

## Maritime Labour Convention, 2006

### Frequently asked questions

#### A. General:

##### 1. **What is the main thrust of Maritime Labour Convention (MLC)?**

The Maritime Labour Convention (MLC), 2006 sets out seafarers' rights to decent conditions of work and helps to create conditions of fair competition for shipowners. It is intended to be globally applicable, easily understandable, readily updatable and uniformly enforced. The MLC has been designed to become a global legal instrument that, once it enters into force, will be the "fourth pillar" of the international regulatory regime for quality shipping, complementing the key areas of Safety, Training and the Prevention of Pollution from Ships, as reflected in the main International Maritime Organization (IMO) Conventions such as the International Convention for the Safety of Life at Sea, 1974, (SOLAS), the International Convention on Standards of Training, Certification and Watchkeeping, 1978, (STCW) and the International Convention for the Prevention of Pollution from Ships, 73/78 (MARPOL).

The Maritime Labour Convention is seen as having two primary purposes:

- to bring the system of protection contained in existing maritime 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 and governments interested in providing decent conditions of work do not have to bear an unequal burden in ensuring protection.

The Convention is organised into three main parts with the Articles coming first which set out the broad principles and obligations. This is followed by the more detailed Regulations and Code (with two parts: Parts A and B) provisions.

The Regulations and the mandatory Standards (Part A) and recommendatory Guidelines (Part B) in the Code are integrated and organised into general areas of concern under 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.

These five Titles essentially cover the same subject matter as the existing 68 maritime labour instruments, updating them where necessary.

**2. When will the MLC enter into force internationally?**

The MLC will come into force twelve months after the date on which it reaches the entry into force criteria. That is, at least thirty Members of ILO with a total share of 33% of the world gross tonnage of ships have ratified the Convention. Presently twenty two countries have ratified it and they are Antigua and Barbuda, Australia, Bahamas, Benin, Bosnia, Bulgaria, Canada, Croatia, Denmark, Gabon, Kiribati, Latvia, Liberia, Luxembourg, Marshall Islands, Netherlands, Norway, Panama, St Vincent and the Grenadines, Singapore, Spain and Switzerland. Collectively these States have over 50% of the world fleet therefore the target of 33% of world tonnage has been met. The remaining criteria will have been met when another eight States submit their instruments of ratification.

It is anticipated that the thirtieth ratification will be submitted by Summer 2012, therefore the MLC should enter into force internationally in mid 2013. We should know a definitive date in the next few months.

**3. Will the Cayman Islands ratify the MLC?**

Whilst the Cayman Islands will be giving effect to the MLC, international conventions cannot be ratified by the Cayman Islands itself because the UK is the actual ratifying ILO Member State. When the UK does ratify a Convention it may then be extended to the Cayman Islands (as with other Overseas Territories (OTs) or Crown Dependencies (CDs)) if so requested by the OT or CD concerned, or (as in some cases) if the UK requires it to be extended. This means we cannot have MLC extended to us until the UK itself has ratified the convention, which they currently hope to be in a position to do before the end of 2012.

Following the UK's ratification but before the UK will extend to us we will need to have all of our relevant legislation in place and agreed with the UK. We are engaged in ongoing dialogue with the UK so that this agreement should (hopefully) be reached as early as possible so as to avoid any delays in the extension of the Convention to Cayman.

Please note that the twelve month period between ratification and entry into force will still apply for all ratifications after the thirtieth, therefore, based on the above, it is unlikely that the convention will apply to the UK and Cayman upon international entry into force. The UK has informed us that provided ratification has been submitted prior to international entry into force (twelve months after the thirtieth ratification) it is expected that Port State Control will view such ships as if the MLC applies to ships of that flag. Irrespective of the position with ratification, we are proposing to implement MLC inspections in early 2012, to ensure a smooth transition for our shipowners. It is envisaged that a statement of compliance will be issued, which will be converted to a Certificate once the Convention is in force for the Cayman Islands.

**4. Will Cayman Islands Laws and Procedures need to change to implement the MLC?**

Yes there will be considerable changes to some areas of the legislation, including some completely new regulations, and we are dedicating considerable time and resources to this work and will be making these changes over the remainder of 2012 so that we can be ready with all of the requisite legislation before MLC enters into force internationally.

**5. What ships does the MLC apply to?**

Broadly speaking, the Convention applies to all vessels which are ordinarily engaged in commercial activities which operate either on international voyages, or from a foreign port, including yachts engaged in trade.

Engaged in trade includes but is not limited to use by the public, transporting merchandise or carrying passengers for reward or remuneration (other than as a contribution to the actual cost of the vessel or its operation for the period of the voyage or excursion).

**6. What ships are excluded from the scope of MLC?**

The Convention does not apply to:

- ships which navigate exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply;
- ships engaged in fishing;
- ships of traditional build such as dhows and junks;
- warships or naval auxiliaries.
- ships not ordinarily engaged in trade i.e. pleasure vessels.

**7. Does the MLC apply to Pleasure Yachts?**

The intent of the MLC is that it does not apply to vessels that do not ordinarily engage in trade. This has been taken by States and ourselves to mean that all pleasure vessels are excluded.

There has been much discussion regarding vessels that occasionally charter and whilst the “non hardware” related issues can theoretically be turned on and off, the “hardware” provisions such as accommodation requirements cannot. Therefore, for practical reasons, all Code Compliant Pleasure Yachts will need to comply with MLC. In the absence of any legal requirement to comply, this approach would certainly be recommended to future proof the vessel and for resale value.

**8. What is the difference between a Pleasure Vessel and a Pleasure Yacht?**

Under Cayman Islands laws a “pleasure vessel” is:

- a) in the case of a vessel wholly owned by an individual or individuals, used only for the sport or pleasure of the owner or the immediate family or friends of the owner;
- b) in the case of a vessel owned by a body corporate, one on which the persons on the vessel are employees, officers or shareholders (including beneficial owners of shares) of the body corporate, or their immediate family or friends
- c) a vessel wholly owned by or on behalf of a club formed for the purpose of sport or pleasure which, at the time it is being used, is used only for the sport or pleasure of members of the club or their immediate family, and for the use of which any charges levied are paid into club funds and applied for the general use of the club.

“Private use” means that the vessel is used on a private voyage or excursion, and during such use is not engaged in trade by transporting merchandise or carrying passengers for reward or remuneration (other than as a contribution to the actual cost of the vessel or its operation for the period of the voyage or excursion), and is not offered to the public for use.

The term “Pleasure Yacht”, in accordance with Cayman Law, includes a pleasure vessel as defined above and also a “pleasure vessel engaged in trade”. Whilst this latter term may seem a contradiction in terms it caters to the fact that a pleasure vessel may be used for private purposes (when it is a “pleasure vessel”), or for engaging in trade (when it is a commercial vessel) and as such would be subject to Code and Convention provisions as the case may be.

In summary, whilst a yacht is designed for “pleasure use” it may be put to such use either as a purely private yacht or as a commercially operated yacht.

**9. Why is some of the MLC mandatory and some recommendatory?**

Part A and Part B of the Code are interrelated. The provisions of Part B, called Guidelines, while not mandatory, are helpful and sometimes essential for a proper understanding of the Regulations and the mandatory Standards in Part A. In some cases, the mandatory Standards in Part A are so generally worded it may be difficult to implement them without the guidance in the corresponding provisions of Part B.

Our implementation will focus on the Standards, however, we will need to give regard to and perhaps implement some areas of the recommendatory guidelines (Part B) to ensure we comply with the convention. Therefore we would suggest that when you are examining the convention to see what changes you might need to make (and where you already comply) that you focus on the Standards, but remain fully cognisant of the guidelines.

**B. Shipowners:**

**10. What is the definition of ship under the MLC?**

*“ship means a ship other than one which navigates exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply”*

**11. What is the definition of shipowner under the MLC?**

Article 2(1) (j) of the Convention contains the following definition of “shipowner”:

*“shipowner” means the owner of a ship or any other 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 Maritime Labour Convention, regardless of whether any other organisation or persons fulfil certain of the duties or responsibilities on behalf of the shipowner.]*

In practice, there should be no ambiguity as to who is “the shipowner” of a given ship, taking into account that the shipowner-

- is to be named on the Maritime Labour Certificate for each ship so that the person responsible for the operation of the ship is easily identified;
- completes the Declaration of Maritime Labour Compliance Part II saying how compliance with the Convention is ensured and maintained; and
- will be named on the Seafarer Employment Agreement for each seafarer on board, which will specify the undertakings made with respect to the living and working conditions for that seafarer.

**12. What are the main changes that the MLC will impose?**

The MLC broadly brings together other conventions, many of which Cayman Islands vessels will already comply with but occasionally it contains new subjects, particularly in the area of occupational safety and health to meet current health concerns, such as the strengthening of any existing provisions relating to the effects of noise and vibration on workers, or other workplace risks.

The provisions relating to flag State inspections, the use of recognised organisations and the potential for inspections in foreign ports (Port State Control) in Title 5 are based on existing maritime Labour Conventions; however, the MLC builds on them to develop a more effective and cohesive approach to these important issues, consistent with other international maritime Conventions that establish standards for quality shipping with respect to issues such as ship safety and security and protection of the marine environment.

Other changes include:

- Crew Accommodation - major changes for new build vessels – see crew accommodation section for more detail;
- Annual Leave allowance –all seafarers will be entitled to a minimum of 2.5 days annual leave per month served;
- Complaints Procedure – there will need to be an onboard complaints procedure (*see further on for more details*);
- Seafarer Employment Agreement – these will replace Crew Agreements and will be essential for all seafarers; (*see the Seafarers section for more details*)
- Wages - must be paid monthly and a monthly account must be provided to each seafarer of wages and deductions;
- Health and Safety – there are a number of changes here many of which will simply formalise what many of you will already do; these changes include risk evaluation becoming essential and the requirement that all vessels with five or more seafarers must have a safety committee; guidance will be provided on the Health and Safety related areas of the convention in the run-up to the MLC entering into force;
- Social security – sickness benefit and injury benefit to seafarers are to be formally provided.

### **13. What will not change as a result of implementation of the MLC?**

Looking through what is currently done in practice and comparing this against what needs to be done for MLC you will probably find that about 80% of the convention is already complied with by many owners and operators. However, many of you may not be aware of the degree of compliance that already exists until an in-house assessment among all the departments involved has been undertaken.

In particular the following will not be changing for MLC (though some smaller vessels might need to comply with requirements that they previously did not):

- The Hours of Work (the enhanced rest periods are already implemented in National Law).
- The regulations for onboard food and water.
- The requirement for adequate manning levels.
- The requirements to have hospitals on vessels with more than 15 seafarers.
- The requirement to provide free repatriation (though some elements of this will change) and free medical care.
- Crew accommodation requirements for existing ships.

### **14. If my ship is not currently required to comply with certain provisions under “non MLC” rules and regulations, will it have to retroactively comply under MLC?**

Where any provisions and the application of them in “existing” rules and regulations are embraced by the MLC and the MLC requires their application to a vessel not previously required to comply with those provisions, then the provisions will need to be adhered to by existing ships.

In this context, the MLC may, for example, apply certain existing provisions to vessels with a lower gross tonnage. In summary, if a vessel is currently outside of the requirements for a certain provision to be applied and the MLC makes that provision applicable to such a ship, then compliance will be required under MLC and our legislation will need to be changed accordingly.

As an example there is a requirement for all seafarers to have a medical certificate in regulation 1.2 of the MLC. In our current legislation<sup>1</sup> this is only applicable on vessels over 1600gt. However, the MLC requires that this is extended to all vessels covered by MLC.

**15. How will I know what I need to do to ensure I comply with MLC?**

We are preparing guidance on such as this, and hopefully with the survey and inspection programme we intend to commence well before entry into force internationally, you should have no problems complying in advance of MLC entering into force.

However, the best thing to do now would be to use this guidance alongside Part A of the Convention to examine for where there might be gaps, especially on smaller vessels that might not need to comply with all the current legislation for areas to be covered by MLC. Don't worry there is no intention to go beyond what the MLC requires unless our legislation already does so.

**16. Do I have to comply with all of the MLC?**

If your vessel is not an exempted vessel then yes you will be required to comply. However, there are areas of flexibility and exemptions afforded by parts of the convention, in particular Title 3, and the Cayman Islands will seek to utilise these areas wherever it is appropriate to do so.

**17. Will I have to institute an onboard complaints procedure?**

Yes, all ships must have an onboard complaints procedure, which the seafarer must be provided with and this will need to be available for inspection and certification (if certification is applicable).

More guidance will be prepared as we approach the entry into force. However, this should prove reasonably straightforward to implement as we already have procedures for disputes over wages (section 96 of the Merchant Shipping Law, 2008 Revision) and food and water (section 107 of the Merchant Shipping Law, 2008 Revision). It is intended to extend the current process to cover all areas required by the MLC complaints procedure.

The complaints procedure must:

- Provide for "fair, effective and expeditious" handling of seafarer complaints on any alleged breach of the MLC requirements (including seafarer's rights) by giving the right to complain directly to the master and external authorities (Flag or Port State).
- Safeguard against victimization of a seafarer for filing a complaint.
- Aim to resolve complaints at the lowest level possible.
- Give the seafarer a right to be accompanied and/or represented.
- Ensure that someone onboard can provide, on a confidential basis, impartial advice and complaints and assist seafarers in following the onboard procedure.

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<sup>1</sup> Merchant Shipping (Medical Examination) Regulations, 2002

**18. Will I have to start providing seafarers with paid annual leave and public holidays?**

You will have to provide each seafarer 2.5 days per month served on board (30 days per 12 months of service) and this will be accrued in a pro rata basis. Seafarers cannot swap this leave for pay. Therefore all Cayman Islands ships must provide all seafarers with at least 2.5 paid working days off per calendar month, equating to at least 30 days per annum.

In terms of the leave period to be allowed, the concept is that weekends occurring during the leave period do not count toward the expiry of the leave period. This is an important consideration because the MLC recommends that a seafarer should be recalled before the expiry of his leave period only in cases of extreme emergency.

We will be developing the provisions necessary to give effect to the leave aspects of the MLC and updates will be provided as and when appropriate.

**19. Will I have to provide social security to seafarers' onboard Cayman Islands vessels?**

To comply with the MLC at the minimum shipowners must provide medical care, sickness benefit and employment injury benefit for all seafarers regardless of nationality. We already require shipowners to provide free medical care to all seafarers. We will also legislate to require that sickness benefit and employment injury benefit are provided which requires that full basic wages are paid for at least 16 weeks following sickness or injury provided that:

- the injury was caused during the seafarer's service on the ship
- that the sickness or injury was not caused by the wilful misconduct of the sick, injured or deceased seafarer; and
- the sickness was not intentionally concealed when signing the Seafarer's Employment Agreement.

This sickness/injury benefit will form part of the new Seafarers Employment Agreement, see the attached model SEA.

Shipowners must also provide financial security to assure compensation in the event of the death or long-term disability of seafarers due to an occupational injury, illness or hazard. This simply needs to be a certificate of entry in a P&I Club as required by section 54 of the Merchant Shipping Law 2008 Revision.

**C. Seafarers:**

**20. What is the definition of seafarer under the MLC?**

*"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".*

The definition of seafarer does not apply to those persons whose work is not part of the routine business of the ship and whose principal place of work is ashore, for example, marine professionals such as harbour pilots, inspectors, or superintendents, scientists, researchers, divers and specialist offshore technicians. Also those persons working on a seagoing ship on an occasional and short-term basis, for example fitters, guest lecturers and entertainers, repair technicians and surveyors or port workers, are not classed as seafarers.

**21. What will happen to crew agreements once the MLC enters into force?**

This is one significant change that the MLC will bring as there will no longer be a requirement for crew agreements and signing on articles as every seafarer working on a Cayman Islands registered ship or commercial yacht will need to have a Seafarer Employment Agreement (SEA) between themselves and the shipowner, or a representative of the shipowner. However, as most shipowners already have contracts of employment with their seafarers which cover most of the areas in the SEA only minor changes may be required.

**22. What will happen to Crew Lists when the MLC enters into force?**

SEAs will replace crew agreements and the list of crew, traditionally used when a seafarer signs on to the crew agreement. We are proposing a new crew list to be adopted and all seafarers who are employed, engaged or work on board the ship will be required to be entered onto it. The new crew list will contain the following information, which will be in the same form as the UK's ALC1:

- Name and type of ship, IMO Number and call sign
- Port of arrival/departure (ship)
- Date of arrival/departure (ship)
- Flag state of ship
- Last port of call
- Nature and No. of Identity document. (seafarer's passport)
- Number in the list (sequential numbering) 1, 2, 3.....
- Family and given names
- Rank or rating
- Nationality
- Date and place of birth
- Date and signature by Master, authorised agent or officer.

It will also be a requirement for the shipowner to maintain an up to date copy of this crew list and it will be the duty of the Master to notify the shipowner of any changes to this crew list. Also the shipowner will have to supply a copy of the crew list and changes thereto to the Cayman Islands Shipping Registry (CISR) if requested to do so.

**23. Will I need to give seafarers a record of their employment on board?**

The current requirements will not need to change in this area as MLC standard A2.1.1 (e) requires a seafarer to be "given a document containing a record of their employment on board the ship" which may be a seafarer's discharge book. If for any reason a discharge book is not used then the shipowner must provide the seafarer a record of their employment on board containing the following information (a copy of which shall be in English)-

- Name, port of registry, gross tonnage and IMO number of the ship
- Description of voyage
- Capacity in which seafarer is employed
- Date on which employment started
- Date of discharge

## 24. What will need to be included in Seafarer Employment Agreements?

The following must be included and we shall be preparing a worked example to assist shipowners-

- (a) The full name, date of birth and birthplace of the seafarer.
- (b) The name and address of the shipowner.
- (c) The place where the agreement is entered into.
- (d) The date on which the agreement is entered into.
- (e) The capacity in which the seafarer is to be employed.
- (f) The wages (either the amount or the formula to be used in determining them).
- (g) The manner in which wages must be paid, including payment dates and the circumstances (if any) in which wages may or must be paid in a different currency.
- (h) Hours of work.
- (i) The paid annual leave (either the amount or the formula to be used in determining it).
- (j) Termination of employment.
- (k) If the agreement has been made for a definite period, the termination date. The period of notice of termination required and the circumstances in which such notice may be given.
- (l) If the agreement has been made for an indefinite period, the period of notice of termination required and the circumstances in which such notice may be given.
- (m) If the agreement has been made for a voyage, the destination port and the period following arrival after which the agreement terminates. The period of notice of termination required and the circumstances in which such notice may be given.
- (n) The health and social security protection benefits to be provided to the seafarer by the shipowner.
- (o) The maximum duration of service periods on board following which the seafarer is entitled to repatriation (such periods to be less than 12 months).
- (p) The seafarer's entitlement to repatriation (including the mode of transport and destination of repatriation) and the circumstances in which the seafarer may be required to reimburse the shipowner towards the costs of repatriation. A copy of the Cayman Islands Repatriation regulations shall be available to the seafarer on board<sup>2</sup>.
- (q) Reference to Collective Bargaining Agreements where applicable<sup>3</sup>.
- (r) Shipowner's complaint procedure.
- (s) Compensation in respect of loss of personal property as a result of foundering of the vessel
- (t) Disciplinary rules and procedures.

Whilst this might seem a lot most shipowners already have contracts of employment with their seafarers which cover most of the areas in the SEA so only minor changes may be required. Also most seafarers use a discharge book in order to record their record of employment.

## 25. How often must I pay seafarers under MLC?

Seafarers must be paid monthly for their work and be provided with an account of their pay including any deductions each month. They must also be given the opportunity to send money to families easily and without excessive charges.

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<sup>2</sup> It is anticipated that the present Merchant Shipping (Repatriation) (Cayman Islands) Regulations, 1989 will be amended or replaced to implement the MLC.

<sup>3</sup> Due to the multinational nature of crews on board Cayman Islands Vessels and the absence of any single seafarers' organisation representing the interests of crews on Cayman vessels it is unlikely that collective bargaining agreements will be applicable in the first instance. This aspect will be kept under review as the implementation of the MLC develops.

**26. Is there a worked up model of the Seafarers Employment Agreement for Cayman Islands vessels?**

We have prepared a worked example which could serve as a basis for SEAs which is annexed to this document. However, this is a guide and not necessarily a "prescribed document". This is still subject to update as our policy and legislation develops.

**D. Crew Accommodation:**

**27. What changes will the new crew accommodation regulations in title 3 of MLC impose?**

The changes to requirements for Crew Accommodation will only affect new build vessels after the MLC enters into force. For most areas of title 3 you will find that the requirements of the new convention will not be very different to those required now under the existing Merchant Shipping (Crew Accommodation) Regulations, 1988. However, one area that will change significantly will be floor areas for crew accommodation, the minimum permitted areas of which will in most cases increase quite significantly. Other areas where changes will be required will be that all crew accommodation on non passenger vessels will be required to have washbasins in every room, and that on all vessels over 3000gt each seafarer must have their own individual sleeping room.

**28. Do ships that have already been built need to comply with the new accommodation regulations?**

No. Ships constructed before the entry into force date of the MLC do not need to comply with regulation 3.1 on Accommodation and recreational facilities. However, there is a requirement that all accommodation and recreational facilities are decent and do not cause detriment to the health and well being of the seafarers onboard. To achieve this all vessels must comply with the Accommodation of Crews Convention, 1949 (ILO Convention No.92) and its 1970 revision (ILO Convention No.133) which are implemented into Cayman Islands Law by the Merchant Shipping (Crew Accommodation) Regulations, 1988, which will continue to apply for existing vessels.

**29. What is considered "decent accommodation" for existing ships?**

There is a requirement that all accommodation and recreational facilities are decent and do not cause detriment to the health and well being of the seafarers onboard. To achieve this all vessels must comply with the Accommodation of Crews Convention, 1949 (ILO Convention No.92) and its 1970 revision (ILO Convention No.133). This is achieved by compliance with our existing legislation on crew accommodation.

**30. When will my ships need to comply with the new accommodation regulations?**

Only ships whose keel is laid on or after the date of entry into force of the convention for the Cayman Islands (which is likely to be the date of entry into force internationally) will need to comply.

**31. Will yachts have to comply with the accommodation regulations?**

Subject to the answer in Question 28, all commercially registered yachts will need to comply with the accommodation regulations, and the remainder of the MLC. However, there are a number of exemptions for small vessels. All vessels under 200gt can be exempted fully from Standard A3.1. 7(b), 11(d) and 13; and exempted from Standard A3.1.9 (f) and (h) to (l) inclusive, with respect to floor area only. There are a number of exemptions permitted for ships under 3000gt also.

It is recognised that it may be very difficult for large yachts in the 200gt -1250gt bracket to comply with the full crew accommodation provisions under Standard A3.1 of the Convention. The Cayman Islands, along with the UK's Maritime and Coastguard Agency (MCA), working with representatives from the yacht sector and social partners (shipowner and seafarer representatives) has agreed a revised version of Chapter 21 of the Large Commercial Yacht Code which will be officially published when the new version of the Code (LY3) is published by the UK later this year.

In MLC parlance this new chapter of the Large Yacht Code is a "substantial equivalence" in that it meets the objectives, and as far as possible complies with MLC standards, but which also recognises the particular constraints on this size of yacht. You should be able to access Chapter 21A of the Code prior to official publication through the consultation process which is ongoing.

The substantial equivalence has also been discussed with other interested flag states and presented to the ILO. The proposals were generally supported and therefore this will be acceptable to use on Red Ensign flagged yachts.

The UK is also considering whether these changes can be adopted as an amendment to the MLC once the convention enters into force. However, even if this is taken forward it is anticipated that this would take some considerable time.

**32. Does Cayman intend to utilise all of the exemptions permitted on small vessels?**

It is always our intention to minimise the effects of any new legislation on the industry whilst ensuring that the aims of the conventions etc are met, and we intend to continue this policy and where exemptions are permitted we shall endeavour to utilise them. However, there are some areas where we already require compliance in areas where exemptions are permitted (mainly for vessels under 200gt) and we do not intend to lower the standards we currently require.

**E. Certification / Survey:**

**33. What is a Maritime Labour Certificate and do I need one?**

All Ships (except for those exempted<sup>4</sup>) of 500gt and over engaged in international voyages must have a Maritime Labour Certificate issued by the Flag State and it must be ready for inspection at all times. Ships under 500gt may be issued with one on request of the shipowner. This doesn't mean that ships or commercial yachts under 500gt do not have to comply as all ships of 200gt or over will be inspected for compliance with the convention but do not require a certificate.

**34. What is the process for obtaining the certificate?**

Your vessel must be surveyed by a CISR surveyor (or if so authorised, a Classification Society) who will inspect the vessel to ensure that it meets the requirements of the MLC as implemented into Cayman Islands legislation. You will also need to have filled in part 2 of the Declaration of Maritime Labour Compliance (DMLC) which will state what you are doing as a shipowner to ensure that you comply with the 14 areas which must be inspected and certified by the surveyor to allow him to issue the Maritime Labour Certificate.

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<sup>4</sup> ships which navigate exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply; ships engaged in fishing; ships of traditional build such as dhows and junks; warships or naval auxiliaries; ships not ordinarily engaged in trade i.e. private yachts.

**35. How long is the certificate valid for?**

The certification period has the same requirement as the ISM and ISPS Code with a five year validity and an intermediate inspection between the 2<sup>nd</sup> and 3<sup>rd</sup> anniversary date. Following expiry of the certificate you will need to have a renewal inspection within three months of the expiry of the old certificate. You will also need to obtain a new certificate upon change of flag or ownership.

**36. What is the Declaration of Maritime Labour Compliance (DMLC) and what does the shipowner have to do?**

The certification comes as two documents, a Maritime Labour Certificate and the DMLC. The DMLC Part I will be prepared by the Registry and will remain the same unless the legislation implementing the MLC changes. However, the DMLC Part II needs to be completed by the shipowner. This Part identifies the measures adopted to ensure ongoing compliance with Cayman Islands requirements for MLC, ensures that there is continuous improvement in standards and is subject to inspection and approval before certification.

When MLC first introduced the DMLC Part II, there were concerns that the certificate might need to be very long and detailed to contain all the required information. However, MLC guideline B 5.1.3.2 states that Part II may make reference to other documents that contain the policies and procedures that the shipowner has in place to comply with this area. Therefore, for example, for "No. 11 Health and safety and accident prevention" your DMLC Part II could refer to Section X of the Safety Management System.

The procedures and policies in the DMLC Part II are going to be the areas that will be inspected by CISR surveyors during the initial inspection before the certificate is issued so your ships and yachts will need to be able to demonstrate how these procedures and policies are used onboard to implement MLC.

**37. Is there a worked up model of the DMLC?**

We have prepared a draft of Part I (the flag state part) of the DMLC this has been published alongside this document. The text of the DMLC Part 1 will change as the actual legislation is developed so this draft will not be the final version. The DMLC contains the 14 areas within MLC that are liable for inspection and the legislation that we will have in place to implement the 14 areas, any substantial equivalence that Cayman has used, and any exemptions granted in connection with Title 3. Once the legislation is in place Part I of the DMLC will be finalised and then will not change unless there is a change in our implementing legislation.

[We shall also prepare a worked example of part II of the DMLC which could serve as a basis for your work in populating this part of the certification.]

**38. How will the inspection / survey process differ from that for other conventions?**

The survey and certification regime will be quite similar to that for other maritime conventions and codes, such as the ISM code where some of the areas are broadly similar. However, there will be a number of differences.

The surveyor will firstly review the DMLC Part II and supporting documentation and will then walk around the ship checking for compliance etc. He will also need to interview in private a representative number of seafarers, of course, taking into account the seafarers work and rest schedules. It might prove helpful to examine [Chapter 3 of the ILO Guidelines for Flag State Inspections under the Maritime Labour Convention, 2006](#) for more information (Please click on the hyperlink).

Surveyors will be empowered to require that any deficiency they find is remedied and, where they have grounds to believe that deficiencies constitute a serious breach of the requirements of the MLC (including seafarers' rights), or represent a significant danger to seafarers safety, health or security, they are also empowered to prohibit a ship from leaving port until actions are taken to remedy these deficiencies. The surveyors will be expected to take the following into account when considering any deficiencies:

- Does it seriously affect the safety of the ship?
- Is it a significant danger to the safety, health or security of any seafarer?
- Is it a serious breach of MLC requirements (including seafarer rights)?
- Is there a rectification plan prepared to ensure that the deficiency is fixed as quickly as possible?

If there are no deficiencies or the surveyor is satisfied that they are not a serious breach and that a rectification plan will resolve such deficiencies quickly and adequately, he will then complete an inspection report and issue the Maritime Labour Certificate if the vessel requires one.

### **39. How long will the survey take?**

As the MLC is a significant convention covering many areas onboard it is anticipated that the surveys will be quite time consuming, however, with advance preparation this can be minimised. It would be useful for each company to have someone in their offices with responsibility for ensuring compliance with MLC and liaising with the CISR and ensuring that all papers such as the DMLC Part II and supporting documents are in order. It would also be useful for someone onboard to act as a central point for organising timings of relevant people on board who need to be interviewed, such as the master, the seafarer etc.

For your information the UK has undertaken a number of 'draft' surveys on its vessels. These were undertaken against the MLC text as there was no legislation in place and they did not take into account any of Part B of the Code (i.e. the non-mandatory guidelines). These were the approximate timings for the various inspections:

- 3000gt dredger – 8 hours
- 80000gt container ship – 8 hours
- 67000gt ferry – 12 hours
- 148000gt cruise ship – 4 days

Based on the above it is anticipated that a Commercial Yacht will take approximately 8 hours.

### **40. When will my ships be surveyed?**

Your ships will be surveyed over the next eighteen months as far as possible in advance of entry into force of the convention (most likely mid 2013). For all passenger ships and bulk carriers it will be essential to be surveyed and certificated prior to entry into force. However, for all other ships there is an international agreement that surveys can continue to take place in the year following entry into force provided that they are all complete for all vessels by the anniversary date of entry into force. These vessels should not be detained by Port State Control for not holding a Maritime Labour Certificate during this period (however, the rules on crew accommodation for new vessels will apply from the day the MLC enters into force).

Cayman intends to prioritise inspections accordingly and will firstly ensure that all bulk carriers and passenger ships are surveyed and certified; this will be followed by all remaining merchant ships and all commercial yachts over 500gt. Finally we will inspect all Merchant ships between 200 and 500gt and commercial yachts between 200 and 500gt. These final two categories require inspection but not certification unless the shipowner explicitly requests certification.

New build vessels will be inspected as part of the initial certification so these will be done as and when required rather than prioritised.

We intend to commence surveys in early 2012. However, these early surveys will most likely be undertaken against the convention rather than legislation as it is unlikely that all implementing legislation will be in place for this point. Therefore it may be necessary to have follow up surveys if the legislation is significantly different to the MLC, however as previously stated it is never our intention to depart significantly from any maritime convention.

**41. Who will carry out the surveys?**

In the first instance it is highly probable that the initial inspection will be undertaken by a CISR Surveyor. However, it is possible that due to workloads and pressure of the entry into force date that some parts or all of the initial inspection will be delegated to class. If this happens then the intermediate inspection between the 2<sup>nd</sup> and 3<sup>rd</sup> anniversary date would definitely be undertaken by a Cayman Islands surveyor.

**42. Will any of the surveys be delegated to Class?**

Further to the answer to question 41, it is possible that due to workloads and pressure of the entry into force date that some parts (for example the Interim Certificate or crew accommodation inspection) or all of the initial inspection will be delegated to class. If this happens then the intermediate inspection between the 2<sup>nd</sup> and 3<sup>rd</sup> anniversary date would definitely be undertaken by a CISR surveyor.

**43. How many vessels will need to be inspected by the Cayman Islands Administration?**

The number of Cayman Islands vessels that will require inspection is likely to be close to 600.

**44. Can I obtain a Maritime Labour Certificate even if it is not essential to carry one?**

Whilst vessels under 500gt do not require a Maritime Labour Certificate it is possible to obtain a certificate for a vessel under 500gt if the owner feels it to be necessary, for example to assist in port state control procedures. However, as holding this certificate will not be essential we will not be able to prioritise such certification and cannot guarantee you would have a 'voluntary' certificate in time for entry into force of the MLC.

**45. Can I opt for voluntary Compliance with the MLC even if the Convention does not apply to my vessel?**

It is likely in the future that a system of voluntary compliance may be introduced. However, priority will be given to vessels that must comply with the Convention. Only after all vessels that the convention applies to are dealt with will requests for voluntary compliance be considered.

**46. What is an Interim Maritime Labour Certificate?**

This will be required for new ships on delivery and for ships that may be new to your fleet or new to the Cayman Islands Shipping Registry. The good news is that there is no need for a DMLC until the full term certificate is issued after initial inspection.

The interim certificate is valid for 6 months (which is the same as those for the ISM and ISPS Codes) but there is one key difference in that there is no ability to extend an interim certificate. Unlike the interim certificates for the ISM and ISPS Codes you must obtain a full certificate within the 6 month validity of the interim certificate.

**47. If I obtain a Certificate prior to entry into force of the MLC will it be valid once the convention enters into force internationally?**

Yes the certificate will automatically become an official Maritime Labour Certificate following entry into force of the convention which should, under the terms of the convention, be acceptable to all port state control officers as proof of compliance with MLC.

**48. Can my Maritime Labour Certificate be withdrawn?**

Yes, as with other maritime convention the certificate can be withdrawn at interim inspections or following a complaint by any Port State Control officer or seafarers and investigation by the Flag State, or any Port State. The certificate can only be withdrawn by the Maritime Administration which issued it, i.e. the CISR for Cayman registered ships.