

A SAFETY NET

MLC INTRODUCES FINANCIAL SECURITY FOR CREW

EARLY NEXT YEAR, AMENDMENTS TO THE Maritime Labour Convention (MLC) will come into force that introduces a financial security "safety net" for crew.

The vast majority of yachts that operate on a commercial basis will be affected by the changes. In practice, ship owners will likely deal with these changes by purchasing insurance that covers their crew for certain risks.

In this article, Adam Ramlugon, Superyacht lawyer at the luxury asset law firm Bargate Murray, discusses what these changes mean for the superyacht industry.

Background

Prior to the MLC coming into force in 2013, the agreement was billed as "a harbinger of a new era in our globalized world".

As portentous as that might sound, the focus that the MLC brought onto the welfare and working conditions of crew across the maritime community must surely be a good thing.

When it comes to superyachts however, the general consensus is that the MLC is something of mixed bag. A number of the provisions of the Convention have translated across to this unique and remarkable industry very well. The suite of mandatory benefits afforded to crew under their Seafarer Employment Agreements (SEA's) is a good example here.

On the other hand, if you were to ask a yacht builder what they thought of the minimum cabin size requirements for crew introduced by the Convention, you are not likely to receive a positive answer. Those in the know argued at the time that the rules would make it nigh on impossible to build a charter yacht of 3,000GT or less that could comply with the requirements.

The same goes for the rules on minimum hours of work and rest. The principle behind them is that crew should not be expected to work for more than 14 hours in any 24 hour period and 72 hours over seven days. Speak to the seasoned crew of a busy charter yacht however, and they will probably tell you that this is simply unrealistic in the context of a luxury charter, where crew are required to be on call to take care of their guests 24/7. It should be noted, however, that the Convention does, permit these limits to be broken provided that crew are given compensatory rest periods.

On the whole, there is a feeling that the framers of the MLC were almost exclusively concerned with regulating the commercial shipping industry, and

The Maritime Labour Convention is introducing new rules on financial security for crew. Superyacht lawyer Adam Ramlugon explains what this legal update means for superyacht owners.

that the world of private superyachts was little more than an afterthought. Then again, perhaps this is not surprising. The world's complement of merchant vessels and other commercial tonnage outnumber superyachts by a factor of five or more.

Ultimately, of course, none of that matters. At last count, 91% of the world's gross commercial tonnage was covered by the Convention, and this includes almost any commercial charter yacht that you might care to mention. It is, therefore, very much a case of adopting a British "Keep Calm and Carry On" approach. The MLC is here to stay and, here at Bargate Murray, we take great pride in leading from the front when it comes to advising our clients on how to stay compliant as new rules come into force.

The latest rules regarding financial security are no exception.

The new rules

As of 18 January 2017, all ships and yachts to which the MLC applies must have a system of "financial security" in place which will provide crew with a direct right of access to financial compensation and other benefits in the events of:

"Abandonment"; and,
"Contractual claims" which relate to death or long term disability (in each case as those terms are defined by the Convention)

Fear not, I am not about to embark on a clause by clause analysis of the provisions that will carry these rules into effect. The point behind them, however, is to require ship owners to put a regime in place which will kick in should an owner default on its obligations to, for example, cover the costs of repatriating a seafarer employed on their yacht.

This is one circumstance which would give rise to an event of "abandonment" as defined by the Convention.

At the moment, if a seafarer is "abandoned" in this way, the owner is in default of its obligations under the MLC and liable to sanctions under the laws of their yacht's flag state. Owners of Cayman flagged yachts, for example, are liable to a significant fine. The trouble is, however, that this particular sanction, or the risk of it to the owner, does not actually do very much in terms of getting the seafarer home.

The idea, therefore, is for a financial security provider (i.e. a separate entity to the owner) to step into the breach and pay the seafarer's repatriation costs. Under the rules, this "safety net" could be provided in a number of ways, but it is highly likely that this is a matter that will be dealt with by way of insurance. Discussions are currently underway between leading Flag States (such as Cayman) and the major P&I insurers, including the International Group of P&I Clubs, to work out how to best go about this. Other underwriters outside of that group are also, we understand, in separate discussions.

What do owners need to do to comply?

For the moment, this is a question of "wait and see" but you can expect a solution to be agreed between the marine insurance market and Flag States within the next few months. It should then simply be a matter of acquiring a compliant insurance product ahead of the 18 January 2017 deadline.

Additionally, however, the rules will also require owners to display "documentary evidence" on board their yachts to confirm that appropriate financial security is in place for their crew. The format of this document is a matter which we expect to be agreed between Flag State and the insurance market.

Ultimately, these are rules that will be welcomed by the superyacht industry. They can only be good news for crew and do not, it would seem, place too much of administrative burden on owners and their yacht managers.

This being the Monaco Yacht Show season, my team and I will be in Monaco later this September to meet a mixture of client contacts and old friends. If you are interested in learning more about this subject, or simply meeting the team, please do not hesitate to get in touch. bargatemurray.com

© Bargate Murray Limited, 2016. All rights reserved. This article is for information purposes only. The information and opinion expressed in this document does not constitute legal advice and should not be regarded as a substitute for legal advice.

