

GUIDANCE NOTE 03/2012

IMPLEMENTATION OF THE MARITIME LABOUR CONVENTION, 2006

To: OWNERS, MANAGERS AND MASTERS OF CAYMAN ISLANDS SHIPS

This Guidance Note was previously issued as Shipping Notice 03/2012 and the content remains unchanged.
A copy of Shipping Notice 03/2012 is attached to, and forms part of, this Guidance Note.

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SHIPPING NOTICE 03/2012**IMPLEMENTATION OF THE MARITIME LABOUR CONVENTION, 2006.**

To: OWNERS, MANAGERS, CHARTERERS, CREWING AGENCIES AND MASTERS OF EXISTING CAYMAN ISLANDS SHIPS (INCLUDING COMMERCIAL YACHTS).

1. BACKGROUND

- 1.1 The purpose of this notice is to outline the plans by the Cayman Islands Shipping Registry (CISR) for the implementation of the Maritime Labour Convention (MLC), 2006, on Cayman Islands ships.
- 1.2 The MLC has to date been ratified by 28 States and will enter into force twelve months after the thirtieth ratification. This is likely to be achieved in the next two months, therefore it is anticipated that the Convention could enter into force internationally as early as August 2013.
- 1.3 The UK is the ratifying ILO Member State for MLC for the Cayman Islands and as such will extend the Convention to its Overseas Territories, including the Cayman Islands, after the UK has itself ratified the Convention. Indications are that UK ratification will take place towards the end of 2012 or early 2013 and the Convention will thus enter into force, for the UK 12 months later. This will mean that the MLC will probably enter into force for the UK and Cayman not long after the international entry into force date (estimated to be as early as August 2013).
- 1.4 Whilst it is unlikely that MLC will be extended to the Cayman Islands on the international date of entry into force, the Cayman Islands will be giving full effect to the Convention through national legislation, as is required by the Convention, prior to its entry into force for Cayman and therefore the CISR does not anticipate any negative impact on its' ships or operators when the Convention does enter into force for the Cayman Islands.
- 1.5 This Shipping Notice therefore sets out the plans for inspection and certification of all existing Cayman Islands ships that need to be inspected and, where necessary, certified for compliance with MLC. Shortly prior to entry into force of MLC the CISR shall

promulgate separate information regarding inspection and certification for ships built after entry into force.

2. WHICH SHIPS DOES MLC APPLY TO AND WHO IS THE SHIPOWER?

- 2.1 MLC applies to all ships which are ordinarily engaged in commercial activities which operate either on international voyages, or from a foreign port, including yachts engaged in trade.
- 2.2 MLC does not apply to ships that do not ordinarily engage in trade. This means that all private yachts that never engage in trade are excluded. There has been much discussion in the yachting sector regarding ships 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 Large Yacht Code compliant pleasure yachts will need to comply with MLC.
- 2.3 For the purposes of this Shipping Notice and any inspections carried out to assess compliance with the relevant provisions of the MLC, the definition of “shipowner” shall be the same as that in the MLC, i.e. -

“shipowner” means the owner of the ship or another organization 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 organization or persons fulfil certain of the duties or responsibilities on behalf of the shipowner.

- 2.4 All concerned, and in particular shipowners and any organization referred to above, need to be fully aware that where an entity assumes the duties (e.g. for crew contracts) imposed on shipowners by the Convention, and additionally has agreed to assume the responsibilities (i.e. financial guarantee) of the shipowner, then that entity will be responsible for any financial liability with respect to a seafarer arising under the MLC. However, where an entity assumes the duties imposed on the Shipowner but does not agree to assume the responsibilities (i.e. financial liability), then such responsibilities will remain with the shipowner, in accordance with the Convention.

3. CAYMAN ISLANDS PROGRESS TOWARD IMPLEMENTATION

- 3.1 The Cayman Islands has undertaken considerable work on preparing to implement the MLC and in February this year the CISR published a number of documents to assist shipowners and management companies with preparations toward implementing MLC on their ships. In this regard, the following information is available on the [CISR website](#)-

- [A Draft Declaration of Maritime Labour Compliance \(DMLC\) Part I;](#)
- [Detailed Questions & Answers on the MLC \(FAQs\);](#)
- [A representative sample of a DMLC Part II;](#)
- [A Model Seafarer Employment Agreement, which will replace crew agreements in the longer term and we are encouraging their use now;](#)
- [A copy of the "Guidelines for flag State inspections under the Maritime Labour Convention, 2006" published by the ILO which provides useful information regarding how the flag State inspections will be conducted and what the inspectors will be looking for.](#)

The CISR is continually monitoring developments and will keep this information up to date as further progress is made and owners and managers should ensure that they are aware of the latest information, in particular any updates to the DMLC Part I and the FAQs.

- 3.2 The CISR also continues to work on implementation of and legislation for the MLC and intends to finalise and publish all necessary legislation over the next 12 months to ensure that everything is finalised, and in place, prior to the international entry into force date (most likely August 2013¹). In the remainder of this Shipping Notice reference to entry into force should be read to mean entry into force **internationally** as the CISR intends to fully apply MLC on Cayman Islands ships from this date, as far as is practicable.
- 3.3 Due to the number of ships that will require inspection over the next two years it is imperative that inspections for compliance with MLC on Cayman Islands ships are commenced without delay and the CISR will soon be undertaking the first inspections (see also paragraph 4.2).

4. INSPECTION AND CERTIFICATION OF CAYMAN ISLANDS SHIPS

- 4.1 All commercially operated Cayman Islands ships will need to be inspected for compliance with MLC. Additionally all ships of 500GT and above will need certifying by the CISR. Merchant ships and commercial yachts under 500GT require inspection but not certification unless the shipowner requests a Maritime Labour Certificate.
- 4.2 The CISR intends to commence inspections in late summer 2012. However, these early inspections will be undertaken against the text of MLC rather than Cayman Islands legislation, as the national implementing legislation may not be complete at this stage².

¹ Current estimates are that the 30th ratification will be submitted to ILO in the next two months and therefore the MLC will have reached the entry into force requirements. This will mean the MLC will enter into force 12 months later which is anticipated to be August 2013. The CISR will update this Shipping Notice with the exact date of entry into force when available.

² Please be aware that the CISR does not intend to depart significantly from any maritime Convention, therefore there should not be any major differences between any requirements in Cayman Islands legislation and those of MLC. Where any difference is unavoidable and/or unforeseen at the time of the inspection, it may be necessary to conduct follow up exercises (most likely office based). In such cases any costs of further work would be borne by CISR. However, should the CISR inspector decide

- 4.3 Ships that are inspected prior to entry into force of MLC for the Cayman Islands and which comply with the relevant requirements of the MLC will be issued with a Statement of Maritime Labour Compliance (SoMLC) pending the entry into force of the Convention for the Cayman Islands. The SoMLC will be exchanged for a full Maritime Labour Certificate upon entry into force of MLC for the Cayman Islands, provided that the ship has been maintained in compliance.
- 4.4 All ships will be inspected over the next two years, as far as possible in advance of international entry into force of MLC. For all passenger ships and bulk carriers it will be essential that they be inspected and, if in compliance, issued with a SoMLC prior to entry into force of the Convention. However, for all other ships there is an international agreement that inspections can continue to take place in the year following international entry into force provided that all inspections are completed and all ships that require a Maritime Labour Certificate have one by the anniversary date following international entry into force (approx. August 2014). Ships other than passenger ships and bulk carriers should not be detained by Port State Control for not holding a Maritime Labour Certificate during this period, provided that they comply with the requirements of the Convention.
- 4.5 The CISR intends to prioritise inspections accordingly and will firstly ensure that all bulk carriers and passenger ships (including passenger yachts certified under the Passenger Yacht Code) are inspected and issued with a SoMLC. This will be followed by all remaining merchant ships and all commercial yachts of 500GT and above. Finally all merchant ships and commercial yachts under 500GT will be inspected.
- 4.6 Whilst ships under 500GT do not require a Maritime Labour Certificate it is possible to obtain a Certificate for a ship 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 the CISR will not be able to prioritise such certification and cannot guarantee a ship would have a SoMLC in time for entry into force of MLC.

5. PREPARATION FOR THE INSPECTION

- 5.1 All relevant Ships must be inspected by a CISR inspector (or if so authorised, a Classification Society inspector³) who will inspect the ship to ensure that it meets the requirements of the MLC as implemented into Cayman Islands legislation (or for early inspections against the text of MLC as indicated in paragraph 4.2).

that further work is required before he is content that the ship complies with the requirements of MLC then any costs for this (either office based work or follow up inspections) would be borne by the shipowner.

³ In the first instance it is probable that for existing ships the CISR will undertake the first MLC inspection. However, it is possible that due to workloads and pressure of the entry into force date that some parts will be delegated to Class. In such circumstances the intermediate inspection between the 2nd and 3rd anniversary date would definitely be undertaken by a Cayman Islands inspector.

- 5.2 On ships of 500GT and above shipowners will also need to have filled in part II of the Declaration of Maritime Labour Compliance (DMLC) which will state how that shipowner ensures compliance with the 14 areas which must be inspected and certified to allow the inspector to issue the SoMLC⁴ / Maritime Labour Certificate. More information on the DMLC, the current DMLC Part I for Cayman Islands ships and an example of the DMLC part II are available on the [website](#).
- 5.3 Whilst ships under 500GT do not require a Maritime Labour Certificate, other than those ships which wish to obtain a 'voluntary' Certificate (see paragraph 4.6), to assist the shipowner and the inspector with preparing for the inspection the CISR has taken a policy decision that for all ships which require an MLC inspection the shipowner should prepare a DMLC Part II.
- 5.4 The CISR would expect that most shipowners with a Safety Management System (SMS) manual, or other appropriate manuals, would make reference to them in the DMLC Part II. While the SMS may be updated by regular review, the DMLC Part II should only be resubmitted for updating when there are significant changes.
- 5.5 As the MLC is a significant Convention covering many areas on-board it is anticipated that the inspections 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, as far as is practicable and ensuring that all papers such as the DMLC Part II and supporting documents are in order. This includes-
- i) **Minimum age:** The shipowner should supply any policy and procedures relating to the prohibition of the employment of seafarers under the age of 16, and for seafarers under the age of 18: i.e. night work; hours of work and rest; leave and repatriation; health and safety including health assessment, risk assessment and prohibition and restriction of certain types of work.
 - ii) **Seafarer employment agreements (SEA):** The shipowner should forward all generic SEA(s) to the CISR for inspection for compliance with the MLC taking into account any regulations and any guidance such as the model SEA available on the [website](#).
 - iii) **Repatriation:** The shipowner should supply evidence of financial security to ensure that seafarers are duly repatriated.
 - iv) **Shipowners' liability:** The shipowner should supply evidence of financial security to ensure compensation in the event of the death or long term disability of seafarers due to an occupational injury, illness or hazard. This includes any indemnity against unemployment from the foundering or loss of the ship.

⁴ See paragraph 4.4 for the procedure prior to international entry into force

- v) **Health and Safety:** The shipowner should supply evidence that procedures are in place for new health and safety areas required by MLC: i.e. arrangements are in place to protect seafarers from the harmful effects of noise, vibration and chemicals on board the ship; procedures are in place to advise the master on reporting occupational diseases to the CISR.
- vi) **On-board complaints procedure:** The shipowner should supply a copy of the on-board complaints procedure.

5.6 This information will be examined for compliance in advance of the inspection by the inspector. A follow-up check will be onboard to ensure the same version is in use.

6. THE INSPECTION

6.1 The inspection and certification regime will be quite similar to that for other maritime Conventions and Codes, such as the ISM Code; however, there will be a number of differences. The inspector will firstly review the DMLC Part II and supporting documentation to ensure that these are the same version as provided in advance. The inspector will then walk around the ship checking for compliance etc. Additionally the inspector will also need to interview in private a representative number of seafarers, taking into account the seafarers' work and rest schedules.

6.2 Inspectors are empowered to require that any deficiency they find is remedied. Where an inspector 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, the inspector is empowered to prohibit a ship from leaving port until actions are taken to remedy these deficiencies.

6.3 If there are no deficiencies, or the inspector is content that a rectification plan will resolve such deficiencies quickly and adequately, the inspector will then complete an inspection report and issue the SoMLC / Maritime Labour Certificate, if the ship requires one.

6.4 A number of trial inspections have been undertaken by various administrations. Based on these inspections it is anticipated that an inspection for a commercial ship or a commercial yacht will take approximately 8 hours (plus office preparation), though this should be taken as a guide and may change as further experience is gained.

6.5 Based on the time required to undertake the inspection on the ship and the work required in advance of the inspection we anticipate that in total the costs for the inspection will be 12 hours at our standard surveyors rates plus traveling time and expenses at cost.

6.6 Should you have any queries on any aspect of the MLC please contact James Hatcher or Peter Southgate. Both can be reached by email to shipping.master@cishipping.com.