall require ships that fly its flag to carry and maintain a declaration of Maritime Labour Compliance stating the national requirements implementing this Convention for the working and living conditions for seafarers and setting out the measures adopted by the shipowner to ensure compliance with the requirements on the ship or ships concerned.

The Maritime Labour Certificate and the Declaration of Maritime Labour Compliance shall conform to the model prescribed by the Code.

Where the competent authority of the Member or a recognized organization duly authorized for this purpose has ascertained through inspection that a ship that flies the Member's flag meets or continues to meet the standards of this Convention, it shall issue or renew a Maritime Labour Certificate to that effect and maintain a publicly available record of that certificate.

- **Inspection and enforcement**

Each Member shall verify, through an effective and coordinated system of regular inspections, monitoring and other control measures that ships that fly its flag comply with the requirements of this Convention as implemented in national laws and regulations.

Detailed requirements regarding the inspection and enforcement system referred to in paragraph 1 of this Regulation are set out in Part A of the Code.

- **On-board complaint procedures**

Each Member state shall require that ships that fly its flag have on-board procedures for the fair, effective and expeditious handling of seafarer complaints alleging breaches of the requirements of this Convention (including seafarers' rights).

Each Member state shall prohibit and penalize any kind of victimization of a seafarer for filing a complaint.

The provisions in the Regulation and related sections of the Code are without prejudice to a seafarer's right to seek redress through whatever legal means the seafarer considers appropriate.

- **Marine casualties**

Each Member shall hold an official inquiry into any serious marine casualty, leading to injury or loss of life, that involves a ship that flies its flag. The final report of an inquiry shall normally be made public.

Members shall cooperate with each other to facilitate the investigation of serious marine casualties referred to in paragraph 1 of this Regulation.

## **Port State Responsibilities**

*Purpose: To enable each Member to implement its responsibilities under this Convention regarding international cooperation in the implementation and enforcement of the Convention standards on foreign ships*

- **Inspections in port**

Every foreign ship calling, in the normal course of its business or for operational reasons, in the port of a Member may be the subject of inspection in accordance with paragraph 4 of Article V for the purpose of reviewing compliance with the requirements of this Convention (including seafarers' rights) relating to the working and living conditions of seafarers on the ship.

Each Member shall accept the Maritime Labour Certificate and the declaration of Maritime Labour Compliance required under Regulation 5.1.3 as prima facie evidence of compliance with the requirements of this Convention (including seafarers' rights). Accordingly, the inspection in its ports shall, except in the circumstances specified in the Code, be limited to a review of the certificate and declaration.

Inspections in a port shall be carried out by authorized officers in accordance with the provisions of the Code and other applicable international arrangements governing Port State Control inspections in the Member. Any such inspection shall be limited to verifying that the matter inspected is in conformity with the relevant requirements set out in the Articles and Regulations of this Convention and in Part A of the Code.

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 ensure that the working and living conditions for seafarers on ships entering a port of the Member concerned meet the requirements of this Convention (including seafarers' rights).

Information about the system referred to in paragraph 4 of this Regulation, including the method used for assessing its effectiveness, shall be included in the Member's reports pursuant to article 22 of the Constitution.

- **Onshore seafarer complaint handling procedures**

Each Member shall ensure that seafarers on ships calling at a port in the Member's territory who allege a breach of the requirements of this Convention (including seafarers' rights) have the right to report such a complaint in order to facilitate a prompt and practical means of redress.

### **Labour Supplying Responsibilities**

*Purpose: To ensure that each Member implements its responsibilities under this Convention as pertaining to seafarer recruitment and placement and the social protection of its seafarers*

- Without prejudice to the principle of each Member's responsibility for the working and living conditions of seafarers on ships that fly its flag, the Member also has a responsibility to ensure the implementation of the requirements of this Convention regarding the recruitment and placement of seafarers as well as the social security protection of seafarers that are its nationals or are resident or are otherwise domiciled in its territory, to the extent that such responsibility is provided for in this Convention
- Detailed requirements for the implementation of paragraph 1 of this Regulation are found in the Code
- Each Member shall establish an effective inspection and monitoring system for enforcing its labour-supplying responsibilities under this Convention
- Information about the system referred to in paragraph 3 of this Regulation, including the method used for assessing its effectiveness, shall be included in the Member's reports pursuant to article 22 of the Constitution





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