

## Maritime Labour Convention enters into force

On 20 August 2012, the International Labour Organisation announced that, with the Philippines having become the 30th country to ratify the Maritime Labour Convention 2006 (“MLC 2006”), the threshold requirements for its entry into force had been reached. Accordingly, the MLC2006 will enter into force internationally 12 months from that date, on 20 August 2013.

The Maritime & Coastguard Agency (“MCA”) is the UK government agency responsible for implementing maritime safety policy in the UK and for the form of the UK legislation enacting the MLC 2006. The UK has yet to ratify the MLC 2006 but our understanding, from discussions with the MCA, is that it is fully committed to doing so and that the domestic legislation will be in force from 20 August 2013 at the latest.

This article provides a timely reminder of the aims of the MLC 2006 and sets out how enforcement of the obligations under the Convention is intended to be achieved.

### About the MLC 2006

The aim of the MLC 2006 is to ensure seafarers’ rights to decent conditions of employment at sea and ensure that they have better information in respect of their rights and the benefits of an enhanced compliance regime. The MLC 2006 consolidates 68 existing maritime labour instruments into a single text. It will be the “*fourth pillar*” of the international regulatory regime for quality shipping, alongside key conventions of the International Maritime Organisation such as the International Convention for the Safety of Life at Sea (“SOLAS”), the International Convention on Standards of Training, Certification and Watchkeeping (“STCW”), and the International Convention for the Prevention of Pollution from Ships (“MAR POL”).

The scope of the MLC 2006 is very wide. It aims to achieve protection for all seafarers (of which there are estimated to be 1.2 million worldwide). This is reflected in the broad definition of “*seafarer*” as “*any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies.*” The principal intention is to cover all persons employed or working on board a ship, in any capacity whatsoever, including the self-employed and, crucially, those employed by third parties.

The obligations under the MLC 2006 fall squarely on the shoulders of the “*ship-owner*”. This is defined to mean the owner of the ship or another organisation or person to whom the owner has entrusted responsibility for her operation such as a ship manager, manning agent or bareboat charterer.

The MLC 2006 describes standards which are mandatory and guidelines which are not. However, manning agents may find that, in the particular jurisdiction in which they operate, a guideline is in fact given mandatory status, placing additional obligations on them. For example, that the manning agent must verify that labour conditions on ships for which it supplies seafarers are in conformity with applicable collective bargaining agreements, or that the manning agent may only supply seafarers to ship-owners who offer terms and conditions of employment that comply with applicable laws, regulations or collective agreements.

## Enforcement

Enforcement is to be through a combination of “*compliance awareness*” at all levels, flag state control and port state control. In particular:

1. from the individual seafarer’s perspective, his terms of employment will be required to be contained in a single document (the “*Seafarer’s Employment Agreement*” or “*SEA*”) between himself and the ship-owner, he must be properly informed of his rights and the remedies available to him in the event of non-compliance with the MLC 2006, and he has the right to make complaints (onboard and onshore). SEAs replace previous crew agreements and are akin to onshore employment contracts. Model clauses are already being provided by many flag states within the Red Ensign Group;
2. in addition, ships are required to have onboard procedures for the fair, effective and expeditious handling of seafarers’ complaints alleging breaches of the requirements of the MLC 2006 (including seafarers’ rights). These procedures shall include the right of the seafarer to be accompanied or represented during the complaints procedures, as well as his benefiting from safeguards against the possibility of being victimised for filing complaints in the first place;
3. the ship-owner will be required to implement measures that ensure compliance with the domestic regulations enacting the MLC 2006;
4. the ship’s master will be responsible for carrying out the owner’s measures and for keeping records evidencing implementation of the measures;
5. the flag state must review the ship-owner’s measures and verify and certify implementation. The certificate is valid for five years, subject to periodic inspections by the flag state;
6. where the ship is of 500 gross tonnage or above and is engaged in international voyages or voyages between foreign ports, she will be required to carry a Maritime Labour Certificate onboard. This, complemented by a Declaration of Maritime Labour Compliance, will constitute *prima facie* evidence that the ship has been duly inspected for compliance by the flag state and that, to the extent certified, the requirements of the MLC 2006 in relation to working and living conditions have been met;
7. flag states must also ensure that domestic regulations implementing the MLC 2006 are applied to smaller ships that are not covered by the certification system. Although not mandatory, it may be in the interests of owners of ships of under 500 gross tonnage to obtain the certificates in order to avoid what may otherwise be a more extensive port inspection; and
8. the concept of “*no more favourable treatment*” for ships of non-ratifying countries, applied through port state control, means that ships of all countries (irrespective of ratification) will be subject to inspection in the port of any state that has ratified and may be detained in port if they do not meet the minimum standards of the MLC 2006.

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(Charlotte Davies : Partner, London. INCE & CO International Law Firm.  
Nick Wilcox : Senior Associate, London. INCE & CO International Law Firm.)