



CREW & CONCIERGE

Additional Information

The Maritime Labour Convention
And
Seafarer Employment Agreement

Maritime Labour Convention (MLC)

The Maritime Labour Convention 2006 came into effect on 20th August 2013. This had a profound effect on all commercial shipping, including commercial Superyachts and those who work on them. 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 ship owners (including superyacht owners) and governments interested in providing decent conditions of work do not have to bear an unequal burden in ensuring protection

The new Convention is intended to achieve increased compliance by operators and owners of ships, including Superyachts, 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
- Ship owners' 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

Seafarer Employment Agreement (SEA)

The MLC also introduced the Seafarer Employment Agreement (SEA). This is important to you, so we treat the subject in depth.

Before the introduction of the MLC most Flag States required “crew agreements” which set out the key terms of the employment conditions. The Flag State had to approve the crew agreements before the vessel implemented them, but one document sufficed for the whole crew, which was signed by individuals when joining and leaving the vessel. With the introduction of the MLC all this changed. The MLC establishes a minimum requirement for almost all aspects of working conditions for seafarers – in effect, a “bill of rights”. Additionally, signing-on articles on vessels under Red Ensign flags became obsolete when the MLC came into effect. So now every seafarer working on a commercial yacht must have a Flag State approved Seafarer Employment Agreement (SEA)

The SEA Specifically in terms of crew employment, the MLC requires each Flag State to have a clearly written and legally enforceable contract for each crewmember, not a general crew agreement. This is known as a Seafarers Employment Agreement or SEA.

The MLC Regulations state:

- Every seafarer has the right to a safe and secure workplace that complies with safety standards
- Every seafarer has a right to fair terms of employment
- Every seafarer has a right to decent working and living conditions on board ship
- Every seafarer has a right to health protection, medical care, welfare measures and other forms of social protection.

And:

- The terms and conditions for employment of a seafarer shall be set out or referred to in a clear written legally enforceable agreement and shall be consistent with the standards set out in the Code.

The SEA is a contractual agreement between the individual crewmember and the vessel’s owner, representative or owning company. (In most cases the owner has little to do with the yacht’s administration; as many yachts are owned by a company and run by a management firm, we will refer from now just to the “employer” to cover all three entities.)

It must be in a language understood by the crewmember. Where such a language is not English, an English translation must be maintained on board the vessel. The SEA must be signed by the crewmember and the vessel’s employer and a copy kept by the crewmember and a copy held on board the vessel. (The importance of a copy being held on board was emphasised within two weeks of the MLC coming into force when a vessel was detained in Denmark as, on inspection, it was found that none of the crew had a SEA. In addition, the Isle of Man Ship Registry 2014 MLC Annual Report showed that of 217 vessels inspected, 129 had deficiencies in their SEAs.)

So what is a SEA required to contain? As an absolute minimum, the following information is required relating to the individual seafarer, the employer and the terms and conditions under which the seafarer is to be employed:

- The seafarer's full name, date of birth or age, and birthplace
- The vessel owner's name and address
- The place where and date when the seafarer's employment agreement is entered into
- The capacity in which the seafarer is to be employed
- The amount of the seafarer's wages or, where applicable, the formula used for calculating them
- The amount of paid annual leave or, where applicable, the formula used for calculating it
- The termination of the agreement and the conditions thereof, including:
 - i. If the agreement has been made for an indefinite period, the conditions entitling either party to terminate it, as well as the required notice period which shall not be less for the employer than for the seafarer
 - ii. If the agreement has been made for a definite period, the date fixed for its expiry
 - iii. If the agreement has been made for a voyage, the port of destination and the time which has to expire after arrival before the seafarer should be discharged
- The health and social security protection benefits to be provided to the seafarer by the vessel's employer
- The seafarer's entitlement to repatriation, including repatriation destination
- Reference to the Collective Bargaining Agreement, if applicable
- Any other particulars which national law may require

Once the SEA is approved by a Flag State, it becomes MLC compliant.

Obligations and Responsibilities:

As a seafarer the SEA is an important document for you. The employer must inform you of your rights and duties under the agreement prior to or in the process of engagement. It is the employer's responsibility to ensure that you as a prospective crewmember have the opportunity to examine the SEA before signing it and that you have reasonable time to seek professional advice before signing.

If you are serving on an MLC compliant yacht, the Flag State or its designated recognised organisation will have approved the agreement and ensured it is compliant with the MLC requirements. There may be some differences between various Flag States' and employers' interpretations of the MLC, but the Agreement will have to have been approved.

The Employer is bound to agree with the terms of the SEA, just as crew are, so the introduction of these Agreements essentially just gives a more definite structure as to what can be included as opposed to the older "contract of employment".

Remember, crew are entitled to seek clarification or take advice on anything you're unsure of prior to signing.

What Else Should You Look For?

We have outlined the minimum requirement of a SEA under the MLC, but what of the detail, the dreaded “small print”? Each Flag State has similar requirements and interpretations but the actual text does vary. The International Labour Organization (ILO) has published a “model format for Seafarer Employment Agreement”. In addition, several Flag States have published their own “model agreements”, such as the Isle of Man, Cayman Islands, Marshall Islands, Gibraltar and the UK’s Maritime and Coastguard Agency (MCA). All these models are available online. Note: these are “model agreements” – as the Isle of Man states: “This is a model format of a SEA; its use is not compulsory but it would be deemed to be evidence of compliance with the new MLC regulations.” So every vessel could have different SEA depending on their flag and interpretation of the model. Two example contrasts between Flag States are the Cayman Model and the Gibraltar model – the Cayman model goes into more detail than any other model, while the Gibraltar model is minimalistic.

For us to go into all the detail contained in each Flag State’s SEA and the variables would take more space than is available here, but we can provide some outline of what detail is included in a SEA and some of the variables between Flag States.

Hours of work and rest:

The Convention requires every Flag State to establish maximum hours of work or minimum hours of rest over given periods that are consistent with the provisions of the Convention.

The ILO model states:

Your hours of work will be arranged such as to ensure that you receive a minimum of 10 hours available for rest in each 24-hour period and a minimum of 77 hours rest in each seven-day period. This minimum period of rest may not be reduced below 10 hours except in an emergency. You may be required, at the absolute discretion of the Master, to work additional hours during an emergency affecting the safety of the ship, its passengers, crew or cargo or the marine environment or to give assistance to other ships or persons in peril. You may also be required to work additional hours for safety drills such as musters, fire fighting and lifeboat drills. In such circumstances you will be provided subsequently with (a) compensatory rest period(s).

The UK MCA agreement is identical; the Cayman model is fairly similar but goes into more detail; however the Isle of Man has no such detail.

In our experience this is one of the most challenging aspects of MLC implementation, so we recommend that you check your SEA thoroughly and, when employed, that the conditions are adhered to.

Paid annual leave:

Flag States are required to ensure that seafarers are given paid annual leave in accordance with the provisions of the Convention.

The Isle of Man model states:

The seafarer is entitled to take..... [Insert number] days paid annual leave (a minimum of 30 days) in each year of employment. The seafarer will be paid normal basic remuneration during such leave.

The seafarer will also be entitled to 10 days public holidays in each year of employment. By contrast, the Cayman model gives a minimum of 38 days’ annual leave including public holidays.

As well as what may be in your SEA we recommend that you ask what travel time is allowed and, if you are on rotational work, will you have travel home time paid for?

These are not always included in the SEA so make sure that you know what you are entitled to – and make sure that it is writing.

Repatriation:

Seafarers have a right to be repatriated at no cost to themselves in the circumstances and under the conditions of the Convention. The Convention specifies these conditions but there is quite a difference between ILO and Flag State models and some have various caveats, so check thoroughly.

On-board health benefits:

Every Flag State must ensure that all seafarers are covered by adequate measures for the protection of their health and that they have access to prompt and adequate medical care. The protection and care under the regulations shall, in principle, be provided at no cost to the seafarer while working on board. In this instance, the Flag States' models follow the ILO model agreement virtually to the letter.

Social Security Benefits:

The Convention states:

Every Flag 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 Convention without prejudice however to any more favourable conditions referred to in paragraph 8 of article 19 of the Constitution.

And...

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 shore workers.

Every country has different social security (or other equivalents) benefits. The rules above only apply if the country's legislation requires it to do so. It is therefore very important that you have this checked out by suitable experts.

Termination of employment:

The Isle of Man model states:

The minimum notice period for termination of a SEA is 7 days, and if for an indefinite period, must not be less for the ship owner than for the seafarer.

An SEA may be terminated at shorter notice or without notice under circumstances agreed in an applicable Collective Agreement or:

- a) If the seafarer, ship owner or ship owners representative agree that a shorter or no notice period is acceptable;
- b) In the case of misconduct of the seafarer;
- c) If the seafarer has need to terminate the agreement for compassionate or other urgent reasons without penalty to the seafarer

The Cayman model is pretty similar, but there are variances in the terminology used.

Disciplinary Rules and Procedures:

The ILO states that the rules are laid out in Merchant Shipping Law N.106(1)2000. The UK MCA states that the rules are set out in the:

Code of Conduct for the Merchant Navy, which has been agreed between the Chamber of Shipping, Nautilus International and the National Union of Rail, Maritime and Transport Workers; or the ship owner's Code of Conduct.

(Note; Under UK law there is no obligation on any worker to belong to a union). The Cayman statement is fairly similar, and both the Isle of Man and Cayman add:

The Code of Conduct will be made available to you, if requested, before you sign this agreement.

So if you are unfamiliar with the contents we recommend that you obtain a copy. Something else you should be aware of is, that regardless of what the MLC states, the employer may list any conditions he wishes so long as they are approved by the Flag State.

Your bill of rights:

Our advice to any prospective employee or crewmember seeking to change jobs is very simple: when you are offered a job, ask to see the vessel's SEA and read it thoroughly before you accept the job. Remember, if you are in doubt about anything, ask for clarification from the employer and, if necessary, seek advice. It would also be worth ascertaining which flag the yacht is flying and access the model agreement of that flag state for reference.

The MLC is a seafarer's "bill of rights" and the SEA should be your watertight contract of employment. It also provides the employer with the legal framework with which to employ crew – in essence; the terms and conditions of employment for both seafarer and employer alike.