

M/Y CREW **AGENCY**

# Employment Contract Guidance (MLC & SEA)



Maritime & Coastguard Agency

MCA Certified Recruitment and Placement Agency



The MLC 2006 came into effect on 20th August 2013 and has had a notable effect on all commercial super yachts and those who work for them.

The MLC oversight can best be described as fulfilling two main objectives:

- 1) To bring the system of protection contained in its existing labour standards closer to the workers concerned and in a form which is conducive with the rapidly changing global industry;
- 2) To improve the applicability so that ship owners and governments interested in providing improved conditions of work do not have to burden unequal protection procedures.

The new convention was intended to achieve increased wider compliance by operators and owners of ships alike, and to further strengthen enforcement of standards through procedures which are applicable at all levels.

The areas in which it contains provisions for are as below:

- Crew Accommodation;
- Complaint procedures which are available to Seafarers;
- Ship owners and ship masters supervision of conditions on their respective ships;
- Flag States jurisdiction and control over their ships;
- Port State inspections of foreign ships;
- Ensuring that members not only implement the Convention in the respective national laws but also to document their implementation, the convention should also enhance the effectiveness of the supervision carried out at an international level, especially by the competent bodies of the ILO.

The MLC also introduced the Seafarer Employment Agreement (SEA) which has notable importance to each and every seafarer.

Prior to the introduction of the MLC most Flag States required 'crew agreements' which set out the fundamentals and key terms of the proposed employment conditions. The flag state had to approve the crew agreements before they were implemented by the ship however, one document sufficed for the whole crew which was signed by individuals both joining and leaving the ship.

With the introduction of MLC all of this changed. The MLC establishes and sets out minimum requirements for almost all aspects of working conditions for seafarers. In addition, signing-on articles on vessels under red ensign flags became obsolete when the MLC came into full effect.

So now every seafarer working on a commercial yacht must have a flag state approved seafarer employment agreement (SEA). For more information on the regulations applying to non-commercial yachts, please refer to our 'Yachts Guide to the MLC' by clicking [here](#).

## The Seafarer Employment Agreement

The MLC requires each flag state to have a clear and concise legally enforceable contract for each crew member, not a general crew agreement. As referred to above, this is known as the SEA.

The MLC regulations require that:

- Every Seafarer has the right to fair terms of employment;
- Every Seafarer has the right to a decent standard of living and working conditions on board a ship;
- Every Seafarer has the right to health protection, medical care, welfare measures including other forms of social protection;
- The terms and conditions for employment of a seafarer shall be set out or referred to in a clearly 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 crew member and the vessels owner, representative or owning company.  
**Note:** *In most cases the owner has very little to do with the yachts administration as many yachts are owned by a company and subsequently, run by a management team referred to as the 'employer' herein to cover all three entities.*
- The seafarer employment agreement must be in a language fully understood by the crew member. Where a language is not English, an English translation must be maintained on board the vessel. The SEA must be signed by the crew member and the vessels employer and a copy kept by the crew member and a copy kept onboard the ship.

The importance of a copy being kept onboard the ship was emphasised within two weeks of MLC taking effect when a ship was detained in Denmark and was found to have no crew onboard who had a SEA.

As an absolute minimum, the following information is required relating to the individual seafarer, the employer and the terms and conditions of which the seafarer is to be employed:

- The seafarers full name;
- The ship owners name and address;
- The place where, and date when the seafarers employment agreement is entered into;
- The capacity in which the seafarer is to be employed;
- The exact amount of the seafarers wage and/or the formula for calculating them;
- The amount of paid annual leave and/or the formula used to calculate it;
- The termination of the agreement and the conditions for this which should include:
  - i) If the agreement has been made for an indefinite period and the conditions entitling each party to terminate it, as well as the pre defined required notice period which can not be less for the employer than for the seafarer;
  - ii) If the agreement has been made for an definite period, the fixed date for it's 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 can be discharged.
- The health and social security protection benefits to be provided to the seafarer by the ships employer;
- The seafarers entitlement to repatriation, including repatriation destination;
- Reference to the Collective Bargaining Agreement, if applicable;
- Any other particulars which respective national law should require.

**Note:** *Once the SEA is approved by the Flag State, it then becomes MLC compliant.*

## Obligations and Responsibilities

As a seafarer the SEA is an extremely important document for you. The employer must inform you of your rights and duties under the agreement prior and/or in the process of engagement. It is the employers responsibility to ensure that you as a prospective crew member have the opportunity to examine the SEA before signing it, that you have had reasonable time and that you have had the opportunity to seek legal/professional advice before signing. If you are employed on a MLC compliant yacht, the flag state or its designated recognised organisation will have approved the agreement and ensured it's eligibility in compliance with MLC requirements. There may be some differences between various flag state and employers interpretations of the MLC however, they will have to have gone through the approval process.

Your employer is bound to agree with the terms of the SEA, as are crew members, so the introduction of these agreements effectively gives a more comprehensive structure as to what can be included relative to the old 'contract of employment'.

### **What else should you look for in your SEA?**

So far we have defined the minimum requirements set out by the MLS for all seafarer employment agreements. However, we all know that the "devil can be found in the details" so below we have outlined further information and considerations to further protect you.

### **Interpretations of the SEA**

Each flag state has similar requirements and interpretations however, the text and delivery can vary. The International Labour Organisation (ILO) has published a 'model format for seafarer employment agreement' which you can view by clicking [here](#).

Furthermore, 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 & Coastguard Agency (MCA).

### **Hours of work and rest**

The convention requires that every flag state is to establish clearly defined maximum hours of work or minimum hours of rest over a given period that are in compliance with the provisions set out in the convention.

The ILO 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'S MCA model is identical to this; the Cayman Islands is similar however, goes into more detail and the Isle of Man has little in terms of detail.

We recommend that you check though your SEA thoroughly and ensure that all points are covered and anything you are not sure of, seek professional advice/assistance. In addition, you should ensure that once engaged, all points are adhered to.

### **Paid annual leave**

Flag states are required to ensure that seafarers are given paid annual leave in accordance with the provisions set out in the convention.

All seafarers have a right to be repatriated at no extra cost to themselves in the circumstances and in accordance of the conditions set out by the convention. The convention specifies these conditions but there can be a substantial difference between ILO and flag states models. These can include various caveats so we recommend that you check through thoroughly.

### On-board health benefits

Each and 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, be provided at no extra cost to the seafarer whilst working on board. In this instance, flag states models all follow the ILO model agreement almost to the letter.

### Social security benefits

The convention states that every flag state shall ensure that all seafarers and, to the extent provided by its national law, their dependents have access to social security protection in accordance with the convention without prejudice. Each member shall ensure that seafarers who are subject to its security legislation and to the extent provided for in its international law, their dependants are entitled to benefit from social security protection no less favourable than that enjoyed by shore workers.

However, each and every country has different social security benefits. The rules only apply if the country in questions legislation requires it to do so. It is therefore important that you have your individual circumstances clarified by an expert/professional.

### 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 shipowner's Code of Conduct. NOTE: Under UK law there is no obligation on any worker to belong to a union.*

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

We would advise, to any prospective employee or crew member who has been offered a job, to ensure that you ask to view the employers SEA/agreement and read through it thoroughly (using this document if necessary as guidance) ahead of your start date to ensure that you're both happy with its contents and that all necessary requirements are met. If in doubt, speak to a professional before signing any contract/agreement.

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