

Countdown to 20 August 2013  
The Maritime Labour Convention 2006

CLYDE & CO





As the shipping community prepares for the Maritime Labour Convention 2006 to enter into force on 20 August 2013, many questions are being asked about the impact this Convention will have on the shipping sector. In the first of a three part series, we examine the scope and operation of the Convention, and its significance for the industry. In part 2 we will look in more detail at problems identified in this paper, and part 3 will look at the challenges of implementation and enforcement.

# The Maritime Labour Convention 2006

Following our series of papers, Clyde & Co will present a seminar on 16 September 2013 during which Paul Newdick, Heidi Watson and Trudy Grey will discuss key issues relating to the Convention. To register your interest in attending, please follow the link on the cover e-mail.

The Maritime Labour Convention 2006 (MLC) was adopted by the International Labour Organisation (ILO) in February 2006, but it was only last year, on 20 August 2012, that the minimum requirements set out for its entry into force were met when the Philippines became the 30th country to ratify the Convention. As the Convention was designed to enter into force 12 months after the minimum requirement was reached, the MLC will enter into force on 20 August 2013 but only as far as the first 30 ratifying countries are concerned. Entry into force for other countries will take place 12 months after each ratification is registered by the ILO. However, despite the fact that entry into force of the Convention will vary from country to country, it should be noted that from 20 August 2013 Port State Control in countries which have not ratified the Convention will still apply the MLC requirements to ships flagged in ratifying countries. Similarly, through the “no more favourable treatment” clause (discussed below), ships flagged with non-ratifying countries will have to comply with the 14 minimum requirements set out under the Convention (see below) when calling at ports of ratifying countries.

At the time of writing this update, 41 countries representing approximately 70 percent of the world gross tonnage have ratified the MLC including important Flag States such as Panama and Liberia, as well as the key Port states and jurisdictions of the majority of seafarers and seafarer recruitment providers.

For now, some notable Flag States have not yet ratified including the United States and the United Kingdom. Whilst the United Kingdom has indicated that it will ratify and be ready to implement by August 2013, the situation is much less clear for the United States. For the full list of ratifying countries, please [click here](#).

In brief, the MLC constitutes a major shift in maritime labour law. It links strength of rights with flexibility in application and a strong regime of enforcement. In this way, it aims for and is likely to achieve almost universal ratification, a result which past Conventions (and there have been over 70) have failed to achieve. Fundamentally, it is a set of maritime labour principles and rights, and aims to transform shipping into a more socially responsible industry, manned by better informed seafarers operating in improved working and living conditions. Importantly, it is intended to level the playing field so that unscrupulous operators cannot undercut on price those operators already providing decent living and working conditions.

The Convention is based on a certification system operated by Flag States whereby all relevant ships flagged by a ratifying state will need to be certified and, once certified, they will be deemed to have complied with the MLC unless Port State Control obtain evidence of non-compliance. Importantly, non-ratifying state ships (which will not have an MLC certificate of compliance) calling at ports of ratifying states will be subject to Port State Control inspections aimed at ensuring compliance with the Convention’s minimum 14 requirements regarding seafarers’ working and living conditions. If these vessels do not comply with those minimum terms, they are likely to encounter long delays and possibly detention. The “no more favourable treatment” clause, as it is known, aims to ensure that shipowners are not able to evade minimum obligations to their seafarers by sailing under a non-ratifying Flag State.

# Scope of the MLC

## The main provisions of the Convention

The preamble to the MLC lists fundamental labour principles which ratifying states need to satisfy themselves are respected in their national laws in the context of the MLC. These are:

- (a) freedom of association;
- (b) effective recognition of the right to collective bargaining;
- (c) the elimination of forced or compulsory labour;
- (d) the effective abolition of child labour;
- (e) the elimination of discrimination in respect of employment and occupation.

The MLC then sets out the essential rights, principles and obligations of its Members (i.e. the countries which have ratified the Convention). The five main areas on which the Convention focuses are:

- (a) Minimum requirements for seafarers to work on a ship;
- (b) Conditions of employment;
- (c) Accommodation, recreational facilities, food and catering;
- (d) Health, protection, medical care, welfare and social security protection;
- (e) Compliance and enforcement.

The MLC is made up of three different but related parts: the Articles, the Regulations and the Code. The Articles and Regulations set out the core rights and principles and the basic obligations of Members.

The Code contains the details for the implementation of the Regulations. It comprises Part A (mandatory Standards) which must be implemented in each Member state through the enactment of national laws, and Part B which constitutes non-mandatory Guidelines.

## What are the 14 minimum requirements set out under the Convention?

The 14 areas which are required to be inspected (and where appropriate certified) under the MLC are:

1. Minimum age;
2. Medical certification;
3. Qualification of seafarers;
4. Seafarers' employment agreements;
5. Use of any licensed or certified or regulated private recruitment and placement service;
6. Hours of work or rest;
7. Manning levels;
8. Accommodation;
9. On-board recreational facilities;
10. Food and catering;
11. Health and safety and accident prevention;
12. On-board medical care;
13. On-board complaint procedures;
14. Payment of wages.

## Financial support and security

The MLC sets out the general principle that shipowners owe seafarers material support in the event of sickness, injury or death occurring while they are serving under a seafarer's employment agreement or arising from their employment under such agreement.

Under the Convention, the minimum costs which are to be covered are:

- Costs related to sickness and injury of their seafarers from the moment they commence their duty to the time they are deemed duly repatriated. These costs include the expenses of medical care, full wages while the seafarer remains on board or until he or she has been repatriated, and depending on national provisions, wages until the time of recovery
- Compensation in the event of the death or long-term disability of seafarers due to an occupational injury, illness or hazard, as set out in national law, the seafarers' employment agreement or a collective agreement
- Burial costs where the death occurred on board or ashore during the period of employment
- The cost of safeguarding the property of seafarers absent as a result of illness, injury or death

National laws may exclude a shipowner's liability in respect of injury incurred otherwise than in the service of the ship, injury or sickness due to the wilful misconduct of the seafarer, or sickness intentionally concealed at the time of entering the employment contract.

Shipowners are required to provide evidence of "financial security" to ensure that they are able to meet their obligations towards seafarers in respect of compensation in the event of death or long term disability. The Convention does not provide a list of suitable financial instruments so that it will fall upon each Member Flag

State to determine what it considers to be suitable financial security.

It should be noted that financial security (or insurance) is also required under the MLC in two other circumstances:

- (i) Repatriation of seafarers. At present, the obligation relates just to repatriation and does not extend to payment of outstanding wages in circumstances where the crew are abandoned. The important issue of abandonment is due to be addressed during an ILO meeting in early 2014. It will be some time before measures to tackle this issue are agreed.
- (ii) Recruitment and Placement (Manning) Agents. A system of protection by way of insurance or other appropriate measure to compensate seafarers for monetary loss as a result of failure of a manning agent or relevant shipowner to meet its obligations to the seafarer.

There is much debate on how Flag States will implement the Financial Security obligations. Many shipowners are hoping that P&I cover will be sufficient but specific insurance products are being created to cover these risks. Our next article will look in more detail at these issues.

## Will the Convention apply directly to Flag States?

As the MLC is an international legal instrument, it will not apply directly to shipowners and seafarers. Instead, through national laws and other measures, Member states will adopt the regulations set out in the Convention, ensuring that these comply with the minimum standards set out under the MLC. For Flag States, this will require a considerable amount of work. The requirements for implementation by Member states are very flexible. Mandatory standards may be implemented in a way that is substantially equivalent to that provided for by the MLC. This is commonly referred to as the "substantially equivalent principle".

Whether the ratifying states will have enacted the necessary laws and be ready to start implementation in time for August 2013 remains to be seen. The ILO is working hard with ratifying states, particularly the developing nations, to assist them in getting ready. However, it is likely that many states will not be ready. The UK, which has not ratified yet, has stated that it believes it is already 85% compliant with the MLC and draft legislation has been prepared, subject to consultation.

#### **Who is a “seafarer” under the Convention?**

As the MLC aims to protect seafarers, clarifying who falls under this term is essential. Under the MLC, a “seafarer” is defined as “*any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies*”. The definition is deliberately broad and certainly is broader than the definitions found in previous Conventions. The question of who is covered, particularly when it comes to those temporarily on board or those carrying out hospitality services has led to fierce debate in the industry and is yet to be resolved.

#### **To which ships will the Convention apply?**

The MLC will apply to ships of all tonnages, whether publicly or privately owned, which are “*ordinarily engaged in commercial activities*.” The Convention does not provide a definition for what constitutes “*ordinarily engaged in commercial activities*” and there has been much debate in, for example, the superyacht industry as to whether superyachts will be included. Indeed, some Flag States have been publicising their narrow interpretation of this issue as a means of encouraging shipowners to change flags. Whilst such opportunistic publicity is innovative, unfortunately it is not an answer to the “*no less favourable treatment*” principle which underpins the MLC.

#### **Which ships are excluded from the Convention?**

The Convention will not apply to ships which navigate “*exclusively in inland waters within, or closely adjacent to, sheltered waters or areas where port regulations apply*”. The Convention refrains from defining “*sheltered waters*” and “*closely adjacent*” and calls upon the national “*competent authority*” of each state to determine this. Notably, certain states have taken a very wide view of this in order to exclude a larger number of vessels from MLC application.

Other categories of ships to which the Convention does not apply are:

- (a) Ships engaged in fishing or in similar pursuits;
- (b) Ships of traditional build such as dhows and junks;
- (c) Warships or naval auxiliaries.

#### **Who is the shipowner?**

Central to the principles of the MLC is the idea that the obligation to ensure compliance falls on the shipowner. Therefore, the definition of the shipowner is a key concern for the industry. Under the Convention, the term “*shipowner*” includes not only the owner of the vessel, but also 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 this Convention, regardless of whether any other organisation or persons fulfil certain of the duties or responsibilities on behalf of the shipowner*.” Debate has centred on the often complex arrangements between shipowner, manager and manning agents in the operation of the vessel and the management of the crew. We will discuss this thorny subject and the attitudes of Flag States to implementation, in part 2 of our series.

# The operation of the MLC

## What is the requirement for “certification”?

Flag States will play a key role in reviewing and issuing certificates of compliance with the MLC. They may delegate this responsibility to a “*recognised organisation*” (e.g. a classification society) but the Flag State remains fully responsible for both inspection and certification.

The requirement for certification under the Convention will only apply to:

- (a) Ships of 500 gt or over, which are engaged in international waters; and
- (b) Ships of 500 gt or over, flying the flag of a Member state and operating from a port, or between ports, in another country.

Shipowners of vessels requiring certification must submit a Declaration of Maritime Labour Compliance (DMLC) to their Flag State. Once satisfied that all the MLC requirements for seafarers’ working and living conditions have been met, the Flag State will issue a Maritime Labour Certificate. This Certificate will be valid for a maximum of five years, with an inspection being required between the second and third year of this period. Vessels will have to carry on board the DMLC and the Maritime Labour Certificate.

In the build up to the implementation of the MLC, we have seen certain non-ratifying Flag States seeking to issue “pseudo MLC certificates” aimed at showing compliance with the MLC. In issue 2, we discuss the validity and impact of those certificates.

In addition, Flag States will need to ensure that smaller ships (below 500 gt), which are not covered by the MLC’s requirement for certification, and which sail on international voyages, or voyages between foreign ports, do nevertheless respect domestic laws and other measures implementing the Convention.

## Who is responsible for enforcing the terms of the Convention?

The Convention can be enforced internationally both by Flag State inspection and by Port State Control.

## Flag state inspectors

Flag States are responsible for inspection and certification. The MLC requires Flag State inspectors to be issued with clear guidelines regarding the tasks to be performed and ILO have issued a lengthy guide for Flag and Port state inspectors. An inspector will have the right to board a ship of its Flag State, carry out the necessary examinations, and require deficiencies to be remedied. Where such deficiencies constitute a serious breach of MLC requirements, or where the safety, health or security of seafarers is significantly compromised, an inspector may detain a vessel until the deficiencies are remedied.

## Port state control

Port State Control officers are tasked with inspecting foreign ships calling into their ports, and assessing whether they comply with MLC requirements relating to working and living conditions. In case of non-compliance, officers have the power to prevent a ship from sailing. Under the MLC, the Maritime Labour Certificate and the DMLC constitute prima facie evidence that the ship is compliant with its requirements; the inspection should in principle be limited to a review of those documents. However, there are four exceptions to this which would enable an officer to carry out a more detailed inspection aboard the ship: where there are issues with the documentation; where there are doubts concerning the seafarers’ actual working and living conditions; where there is suspicion that a change of flag was motivated by the desire to avoid compliance with the Convention requirements; and where there is a complaint regarding working and living conditions (in this regard, all vessels must have a properly documented on board complaints procedure).

Detailed inspections will inevitably cause delays which will impact on charterparty requirements and obligations. If the inspection reveals a serious or repeated breach of the Convention or conditions on board are hazardous to safety, health or security of seafarers, then Port State Control can detain the vessel until the non-conformities have been rectified.

The importance of turning rights on paper into rights in action, and the practical difficulties in enforcing the MLC, will be discussed in more detail in part 3 of our series.

## What does the future hold?

It is difficult to say how this new regime will work in practice as it is such a radical departure from previous regimes. Much will depend on the practicalities of implementation and enforcement which we will discuss in part 3 of our series. The issues and problems being identified now (which we will discuss in part 2 of our series) will need to be ironed out if this Convention is to be workable. It will be interesting to see whether the overwhelming support mustered at the time of its adoption will continue through to implementation and beyond. Given this is the first maritime labour convention with real teeth, the tools are certainly there to make that happen. We wait to see how well the industry responds to the challenge.

If you have any questions or concerns at this stage on any aspect of the Convention, please let us know by clicking [here](#).



# Our team



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Paul Newdick joined Clyde & Co in 1982 and has been a partner since 1988. He has specialised in employment work since 1982. He is an accredited Mediator focusing on employment disputes.

In the marine and energy sectors, aside from crewing and manning issues, Paul has dealt with major incidents in relation to health and safety, personal injury and loss of life. Paul has considerable experience in international employment law issues, especially in the US, Middle East, India and Europe. Paul recently spoke at the International Maritime Employers' Council (IMEC) conference on the subject of the MLC. Paul provides in-house employment training to several multinational companies. Paul is chairman of LawWorks, the operating name for the Solicitors Pro Bono Group, for which he received a CBE in the 2008 Queen's Birthday honours. He was selected by the Lawyer Magazine as one of the "Hot 100" lawyers for 2009.



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Heidi Watson joined Clyde & Co in September 2001. Heidi was promoted to Legal Director in 2012, and then to Partner in 2013. Her practice encompasses all aspects of contentious and non-contentious employment law, including Tribunal and High Court proceedings, drafting contractual documents, advising HR and legal professionals on employee relations issues, handling team moves and restrictive covenants as well as developing an expertise in handling employment issues arising from outsourcing contracts. Heidi's experience spans a number of sectors including insurance, transportation and energy, focusing on the marine sector as the Maritime Labour Convention comes into force. Heidi recently spoke at the Intertanko/Intercargo seminar series where she presented a talk entitled "Getting to grips with the MLC".



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Trudy Grey is a Legal Director in the Marine and International Trade department based in London. She joined Clyde & Co in 2002 from another London law firm. She specialises in shipping, trading and commercial litigation in both court and arbitration proceedings. Trudy acts for a wide range of shipowners, charterers, P&I clubs, offshore clients and traders in relation to contractual, commercial, shipping and trading matters. Her experience includes handling disputes relating to all types of maritime claims as well as the sale of goods and commodities and she regularly advises offshore support vessel owners on contractual issues. She has run numerous arbitrations, in particular LMAA and LCIA arbitrations, and has experience of mediations. Trudy recently also spoke at the Intertanko/Intercargo seminar where she focused on charterparty issues arising from the MLC. She also founded the Clyde & Co networking group "Women in Maritime Trade".



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Peter Roser is a senior associate in Clyde & Co's Employment Team. Peter specialises in employment law and has acted for a broad range of clients in a number of different industry sectors, including the marine sector. He advises on all types of contentious and non-contentious matters relating to UK employment law.

In relation to the marine sector, he has advised regularly on crew contractual and relations issues, dealt with difficult terminations and cross-border disputes. He has spoken at several international industry seminars on the implementation of the Maritime Labour Convention (MLC) and has advised numerous clients in respect of crew and management contracts as well as providing advice on compliance with the MLC.

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